

IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT  
AT MEMPHIS

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**JOSHUA ISAIAH HOLLOWAY,**

**Plaintiff,**

**vs.**

**Case No. CT-3712-22  
Div. II**

**TEMETRIUS JAMEL "JA" MORANT  
And DAVONTE PACK, individually  
and severally,**

**Defendants.**

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**TEMETRIUS JAMEL "JA" MORANT,**

**Counter-Plaintiff,**

**vs.**

**JOSHUA ISAIAH HOLLOWAY,**

**Counter-Defendant.**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER  
DEFENDANT MORANT "FAIRLY RAISED" THE JUSTIFICATION  
OF SELF-DEFENSE**

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**THIS MATTER** came before the Court on December 11, 12, 13, and 20, 2023, for an evidentiary hearing under Tennessee's Self-Defense Immunity (SDI) Statute, Tenn. Code Ann. § 39-11-622. Upon consideration of the parties' pre-hearing briefs, filed on December 7, 2023; the testimony of nine parties and witnesses, including Defendant / Counter-Plaintiff Temetrius Jamel

“Ja” Morant and Defendant Davonte Pack;<sup>1</sup> the parties’ post-hearing briefs, filed on December 18, 2023; the arguments of counsel; and the parties’ proposed findings of fact and conclusions of law, submitted on February 15, 2024, the Court **FINDS** and **CONCLUDES** as follows:

**I.**  
**RELEVANT PROCEDURAL HISTORY**

Plaintiff / Counter-Defendant Joshua Isaiah Holloway sued Mr. Morant (and Mr. Pack) on September 9, 2022, for punching him at the start of a pickup basketball game at Mr. Morant’s family home. (*See generally* Compl.) He amended his lawsuit on March 28, 2023, adding related claims. (*See generally* Am. Compl.) On April 12, 2023, Mr. Morant Answered Plaintiff’s amended lawsuit, denying Plaintiff’s claims and relying on “Tennessee self-defense laws.”<sup>2</sup> (Def. Morant’s Ans. to Am. Compl., Second Aff. Defense.) He also filed a counter-complaint, alleging that Plaintiff, “apparently frustrated, threw the basketball at Mr. Morant and intentionally hit him in the face.” (Counter-Compl. ¶ 13.) The counter-complaint alleged further that Plaintiff then “balled up his fists and walked aggressively toward Mr. Morant as if to attack him,” prompting Mr. Morant to “hit [Plaintiff] once in self-defense.” (*Id.* ¶¶ 13, 15.)

On June 26, 2023, Mr. Morant moved the Court for an evidentiary hearing under the SDI Statute, claiming that he should be civilly immune to Plaintiff’s claims. (*See generally* Mot. to Dismiss.) Plaintiff raised a series of constitutional challenges and non-constitutional objections to Mr. Morant’s motion, all of which the Court either held in abeyance pending the outcome of the

<sup>1</sup> In alphabetical order: Christopher “Chip” Brunt (video deposition), Leonard “Trey” Draper III (video deposition), Mike Miller (video deposition), Mr. Morant (live), Jamie Morant (video deposition), Ronnie Tee Morant (live), Teniya Morant (live), Mr. Pack (live), Donte White (live).

<sup>2</sup> Mr. Pack did the same, relying on “Tennessee defense of others laws.” (Def. Pack’s Ans. to Am. Compl, Second Aff. Defense.)

evidentiary hearing or overruled. (*See Orders of June 30, 2023, Oct. 3, 2023, and Dec. 11, 2023.*)<sup>3</sup>

The evidentiary hearing occurred on December 11, 12, 13, and 20, 2023. The Court received pre-hearing briefs from the parties on December 7, 2023, and held a pre-hearing conference on December 8, 2023. Nine parties and witnesses testified at the evidentiary hearing, some live and others via video deposition.<sup>4</sup> The parties submitted post-hearing briefs on December 18, 2023, and proposed findings of fact and conclusions of law on February 15, 2023. All parties agree that the question presented at this stage of the proceedings is whether Mr. Morant “fairly raised” the justification of self-defense as required by the SDI Statute. (**Agreed Order of Jan. 23, 2024.**)

At the conclusion of Mr. Morant’s proof, counsel for Mr. Holloway moved for a directed verdict pursuant to Tenn. R. Civ. P. 50.01 and 52.01 and Tenn. Code Ann. 39-11-622. The Court considered this in nature of a motion for involuntary dismissal under Tenn. R. Civ. P. 41.02<sup>5</sup> as this was a bench trial.<sup>6</sup> The Court offered to take the motion under advisement and allow Mr. Holloway to put on his proof for the hearing. Counsel for Mr. Holloway (and all parties) declined.

<sup>3</sup> The Court also granted a request by the State of Tennessee to intervene in this case to respond to Plaintiff’s constitutional challenges but excused the State from participating in the evidentiary hearing. (*See, e.g., Order of Dec. 11, 2023.*)

<sup>4</sup> *See, supra*, note 1 and accompanying text.

<sup>5</sup> Tenn. R. Civ. P. 41.02(2) states: After the plaintiff in an action tried by the court without a jury has completed the presentation of plaintiff’s evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court shall reserve ruling until all parties alleging fault against any other party have presented their respective proof-in-chief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court grants the motion for involuntary dismissal, the court shall find the facts specially and shall state separately its conclusion of law and direct the entry of the appropriate judgment.

<sup>6</sup> *See Smith v. Inman Realty*, 846 S.W. 2d 819 (Tenn. Ct. App. 1992)(holding that a motion for directed verdict has no place in nonjury trials).

Accordingly, the Court will “impartially weigh and evaluate the evidence just as it would after all the parties had presented their evidence.”<sup>7</sup>

## II. FINDINGS OF FACT

The Court makes findings of fact according to the following nine factors relevant to the question presented, each of which is discussed in greater detail in §§ III & IV, below:

### **A. Factor One: Location**

1). Mr. Morant is a professional basketball player for the National Basketball Association (NBA)’s Memphis Grizzlies.<sup>8</sup>

2) Holloway was a 17-year-old high school student at the time of the incident.<sup>9</sup>

3). On July 26, 2022, Plaintiff was invited to Mr. Morant’s family home in Eads, Tennessee, to play in a series of pickup basketball games.<sup>10</sup>

4). As many as 30 people were there for the games.<sup>11</sup>

<sup>7</sup> See *Shore v. Maple Lane Farms, LLC*, 411 S.W. 3d 405, 414 (Tenn. 2013).

<sup>8</sup> (Hr’g Tr. of Dec. 11, 2023: 122: 8-11 (Testimony of Ja Morant).)

<sup>9</sup> (Hr’g Tr. Of Dec. 12, 2023: 36:20-23 (Testimony of Mike Miller). The Court has not addressed the issue of Mr. Holloway being a minor in this ruling. No evidence was put in as to Mr. Holloway’s actual weight or size. The proof thus far was that he consented to the contact sport and after the incident his parents wanted him and Ja to sit down and talk to try to work it out. See Finding of Fact No. 108.

<sup>10</sup> (Hr’g Tr. of Dec. 11, 2023: 96: 22-25 and 97: 4-7 (Testimony of Tee Morant).) Mr. Morant lived in the home when he first moved to Memphis, and now his parents live there. (See *id.* at 129: 3-12 (Testimony of Ja Morant).)

<sup>11</sup> (Hr’g Tr. of Dec. 11, 2023: 97: 4-18 and 98: 9-17 (Testimony of Tee Morant) (explaining that there were “more than ten” players and “eleven or twelve in all spectators”); see also *id.* at 145: 12-15 (Testimony of Ja Morant) (“Yes. It was more than ten. I would probably say about thirteen to fifteen playing.”); Hr’g Tr. of Dec. 12, 2023, Morning Session: 66:17-20 (Testimony of Teniya Morant) (“It was about 30 people out there.”); (Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 16: 14-23 (Testimony of Donte White) (“I would assume about 15, 16 [players] because it was—you know, it’s five on five on the court and there were some on the sidelines . . . . [and] it was a few spectators.”); Hr’g Tr. of Dec. 13, 2023: 73: 18-19 (Testimony of Trey Draper) (“It was a full court. It was, like, thirty people or so.”).)

5). Players included Mr. Morant, Mr. Pack, Plaintiff, Christopher “Chip” Brunt, Darnell Cowart, Kyler “KD” Dandridge, Leonard “Trey” Draper III, Alex “Blue” Ndon-Blue, and Donte White.<sup>12</sup>

6). Mr. Pack is one of Mr. Morant’s best friends; they met around age six or seven in South Carolina and grew up together as basketball players.<sup>13</sup>

7). Trey Draper was Mr. Morant’s pre-draft process coach at IMG Academy in Florida and currently helps train Mr. Morant.<sup>14</sup>

8). Darnell Cowart played college basketball with Mr. Morant at Murry State University.<sup>15</sup>

9). Donte White is a basketball coach at Arlington High School and a former assistant AAU coach of Teniya Morant, Mr. Morant’s younger sister.<sup>16</sup>

10). Spectators included Mr. Morant’s parents, his younger sister Teniya, two or three of Teniya’s girlfriends, Ashley Shields, and Mike Miller.<sup>17</sup>

11). Everyone at the Morant family home on July 26, 2022, had been invited and had a

<sup>12</sup> (Hr’g Tr. of Dec. 11, 2023: 97: 4-15 (Testimony of Tee Morant); *id.* at 141:8-142:1 (Testimony of Ja Morant) (naming Plaintiff, Mr. Pack (“Tap”), Chip Brunt, KD, Trey Draper, and Darnell Cowart as people he could “remember off the top [of his head]”).)

<sup>13</sup> (Hr’g Tr. of Dec. 11, 2023: 141:23-143:16 (Testimony of Ja Morant).)

<sup>14</sup> (Hr’g Tr. of Dec. 11, 2023: 144: 2-10 (Testimony of Ja Morant).)

<sup>15</sup> (Hr’g Tr. of Dec. 11, 2023: 144: 16-22 (Testimony of Ja Morant).)

<sup>16</sup> (Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 7: 2-3, 9:19-25 (Testimony of Donte White).) Teniya’s head AAU coach was Ashley Shields (*id.* at 10: 1-2 (Testimony of Donte White)), one of the spectators at the Morant family home on July 26, 2022 (*id.* at 17:2-4 (Testimony of Donte White).)

<sup>17</sup> (Hr’g Tr. of Dec. 11, 2023: 98: 9-17 (Testimony of Tee Morant); *id.* at 144:23-145:5 (Testimony of Ja Morant); Hr’g Tr. of Dec. 12, 2023, Morning Session: 66: 21-24 and 67: 3-6 (Testimony of Teniya Morant).)

right to be there.<sup>18</sup>

12). The Morants had built a full-size court, according to NBA dimensions, in their backyard.<sup>19</sup>

13). Plaintiff had been to the Morant family home several times before July 26, 2022,<sup>20</sup> invited by Teniya.<sup>21</sup>

14). In fact, it was Teniya who began organizing pickup games at the Morant family home after her family moved to Memphis, inviting Plaintiff and other friends from school and the high school basketball tournament circuit.<sup>22</sup>

15). Mr. Morant would invite his own friends to these games as well.<sup>23</sup>

<sup>18</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 13:1-4 (Testimony of Tee Morant).)

<sup>19</sup> (Hr’g Tr. of Dec. 11, 2023: 80: 19-21 and 94:5-9 (Testimony of Tee Morant); *id.* at 126: 4-13, 128:14-129:11 (Testimony of Ja Morant).)

<sup>20</sup> (Hr’g Tr. of Dec. 11, 2023: 82:18-25 (Testimony of Tee Morant) (“about maybe five or six” times); *see also id.* at 133: 18-21 (Testimony of Ja Morant) (“I would probably say, like, five times.”); Hr’g Tr. of Dec. 12, 2023, Morning Session: 60:11-15 (Testimony of Teniya Morant) (“a few times”).)

<sup>21</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 60:16-19 (Testimony of Teniya Morant); *accord* Hr’g Tr. of Dec. 11, 2023: 132:25-133:7 (Testimony of Ja Morant) (“Well, I think my sister had a hoop session first where I actually got to see, you know, Christopher and KD play first, and I think the next hoop session is when I think my sister invited Josh.”); *see also* Hr’g Tr. of Dec. 13, 2023: 26: 11-21 (Testimony of Jamie Morant) (“**Q:** So when you would see Josh at your house, was Joshua at your house sort of at the invitation of your daughter? **A:** Yes . . . .[i]n the beginning . . . .[a]nd then it just got to where some of the high school players would get—be invited to play with the college players.”).)

<sup>22</sup> (Hr’g Tr. of Dec. 11, 2023: 81:15-82:9 (Testimony of Tee Morant); *id.* at 130: 2-13 (Testimony of Ja Morant).) Teams at the Morant family home included both male and female players. (Hr’g Tr. of Dec. 11, 2023: 130: 11-12 (Testimony of Ja Morant); *see id.* at 93: 11-15 (Testimony of Tee Morant).)

<sup>23</sup> (Hr’g Tr. of Dec. 11, 2023: 88: 5-10, 18-20 (Testimony of Tee Morant); *id.* at 130: 13-16 (Testimony of Ja Morant).) Mr. Morant’s friends were “college athletes or, you know, pros, whether it was, you know, overseas the G League or, you know, a crack in the NBA.” (*Id.* at 131:25-132:3 (Testimony of Ja Morant).) They included Darnell Cowart, Jonathan Stark, and Shaq Buchanan. (*Id.* at 130: 17-20. (Testimony of Ja Morant).)

16). At first, there were separate games between Mr. Morant and his friends and Teniya and her friends.<sup>24</sup>

17). Eventually, however, Mr. Morant allowed some of the more talented younger players to join him and his friends, and games were combined.<sup>25</sup>

18). The pickup games at the Morant family home were a part of a tradition that Mr. Morant's parents had started when they lived in Dalzell, South Carolina.<sup>26</sup>

19). In Dalzell, starting when Mr. Morant was in middle school, Mr. Morant's parents would host pickup basketball games, or "hoop sessions," in their backyard,<sup>27</sup> with as many as forty or fifty students from different schools showing up to play.<sup>28</sup>

20). Mr. Morant's parents provided a comfortable environment for the students, who

<sup>24</sup> (Hr'g Tr. of Dec. 11, 2023: 88: 11-17 (Testimony of Tee Morant); *accord* Hr'g T. of Dec. 13, 2023: 18:25-19:6 (Testimony of Jamie Morant) ("My son would have pick-up games with his friends and older players probably later at night or when Teniya didn't have pickup games. But like I said, occasionally, he may get in on some of the pick-up games that his sister had. I seen maybe twice. But if he was playing, he would have his own pick-up games, not with the high school kids."))

<sup>25</sup> (Hr'g Tr. of Dec. 11, 2023: 88: 11-17, 21-23 (Testimony of Tee Morant); *accord id.* at 131: 2-7 (Testimony of Ja Morant) ("I finally started playing, I think, at one time and then just kept playing, you know, after that and then pretty much just invite, you know, the best talent I seen from [Teniya's] hoop sessions to, you know, be able to play with us."), 132: 11-13 (Testimony of Ja Morant) ("I pretty much just found the best players to have a good hoop session."))

<sup>26</sup> (Hr'g Tr. of Dec. 11, 2023: 82:10-17 (Testimony of Tee Morant).) Mr. Morant's family moved from Dalzell to Memphis to join Mr. Morant when he was drafted by the Grizzlies in 2019. (*See id.* at 79:16-80:4 (Testimony of Tee Morant).)

<sup>27</sup> (Hr'g Tr. of Dec. 11, 2023: 137: 21-23 (Testimony of Ja Morant).)

<sup>28</sup> (Hr'g Tr. of Dec. 11, 2023: 78: 3-22 (Testimony of Tee Morant); *id.* at 126: 14-21 and 127: 15-18 (Testimony of Ja Morant); Hr'g Tr. of Dec. 13, 2023: 14: 12-17 (Testimony of Jamie Morant) ("[S]o our house, after our home got built, we built a court in our backyard. So we had kids coming from everywhere, like around the area, to play ball, and it was, like a safe haven almost, like they don't have to be in the streets to be doing crazy stuff. They can come here and play ball."))

called them “Pops” and “Ma.”<sup>29</sup>

21). Mr. Morant’s parents also bought groceries and cooked for the students.<sup>30</sup>

22). In Memphis, as in Dalzell, playing basketball at the Morant family home was different from playing at a gym or a community center in several important ways:<sup>31</sup>

- speakers were set up on the court, and guests could play whatever music they wanted;
- the Morants provided a cooler with Gatorade, Powerade, and other drinks to keep players from getting dehydrated; and
- Mr. Morant’s parents provided supervision by watching the games.<sup>32</sup>

23). The result was high-level basketball, “iron chopping iron” according to Mr.

<sup>29</sup> (Hr’g Tr. of Dec. 11, 2023: 73:1-13 (Testimony of Tee Morant); *accord id.* at 136: 21-25 (Testimony of Ja Morant) (“Pretty much everybody who was around would call my dad Pops or call my mom either Ma or Ma Jamie.”); *id.* at 128: 3-6 (Testimony of Ja Morant) (explaining that guests at the Morant family home treated the Morant family “[j]ust like their family”).)

<sup>30</sup> (Hr’g Tr. of Dec. 11, 2023: 78: 23-79:15 (Testimony of Tee Morant); *accord id.* at 136: 10-17 (Testimony of Ja Morant) (explaining that in Memphis, “like back in Dalzell,” Mr. Morant’s parents would watch the games and cook for the players); Hr’g Tr. of Dec. 13, 2023: 14: 18-21 (Testimony of Jamie Morant) (“So we would put food on the grill while they playing ball, and this was like, probably every day at our home, and that’s just, basically, what it was.”).)

<sup>31</sup> (Hr’g Tr. of Dec. 11, 2023: 84:17-86:4 (Testimony of Tee Morant); *accord id.* at 137: 1-9 (Testimony of Ja Morant) (“I think a word, you know, that we use now is, you know, a vibe. Obviously, like, we have music playing. We have, you know, a cooler for, you know, water. At the time I was—had a deal with Powerade. So it was pretty much Powerade. Good basketball. And then, you know, after you done, you tied, you get a meal.”); *id.* at 137: 10-12 (Testimony of Ja Morant) (explaining that he “wish[ed]” he got “that type of treatment other places at pick-up games”).)

<sup>32</sup> (*See also* Hr’g Tr. of Dec. 11, 2023: 127: 5-14 (Testimony of Ja Morant) (explaining that his parents would “be, you know, back and forth, in and out of the house from cooking and, you know, coming to watch”).)



Morant's father,<sup>33</sup> in an atmosphere that was safer and more fun than at other, public venues.<sup>34</sup>

24). Mr. Morant preferred playing pickup games at the Morant family home for these reasons,<sup>35</sup> as did the guests who were invited there.<sup>36</sup>

25). Mr. Morant's parents also preferred that Mr. Morant play pickup games at the Morant family home so that they could "keep an eye on him and make sure everything [wa]s flowing smoothly[.]"<sup>37</sup>

26). Mr. Morant trusted "100 percent" the people who were invited to hoop sessions at the Morant family home.<sup>38</sup>

27). Players whom Mr. Morant did not trust "didn't get a second invite back."<sup>39</sup>

28). Plaintiff, Chip Brunt, KD, and Blue were some of the talented younger players

<sup>33</sup> (Hr'g Tr. of Dec. 11, 2023: 85: 1-7 (Testimony of Tee Morant); *id.* at 126:22-127:4 (Testimony of Ja Morant).) When Mr. Morant was 13 and 14, his father would have him play against 19- and 20-year-old players "to toughen him up" and give him an advantage "when he play[ed] against his own peers . . . because he [was] used to playing against more advanced players." (*Id.* at 84: 8-13 (Testimony of Tee Morant), 126: 19-20 (Testimony of Ja Morant).) Mr. Morant gave that same opportunity to some of the younger players at the Morant family home by playing with his friends "against the high schoolers [and] college players." (*Id.* at 84: 14-15 (Testimony of Tee Morant).)

<sup>34</sup> (Hr'g Tr. of Dec. 11, 2023: 137: 13-16 (Testimony of Ja Morant) (agreeing "for sure" that playing basketball at the Morant family home "is different than just playing in the public").)

<sup>35</sup> (Hr'g Tr. of Dec. 11, 2023: 90: 14-23 (Testimony of Tee Morant).)

<sup>36</sup> (Hr'g Tr. of Dec. 11, 2023: 127:25-128:2, 135: 15-19 (Testimony of Ja Morant); *accord id.* at 135:20-136:2 (Testimony of Ja Morant) (explaining that he preferred to play pickup games at the Morant family home "[f]or, you know, my safety" and that "my best bet was to play at my house").)

<sup>37</sup> (Hr'g Tr. of Dec. 11, 2023: 90:20-91:5 (Testimony of Tee Morant).)

<sup>38</sup> (Hr'g Tr. of Dec. 11, 2023: 136: 3-5 (Testimony of Ja Morant). *But cf.* Hr'g Tr. of Dec. 12, 2023, Morning Session: 119:15-21 (Testimony of Teniya Morant) (testifying that Plaintiff's behavior on July 26, 2022, "felt like a betrayal . . . [b]ecause she genuinely felt like [she] could have trusted him being at [her] house—invited [him] and he acted that way with [her] brother.").)

<sup>39</sup> (Hr'g Tr. of Dec. 11, 2023: 136: 6-9 (Testimony of Ja Morant).)

allowed to play with Mr. Morant and his friends in the pickup games.<sup>40</sup>

29). Three of the four—Plaintiff, Chip Brunt, and KD—now play college basketball,<sup>41</sup> as does Teniya Morant.<sup>42</sup>

30). Plaintiff, in particular, impressed Mr. Morant, who noticed “how advanced he was, you know, more than the rest of the guys.”<sup>43</sup>

31). Mr. Morant liked Plaintiff’s game and thought it looked like Plaintiff “had a high basketball IQ.”<sup>44</sup>

**B. Factor Two: Conduct**

32). The Morants allowed Plaintiff and other guests to treat the Morant family home as if it were the guests’ own home.<sup>45</sup>

33). Plaintiff’s activities at the Morant family home were not limited to pickup basketball: He would also watch TV, go upstairs and play video games, and get food from the refrigerator.<sup>46</sup>

<sup>40</sup> (Hr’g Tr. of Dec. 11, 2023: 88:24-90:13 (Testimony of Tee Morant); *accord id.* at 132: 14-17 (Testimony of Ja Morant) (“Chip, Josh, and KD would probably be, you know, the main three I would name.”).)

<sup>41</sup> (Hr’g Tr. of Dec. 11, 2023: 88:24-90:13 (Testimony of Tee Morant).)

<sup>42</sup> (Hr’g Tr. of Dec. 11, 2023: 72:23-25 (Testimony of Tee Morant); *id.* at 124: 18-23 (Testimony of Ja Morant).)

<sup>43</sup> (Hr’g Tr. of Dec. 11, 2023: 133: 9-10 (Testimony of Ja Morant); *accord id.* at 151:2-3 (Testimony of Ja Morant) (agreeing that Plaintiff is talented “[f]or sure”).)

<sup>44</sup> (Hr’g Tr. of Dec. 11, 2023: 133: 14-17 (Testimony of Ja Morant); *see also id.* at 134:20-135:5 (Testimony of Ja Morant) (explaining that when Mr. Morant allowed Plaintiff and other talented younger players to ask him questions about basketball, “it was advanced,” and so there was not much he could tell them other than “just keep working hard, believing in yourself”).)

<sup>45</sup> (Hr’g Tr. of Dec. 11, 2023: 83: 10-11 (Testimony of Tee Morant) (“It was home pretty much.”).)

<sup>46</sup> (Hr’g Tr. of Dec. 11, 2023: 83: 1-10 (Testimony of Tee Morant).)

34). Mr. Morant even let Plaintiff and other players go into his closet and pick out shoes that they wanted.<sup>47</sup>

35). The custom at the Morant family home was for everyone to treat everyone else with respect.<sup>48</sup>

36). Respect was important because hoop sessions at the Morant family home could be physical; a little toughness was required because people were playing with their peers, and no one wanted to be considered soft.<sup>49</sup>

37). Additionally, there are several differences between pickup basketball, which was played at the Morant family home, and organized basketball:<sup>50</sup>

- there are no referees, so players must call their own fouls;<sup>51</sup>
- there is no game clock or scoreboard, so players must keep score

<sup>47</sup> (Hr'g Tr. of Dec. 11, 2023: 83: 6-8 (Testimony of Tee Morant); *accord id.* at 134: 6-10 (Testimony of Ja Morant) ("I opened my shoe closet like, 'Come on,' all the players who came out, my shoe closet, my collection, and I just told all of them they could pick any shoe out there if they wore my size, and pretty much, you know, gave them all a shoe."))

<sup>48</sup> (Hr'g Tr. of Dec. 11, 2023: 83:24-84:1 (Testimony of Tee Morant); *accord id.* at 135: 6-14 (Testimony of Ja Morant) ("I feel like that's just how I was raised, you know. Always respect, you know, other's stuff, other's property, and everyone who came that, you know, I allowed to come over to the house, you know, did that."); *id.* at 136:18-20 (Testimony of Ja Morant) (explaining that people invited to the Morant family home were "respectful to [his] parents"); Hr'g Tr. of Dec. 12, 2023, Morning Session: 91:22-92:1 (Testimony of Teniya Morant) ("Q: Okay. All right. When people come over to your home, your friends and your brother's friends, you expect them to sort of behave in a certain kind of way or conduct themselves properly, respectfully, right? A: Yes ma'am."))

<sup>49</sup> (Hr'g Tr. of Dec. 11, 2023: 91:16-20 (Testimony of Tee Morant).)

<sup>50</sup> (Hr'g Tr. of Dec. 11, 2023: 91:10-93:23 (Testimony of Tee Morant); *accord id.* at 138: 9-16 (Testimony of Ja Morant) ("Well, a pickup is pretty much, I would say, kind of similar as, you know, a normal NBA game or organized basketball game. It's just, you know, held different. I feel like the only difference is, you know, there's no referees. So you pretty much call your own fouls. You actually set, you know, a target score for, you know, the winner. You have rules when it's a tie, when it's, you know, close to winning."); *see also* Hr'g Tr. of Dec. 12, 2023, Afternoon Session: 10: 25-11: 22 (Testimony of Donte White).)

<sup>51</sup> (*See also* Hr'g Tr. of Dec. 11, 2023: 95: 3-18 (Testimony of Tee Morant).)

themselves;

- there are no official teams; people pick who they want (which is why unofficial basketball is called “pickup” basketball);<sup>52</sup>
- there are no team jerseys, so players have to keep track of the teams; and
- players themselves decide the winning score, such as “[w]e’re going to twelve” or “[w]in by two.”<sup>53</sup>

38). Pickup games thus involve a lot of integrity and can be intense.<sup>54</sup>

39). To start a pickup game at the Morant family home, teams would first “shoot for ball” to decide which team would have the first possession.<sup>55</sup>

40). Once possession had been decided, then one player on the team with possession would “check” the basketball to a player on the opposing team to make sure that everyone had identified whom to guard and was ready to begin playing.<sup>56</sup>

41). The player on the team with possession may check the ball with either a bounce

<sup>52</sup> At the Morant family home, Mr. Morant’s father sometimes would help pick teams “to keep it even.” (Hr’g Tr. of Dec. 11, 2023: 93: 6-7 (Testimony of Tee Morant).)

<sup>53</sup> (See also Hr’g Tr. of Dec. 11, 2023: 94:10-95:1 (Testimony of Tee Morant).)

<sup>54</sup> (Hr’g Tr. of Dec. 11, 2023: 91: 23-25, 93: 23 (Testimony of Tee Morant).)

<sup>55</sup> (Hr’g Tr. of Dec. 11, 2023: 96: 2-12 (Testimony of Tee Morant).) In other words, one player would shoot the basketball, and if he made the shot, then his team would have the first possession. (See *id.*) If he missed the shot, then the opposing team would have the first possession. (See *id.*; see also Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 11: 23-12: 10 (Testimony of Donte White).)

<sup>56</sup> (Hr’g Tr. of Dec. 11, 2023: 95: 19-22 and 96: 2-15 (Testimony of Tee Morant); see also *id.* at 138:25-139:4 (Testimony of Ja Morant) (“It’s pretty much just to, you know, make sure everybody’s ready to go and ready to play before you, you know, resume the game.”); Hr’g Tr. of Dec. 13, 2023: 43: 20-24 (Testimony of Mike Miller) (“In a normal check ball, it’s just to make sure everyone’s ready. So when you check the ball—me and you are playing one on one, I check the ball to you before you hand it back to me. Everyone’s ready to play.”); Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 12: 23-13: 4 (Testimony of Donte White).)

pass or a chest pass.<sup>57</sup>

42). When the opposing team's player receives the check ball, "[he] should turn and look to make sure everybody's ready on the court, especially [his] teammates."<sup>58</sup>

43). A check ball would thus occur before the start of play.<sup>59</sup>

44). Check balls also would occur to resume play mid-game when there was a foul<sup>60</sup> or when the ball went out of bounds.<sup>61</sup>

45). When checking the basketball, players remain "in guard distance because, you know, once you give the ball back, ball's in play."<sup>62</sup>

46). At the Morant family home, once the player on the team with possession receives the check ball back from the opposing team, that player starts play by passing the ball to a teammate.<sup>63</sup>

<sup>57</sup> (Hr'g Tr. of Dec. 11, 2023: 140: 13-16 (Testimony of Ja Morant).)

<sup>58</sup> (Hr'g Tr. of Dec. 11, 2023: 139: 18-23 (Testimony of Ja Morant); *see also id.* at 139:24-140:1 (Testimony of Ja Morant) ("Q: So I should just check. Basically, that's why it's called a check ball? A: Yeah.").)

<sup>59</sup> (Hr'g Tr. of Dec. 11, 2023: 96: 6-7, 13-15 (Testimony of Tee Morant); *id.* at 140: 19-21 (Testimony of Ja Morant); *accord* Hr'g Tr. of Dec. 12, 2023: Morning Session: 119: 11-14 (Testimony of Teniya Morant) ("Q: [H]ow does it pick up basketball game start? A: Okay, check ball. Q: Okay. So before the check ball has the game started? A: No, sir."); Hr'g Tr. of Dec. 12, 2023, Afternoon Session: 92: 24 (Testimony of Davonte Pack) ("[H]ow the game start? You check in.").)

<sup>60</sup> (Hr'g Tr. of Dec. 11, 2023: 95: 7-18 (Testimony of Tee Morant).)

<sup>61</sup> (Hr'g Tr. of Dec. 11, 2023: 95: 23-25 and 96: 16-18 (Testimony of Tee Morant); *accord id.* at 138: 17-20 (Testimony of Ja Morant) ("Then you have, you know, check-ball situations that pretty much happens at, you know, any dead ball, whether it's a foul call, ball go out of bounds, somebody get hurt, pretty much all that stuff."); (Hr'g Tr. of Dec. 12, 2023, Afternoon Session: 13: 5-25 (Testimony of Donte White) (same).)

<sup>62</sup> (Hr'g Tr. of Dec. 11, 2023: 140: 3-5 (Testimony of Ja Morant); *see also id.* at 140: 5-6 (Testimony of Ja Morant) ("Some people play where once you check, I can start right then or I can pass it in.").)

<sup>63</sup> (Hr'g Tr. of Dec. 11, 2023: 140: 7-10 (Testimony of Ja Morant).)

47). The ball is not live until after that pass.<sup>64</sup>

**B. Factor Three: Use of Force**

48). As many as ten pickup games, and perhaps more, were played at the Morant family home on July 26, 2022.<sup>65</sup>

49). Invitations to the hoop session on July 26, 2022, came either from Teniya Morant or from Mr. Morant himself.<sup>66</sup>

50). The siblings made sure their parents knew about the hoop session “[j]ust for, you know, food purposes. Just to make sure it’s enough.”<sup>67</sup>

51). Because there were more than ten players,<sup>68</sup> some members of the losing team would rotate out each game,<sup>69</sup> but all five members of the winning team would continue playing without interruption.<sup>70</sup>

<sup>64</sup> (Hr’g Tr. of Dec. 11, 2023: 140: 11-12 (Testimony of Ja Morant).)

<sup>65</sup> (Hr’g Tr. of Dec. 11, 2023: 101:13-15 (Testimony of Tee Morant); *accord id.* at 147: 2-4 (Testimony of Ja Morant) (“Easily ten plus.”); *see also* Hr’g Tr. of Dec. 13, 2023: 21: 21-23 (Testimony of Jamie Morant) (“They played multiple games. Like I said, I don’t know what number I walked out on while they were playing.”) and 73: 10-11 (Testimony of Trey Draper) (“I just remember playing thirty thousand games. We was out there all day. It was hot.”).)

<sup>66</sup> (*See* Hr’g Tr. of Dec. 11, 2023: 140:23-141:4 (Testimony of Ja Morant).)

<sup>67</sup> (Hr’g Tr. of Dec. 11, 2023: 141: 12-15 (Testimony of Ja Morant); *see also id.* at 141: 15-17 (Testimony of Ja Morant) (“They would normally ask, you know, how many people would be coming so they’ll be able to cook for, you know, everybody.”).)

<sup>68</sup> (Hr’g Tr. of Dec. 11, 2023: 97: 4-18 and 98: 9-17 (Testimony of Tee Morant) (explaining that there were “more than ten” players and “eleven or twelve in all spectators”); *see also id.* at 145: 12-15 (Testimony of Ja Morant) (“Yes. It was more than ten. I would probably say about thirteen to fifteen playing.”) and 150: 6-12 (Testimony of Ja Morant) (identifying “[p]robably, like, yeah, three to five” additional players waiting to play); Hr’g Tr. of Dec. 12, 2023, Morning Session: 66:17-20 (Testimony of Teniya Morant).)

<sup>69</sup> (Hr’g Tr. of Dec. 11, 2023: 150: 16-20 (Testimony of Ja Morant) (“So whoever was off the court at the time, you know, once the game over and we say it was three people on the side, they would pick up two players from the losing team to come play the next game.”).)

<sup>70</sup> (Hr’g Tr. of Dec. 11, 2023: 97:19-98:8 (Testimony of Tee Morant).)

52). The games were highly competitive.<sup>71</sup>

53). Plaintiff and Mr. Morant were on opposite teams,<sup>72</sup> and Mr. Morant's team won several games.<sup>73</sup>

54). Mr. Morant's father, Tee Morant, watched the games for three or four hours and saw seven or eight games played, but he went inside the Morant family home to cook food for the players "after the competitiveness started dying down" and the players started "getting tired and fatigued."<sup>74</sup>

55). While he was on the court, Tee urged the players, particularly Plaintiff and KD, to play aggressively.<sup>75</sup>

56). Tee specifically directed Plaintiff to guard Mr. Morant because he "felt like if [Plaintiff] was competing against Ja at a high level, when he got to Oak Hill, it should be easier for his game to, you know, manifest itself there[.]"<sup>76</sup>

<sup>71</sup> (Hr'g Tr. of Dec. 11, 2023: 102: 3-6, 103: 20, 104: 10-13 (Testimony of Tee Morant); *accord id.* at 148: 9-13 (Testimony of Ja Morant) ("Definitely was, you know, high level basketball being played. Competitive. Pretty much up tempo. You know, obviously, you know, playing, you know, with more younger guys, you know, you getting up and down the court. But, yeah."); Hr'g Tr. of Dec. 12, 2023, Afternoon Session: 20:19-21:1 (Testimony of Donte White) ("You have to play your best in order to stay on the court. So, yeah, they were competitive."); Hr'g Tr. of Dec. 13, 2023: *passim*, e.g., 35:3, 42:13-15 and 23-24, and 53:3 (Testimony of Mike Miller) ("competitive").)

<sup>72</sup> (Hr'g Tr. of Dec. 11, 2023: 103: 10-17 (Testimony of Tee Morant); *accord id.* at 146:24-147:1 (Testimony of Ja Morant) ("I know me and Tap was on the same team. Josh and Chip, I think maybe KD, too, was on the other team.").)

<sup>73</sup> (Hr'g Tr. of Dec. 11, 2023: 102: 6-7 (Testimony of Tee Morant).)

<sup>74</sup> (Hr'g Tr. of Dec. 11, 2023: 101: 3-24 (Testimony of Tee Morant).)

<sup>75</sup> (Hr'g Tr. of Dec. 11, 2023: 102: 8-18 (Testimony of Tee Morant).)

<sup>76</sup> (Hr'g Tr. of Dec. 11, 2023: 102:19-103:2 (Testimony of Tee Morant); *see also id.* at 148:22-149:4 (Testimony of Ja Morant) ("[P]rimarily Josh was guarding me.".) Oak Hill Academy, to which Plaintiff later transferred from St. George's Independent School in Memphis, is a boarding school in Virginia with a top-ranked basketball team. (*See* Hr'g Tr. of Dec. 11, 2023: 89: 18-20 and 102: 21-22 (Testimony of Tee Morant); *id.* at 242: 8-14 (Testimony of Ja Morant);

57). Tee also told Plaintiff to “play basketball as hard as [he] could” and to “[g]o at Ja.”<sup>77</sup>

58). Throughout the games, Plaintiff and Mr. Morant were “barking at each other, talking trash,”<sup>78</sup> consistently with competitive basketball.<sup>79</sup>

59). At some point, Mr. Morant “started scoring, like, almost every play,”<sup>80</sup> and Plaintiff began to get frustrated.<sup>81</sup>

*see also id.* at 54:25-55:5 (Plaintiff’s Opening Statement).) Tee also pushed KD to help KD make it to a college basketball team. (*Id.* at 103: 2-3 (Testimony of Tee Morant).)

<sup>77</sup> (Hr’g Tr. of Dec. 11, 2023: 103: 4-8 (Testimony of Tee Morant); *cf. id.* at 151:18-20 (Testimony of Ja Morant) (“I would say the only [spectator] who probably was, you know, as verbal [as the players] was my dad. And he was cheering against me. So nothing new there.”), 152:2-4 (Testimony of Ja Morant) (“[H]e really just hope I lose so I can—because he make me jump tires or run sprints if I lose.”), 152:18-23 (Testimony of Ja Morant) (“**Q:** Okay. But it sounds like your dad was wanting someone to challenge you. **A:** Yeah. Always. **Q:** And was Mr. Holloway doing that? As best as he could? **A:** Yeah.”), and 153:2-5 (Testimony of Ja Morant) (“I feel like most of the talk was my dad just, you know, trying to encourage [Plaintiff] and motivate him to, like, continue to go after me like, you know, like, ‘Don’t back down’ type.”).) Tee gave KD the same kind of encouragement. (*Id.* at 103: 8-9 (Testimony of Tee Morant).)

<sup>78</sup> (Hr’g Tr. of Dec. 11, 2023: 103: 21-22 (Testimony of Tee Morant); *accord id.* at 153:6-8 (Testimony of Ja Morant) (“[Plaintiff] scored, you know, a couple of times and, you know, like, was ready to play defense. Then I scored back and be like, ‘You can’t guard me.’”); Hr’g Tr. of Dec. 13, 2023: 20: 7-8 (Testimony of Jamie Morant) (“Then the trash talking was going on between Josh and Ja, and then Ja’s team won.”); Hr’g Tr. of Dec. 13, 2023: 57: 14-15 (Testimony of Mike Miller) (“They were both talking back and forth.”).)

<sup>79</sup> (Hr’g Tr. of Dec. 11, 2023: 103: 22 (Testimony of Tee Morant) (“That’s what you do.”); *id.* at 153: 8-9 (Testimony of Ja Morant) (“It wasn’t nothing outside of basketball talk.”); Hr’g Tr. of Dec. 13, 2023: 57: 14-17 (Testimony of Mike Miller) (“It was very standard . . . . It was competitive basketball. It was what you’d see at every run that I’ve ever been to.”).)

<sup>80</sup> (Hr’g Tr. of Dec. 11, 2023: 103: 22-24 (Testimony of Tee Morant); *id.* at 148: 14-19 (Testimony of Ja Morant).)

<sup>81</sup> (Hr’g Tr. of Dec. 11, 2023: 103: 24-25 (Testimony of Tee Morant); *accord id.* at 154: 5-6 (Testimony of Ja Morant) (“Frustration probably kicked in, you know.”); Hr’g Tr. of Dec. 13, 2023: 59: 20 (Testimony of Mike Miller) (“[I]t was a built up of competitive basketball.”); *id.* at 81:21-82:2 (Testimony of Trey Draper) (“Josh was frustrated. You know, by me just being around, you know, he was frustrated. **Q:** Frustrated with? **A:** Just basketball. I think, you know, they had just lost their game, maybe lost, and the smack talk.”); *id.* at 82: 6 (Testimony of Trey Draper)



60). Plaintiff initially responded by switching off from Mr. Morant and going to guard a different player.<sup>82</sup>

61). But Tee directed Plaintiff to switch back to Mr. Morant, yelling, “Keep going at him.”<sup>83</sup>

62). After Plaintiff returned to guarding Mr. Morant, Mr. Morant continued to score frequently—to “have his way” and “get[ ] the better of Josh.”<sup>84</sup>

63). Mr. Morant was “scoring on the regular, almost like every time he touched the ball . . . . [h]owever he wanted to do it. He was just scoring.”<sup>85</sup>

64). The outcome was “a whole lot of wins, you know, to a whole lot of losses.”<sup>86</sup>

65). After Mr. Morant’s team won yet another game, Tee decided to go back to the Morant family home to cook.<sup>87</sup>

66). “[I]t seemed like everybody was getting tired and, like, almost quitting as far as,

(“He was pissed.”); *id.* at 125: 22-24 (Testimony of Chip Brunt) (“Me and Josh were on the same team. We were losing. So I understood his anger.”).)

<sup>82</sup> (Hr’g Tr. of Dec. 11, 2023: 104: 2-4 and 105:23-106:3 (Testimony of Tee Morant); *see also id.* at 149: 9-13 (Testimony of Ja Morant) (“I just feel like, you know, everybody kind of take that, you know, matchup kind of personal. You don’t want, you know, the offensive player to score on you. And at the same time, you want to score on the defensive player.”).)

<sup>83</sup> (Hr’g Tr. of Dec. 11, 2023: 104: 4-9 and 106: 3-6 (Testimony of Tee Morant).) Tee was attempting to motivate Plaintiff to “[k]eep playing hard” and not to quit “because it’s not going your way.” (*Id.* at 106: 6-9.)

<sup>84</sup> (Hr’g Tr. of Dec. 11, 2023: 106: 10-23 (Testimony of Tee Morant). *But see id.* at 149: 17-21 (Testimony of Ja Morant) (“Q: Okay. In your opinion, did [Plaintiff] have any reason to be kind of upset with the way he was playing? A: Offensively, probably not. I mean, I don’t think nobody like losing, and I feel like that’s probably, you know, when he got frustrated.”) and 150:22-24 (Testimony of Ja Morant) (“Q: And was Josh playing well enough that even if he lost, he kept getting picked up? A: Yeah. He stayed on. Yeah. First pick.”).)

<sup>85</sup> (Hr’g Tr. of Dec. 11, 2023: 107:14-108:6 (Testimony of Tee Morant).)

<sup>86</sup> (Hr’g Tr. of Dec. 11, 2023: 106: 24-25 (Testimony of Tee Morant).)

<sup>87</sup> (Hr’g Tr. of Dec. 11, 2023: 108: 7-17 (Testimony of Tee Morant).)

‘We’re not going to beat them,’” and Tee wanted the food to be ready by the time the players finished.<sup>88</sup>

67). But while Tee was cooking for the players in the Morant family home, an altercation occurred on the basketball court.<sup>89</sup>

68). There had been a check ball at the beginning of every game and “about five” check balls for various reasons during each game.<sup>90</sup>

69). All of the games, and all of the check balls that they included, had occurred without incident.<sup>91</sup>

70) As the players were preparing for the next game, Plaintiff placed the basketball at Mr. Morant’s feet.<sup>92</sup>

71). Mr. Morant, the other players, and spectators alike universally saw that move as disrespectful.<sup>93</sup>

<sup>88</sup> (Hr’g Tr. of Dec. 11, 2023: 108: 11-17 (Testimony of Tee Morant).)

<sup>89</sup> (See Hr’g Tr. of Dec. 11, 2023: 153: 23-25 (Testimony of Ja Morant) (“Q: Or does something happen? A: I mean, with the incident, yes. But before then, no. Everything was all good.”); *see also* Hr’g Tr. of Dec. 13, 2023: 20: 8-10 (Testimony of Jamie Morant) (“So [Plaintiff’s] team was supposed to check the ball, and that’s when the altercation, or whatever you want to call it, happened.”).)

<sup>90</sup> (Hr’g Tr. of Dec. 11, 2023: 147: 5-15 (Testimony of Ja Morant).)

<sup>91</sup> (Hr’g Tr. of Dec. 11, 2023: 147:15-148: 6 (Testimony of Ja Morant); *accord id.* at 150:1-5 (Testimony of Ja Morant) (“[P]retty much was all normal, you know. Play games, you know. Loser walk off. Winner team happy.”).)

<sup>92</sup> (Hr’g Tr. of Dec. 11, 2023: 154:1-6 (Testimony of Ja Morant).)

<sup>93</sup> (Hr’g Tr. of Dec. 11, 2023: 154:8-10 (Testimony of Ja Morant) (“The check ball situation, sitting the ball at somebody foot, that’s pretty disrespectful.”); Hr’g Tr. of Dec. 13, 2023: 20: 11-13 (Testimony of Jamie Morant) (“Josh wouldn’t check the ball. He kept just sitting the ball down. You supposed to pick the ball up and check the ball.”); *id.* at 58: 18-20 (Testimony of Mike Miller) (“So they did the check ball, and Ja—the ball was getting rolled back and forth. Kind of disrespect—it’s more of a respectful thing.”); *id.* at 127: 1-4 (Testimony of Chip Brunt) (“Josh, he set the ball down. In basketball terms, that’s disrespectful not to check the ball up. So he set the ball down instead of checking the ball up.”).)

72). Mr. Morant told Plaintiff as much—“That was disrespectful”—and rolled the ball back to Plaintiff.<sup>94</sup>

73) At this point, Plaintiff wouldn’t check the ball. He kept just sitting the ball down. Then he kicked the ball.<sup>95</sup> There were kicking the ball back and forth, rolling the ball. The ball went to the fence, to the other end of the court because neither one would pick it up. <sup>96</sup>

74). Plaintiff responded by rolling the ball back to Mr. Morant;<sup>97</sup> this exchange went on for a while.<sup>98</sup>

75). Eventually, though, prompted by other players’ exasperation, Mr. Morant picked up the ball and chest passed it to Plaintiff. <sup>99</sup>

76). Rather than “check” to see whether his team was ready, Plaintiff immediately

<sup>94</sup> (Hr’g Tr. of Dec. 11, 2023: 154: 7-8, 155: 12-13 (Testimony of Ja Morant).)

<sup>95</sup> (Hr’g Tr. Of Dec. 13, 2023, 20:11-14 (Testimony of Jamie Morant).

<sup>96</sup> (Hr’g Tr. of Dec. 13, 2023, 20:11-16 (Testimony of Jamie Morant).

<sup>97</sup> (Hr’g Tr. of Dec. 11, 2023: 155: 13-14 (Testimony of Ja Morant) (“[Plaintiff] proceeds to, you know, roll the ball back [to me].”))

<sup>98</sup> (Hr’g Tr. of Dec. 13, 2023: 20: 13-15 (Testimony of Jamie Morant) (“Then [Plaintiff] ends up kicking the ball. Ja kicked the ball back. They did that for a couple of times.”); *id.* at 29: 18-23 (Testimony of Jamie Morant) (“They were kicking the ball back and forth. Ja—they went back and forth kicking the ball, rolling the ball. The ball went to the fence. The ball went to the other end of the court because neither one of them was like, ‘I ain’t getting that shit,’ or whatever.”); *id.* at 43: 9-11 (Testimony of Mike Miller) (“They rolled—the ball got rolled back—rolled to him. [Plaintiff] kicked the ball to Ja, and Ja kicked it back to him.”); *id.* at 74: 3-4 (Testimony of Trey Draper) (“I think Josh rolled it or Ja rolled it. I can’t remember how, but I just remember Ja checking it.”))

<sup>99</sup> (Hr’g Tr. of Dec. 11, 2023: 155: 14-18 (Testimony of Ja Morant) (“Basically, the other players on the court pretty much said, ‘Man, come on. Let’s play.’ So I picked the ball up, gave [Plaintiff] a chest pass[.]”); *accord* Hr’g Tr. of Dec. 13, 2023: 44: 2-4 (Testimony of Mike Miller) (“**Q:** [E]veryone’s, like, ‘Okay. Someone just check the ball finally.’ **A:** Yeah.”); *id.* at 100: 7-11 (Testimony of Trey Draper) (“**Q:** And rather than hand or pass Ja the ball, Josh rolled the ball to Ja, and subsequently, Ja threw a chest pass to Josh because the ball still needed to be checked; right? That’s what you described. **A:** Yes.”). *But see id.* at 20: 15-18 (Testimony of Jamie Morant) (stating that Plaintiff, rather than Mr. Morant, finally picked up the ball due to his teammates’ exasperation).)

returned the ball to Mr. Morant,<sup>100</sup> striking Mr. Morant in the face.<sup>101</sup>

77). There is some debate about how Plaintiff threw the ball:

- Mr. Morant, his mother, and his sister recall a one-handed baseball throw.<sup>102</sup>
- Chip Brunt, Trey Draper, and Mike Miller remember a chest pass,<sup>103</sup> but Miller also called it a “fast ball,” “fired” at Mr. Morant.<sup>104</sup>

<sup>100</sup> (See Hr’g Tr. of Dec. 11, 2023: 155: 18 (Testimony of Ja Morant) (“[P]laintiff fired the ball right back at me.”); Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 103: 7-13 (Davonte Pack) (“[T]he ball just came back fast. I don’t know how he passed it. The ball just came quick. So once the ball came quick, it’s like you wasn’t even intentionally checking. You check for your team to be ready.”); Hr’g Tr. of Dec. 13, 2023: 43: 12-13 (Testimony of Mike Miller) (“Josh fired the ball to Ja and hit him in the mouth. That kind of started everything.”); *id.* at 45: 9-12 (Testimony of Mike Miller) (“**Q:** What’s Ja doing at the time the ball’s coming to him? **A:** Waiting to—like, basically, sitting there waiting to catch it. That’s how fast [Plaintiff] threw it.”); *id.* at 127: 17-19 (Testimony of Chip Brunt) (“Joshua was actually, like, backing back, and he chest passed, and Ja wasn’t ready[.]”).)

<sup>101</sup> (Hr’g Tr. of Dec. 11, 2023: 156: 14-16 (Testimony of Ja Morant) (“**Q:** [D]o you recall where it hit you?” **A:** “Left side of my face.”); Hr’g Tr. of Dec. 12, 2023, Morning Session: 70: 9-10 (Testimony of Teniya Morant) (“Josh made a baseball throw and it hit Ja in his face with the ball.”); Hr’g Tr. of Dec. 13, 2023: 20: 19-22 (Testimony of Jamie Morant) (“So [Plaintiff] picked it up, and he didn’t check the ball. He threw the ball at Ja’s face and hit him on the—on the side, the left side of his face right here.”); *id.* at 44: 20-25 (Testimony of Mike Miller) (“**Q:** Where does it hit Ja that you saw? **A:** Right in the mouth. **Q:** Okay. **A:** Well, I got to assume. I was from the back. So—but his back—his head went back.”); *id.* at 81: 11 (Testimony of Trey Draper) (“He hit him in the grill.”); *id.* at 127: 17-19 (Testimony of Chip Brunt) (“Joshua was actually, like, backing back, and he chest passed, and Ja wasn’t ready, and it hit him in his face.”).)

<sup>102</sup> (Hr’g Tr. of Dec. 11, 2023: 156: 12-13 (Testimony of Ja Morant) (“**Q:** All right. Did [Plaintiff] return the chest pass? **A:** No. Threw the ball with one hand.”); Hr’g Tr. of Dec. 12, 2023, Morning Session: 70: 9-10 (Testimony of Teniya Morant) (“Josh made a baseball throw and it hit Ja in his face with the ball.”); Hr’g Tr. of Dec. 13, 2023: 24: 13-15 (Testimony of Jamie Morant) (“**Q:** So are you saying [Plaintiff] took the ball with one hand— **A:** Yes.”).)

<sup>103</sup> (See Hr’g Tr. of Dec. 13, 2023: 127: 17-19 (Testimony of Chip Brunt) (“Joshua was actually, like, backing back, and he chest passed, and Ja wasn’t ready, and it hit him in his face.”); *id.* at 81: 3-11 (Testimony of Trey Draper) (“Josh threw a chest pass to Ja? . . . Well, he threw it, and, like, it hit [Ja] in the-- . . . He hit him in the grill.”); *id.* at 44: 11-14 (Testimony of Mike Miller) (“**Q:** Nothing out of the ordinary of how Joshua was checking the ball in? **A:** Outside that it hit [Mr. Morant] in the mouth. I mean, it was an aggressive check-in.”).)

<sup>104</sup> (See Hr’g Tr. of Dec. 13, 2023: 35: 7-8 (Testimony of Mike Miller) (“Josh fires a fast ball at Ja. Hits him in the mouth.”), 43:12-13 (“And then Josh fired the ball to Ja and hit him in the mouth. That kind of started everything.”).)

78). Everyone agrees that the ball came back fast.<sup>105</sup>

79). The ball hit Mr. Morant in the mouth and his head went back.<sup>106</sup>

80). And Plaintiff did not apologize or give any indication that striking Mr. Morant in the face was a mistake.<sup>107</sup>

81). Saying “my bad,” “I’m sorry,” “my fault,” and “you good” are all ways that basketball players apologize to each other.<sup>108</sup>

**C. Factor Four: Attempted Use of Force**

82). Mr. Morant responded by asking Plaintiff, “What you on,”<sup>109</sup> meaning, “What you got going,” or “What you do that for?”<sup>110</sup>

83). Other players and spectators understood this meaning.<sup>111</sup>

84). Plaintiff did not respond verbally to Morant’s question. Nor, did he say any threatening words at that time.<sup>112</sup>

<sup>105</sup> See, *supra*, note 104 and accompanying text.

<sup>106</sup> (Hr’g Tr. of Dec. 13, 2023: 44:19-25 (Testimony of Mike Miller).

<sup>107</sup> (Hr’g Tr. of Dec. 11, 2023: 157: 1-20 (Testimony of Ja Morant).)

<sup>108</sup> (Hr’g Tr. of Dec. 11, 2023: 157: 1-20 (Testimony of Ja Morant); Hr’g Tr. of Dec. 13, 2023: 49: 2-5 (Testimony of Mike Miller) (“**Q:** What’s the normal basketball if it happens on accident? **A:** I mean, you verbalize, ‘my bad.’ I mean, that’s the only thing I can think of.”); *id.* at 132:25-133:5 (Testimony of Chip Brunt) (“**Q:** [W]hat’s the purpose of your statement here where it says, ‘After the ball hit Ja in the face, Josh did not apologize’? What does that matter? **A:** Because if he hit somebody in the face, I feel like it was on purpose. Even if his hands were down, you don’t throw it at his face.”). *But see id.* at 102: 21-25 (Testimony of Trey Draper) (“Like you said, nobody apologizes on the floor . . . . **Q:** [L]ike, would anybody have expected Ja—Joshua to apologize? **A:** I don’t think so.”).

<sup>109</sup> (Hr’g Tr. of Dec. 11, 2023: 159: 20-22 (Testimony of Ja Morant).)

<sup>110</sup> (Hr’g Tr. of Dec. 11, 2023: 160: 1-2 (Testimony of Ja Morant).)

<sup>111</sup> (See, e.g., Hr’g Tr. of Dec. 12, 2023, Morning Session: 70:13-72:18 (Testimony of Teniya Morant); Hr’g Tr. of Dec. 13, 2023: 82:24-83:3 (Testimony of Trey Draper); *id.* at 127: 21-22 and 129: 5-7 (Testimony of Chip Brunt).)

<sup>112</sup> (Hr’g Tr. Of Dec. 11, 2023: 214:6-13 (Testimony of Ja Morant).

85) But Plaintiff's response was non-verbal: He pulled up his shorts.<sup>113</sup>

86). That act sent Mr. Morant and everyone else who saw it the same message:

- Mr. Morant: "With him pulling up his shorts, where I'm from, that's a fighting stance."<sup>114</sup>
- Mr. Pack: "Joshua pulled his pants up, which mean fighting."<sup>115</sup>
- Teniya Morant: "It's squaring up. If we're going to fight."<sup>116</sup>
- Trey Draper: "[W]hen you do this, you know, that's more of a fight stance for me, you know, what I'm used to when you do."<sup>117</sup>
- Chip Brunt: "[H]e squared up. If you square up, that automatically mean you're trying to fight."<sup>118</sup>
- Mike Miller: "[T]hey, basically, squared up like they're going to fight."<sup>119</sup>

87) There is a dispute as to whether Holloway stepped back in a defense mode to fight or forward at this time and as to whose hands were up or down.<sup>120</sup>

88). Plaintiff and Mr. Morant each took a step forward—Plaintiff having "squared

<sup>113</sup> (Hr'g Tr. of Dec. 11, 2023: 160: 6-7 (Testimony of Ja Morant).) Chip Brunt recalls that Plaintiff also had a verbal response: "What you want to do?" (Hr'g Tr. of Dec. 13, 2023: 129: 5-16 (Testimony of Chip Brunt)); *see also id.* at 157: 9-11 ("I mean, if you square with me and throw the ball in my face purposely, it mean—and you ask me what you want to do, you want to fight.")

<sup>114</sup> (Hr'g Tr. of Dec. 11, 2023: 161: 5-6 (Testimony of Ja Morant).)

<sup>115</sup> (Hr'g Tr. of Dec. 12, 2023, Afternoon Session: 141: 15-16 (Testimony of Davonte Pack).)

<sup>116</sup> (Hr'g Tr. of Dec. 12, 2023, Morning Session: 110: 19 (Testimony of Teniya Morant); *see also id.* at 73: 5-9, 109: 25-111:12 (Testimony of Teniya Morant).)

<sup>117</sup> (Hr'g Tr. of Dec. 13, 2023: 104:4-6 (Testimony of Trey Draper); *see also id.* at 103: 3-104:1 (Testimony of Trey Draper).)

<sup>118</sup> (Hr'g Tr. of Dec. 13, 2023: 134: 1-2 (Testimony of Chip Brunt); *see also id.* at 134: 12-14 (Testimony of Chip Brunt).)

<sup>119</sup> (Hr'g Tr. of Dec. 13, 2023: 45: 24-25 (Testimony of Mike Miller).)

<sup>120</sup> (Hr'g Tr. Of Dec. 11, 2023: 215:6-7. 9-10; Hr'g Tr. Of Dec. 13, 2023: 45:20 (Testimony of Mike Miller); Hur'g Tr. Of Dec. 13, 2023,: 20:22-2 (Testimony of Mike Miller).

up” and Mr. Morant having asked, “What you on?”— and ended up standing chest-to-chest.<sup>121</sup>

89). Holloway and Morant touched chests.<sup>122</sup> Plaintiff then shoulder-bumped Mr. Morant and squared up again.<sup>123</sup>

90). Morant took a step back.<sup>124</sup>

91). Holloway pulled up his pants again and stepped forward.<sup>125</sup>

92). Mr. Morant took these actions to mean that Plaintiff was about to hit him.<sup>126</sup>

93). He responded with a single punch to protect himself.<sup>127</sup>

94). Plaintiff stumbled back but then gathered himself, raised his guard, and stepped forward again.<sup>128</sup>

95). Mr. Pack then responded with a single punch.<sup>129</sup>

96). Plaintiff fell to the ground when Mr. Pack hit him, and Mr. Pack immediately began pulling Mr. Morant away.<sup>130</sup>

97). In the meantime, other people on the court helped Plaintiff up, and Mike Miller, Donte White, and Jamie Morant began to escort Plaintiff off the court.<sup>131</sup>

<sup>121</sup> (Hr’g Tr. of Dec. 11, 2023: 163: 10-17 (Testimony of Ja Morant).)

<sup>122</sup> (Hr’g Tr. Of Dec. 11, 2023: 215: 11 (Testimony of Ja Morant).

<sup>123</sup> (Hr’g Tr. of Dec. 11, 2023: 163: 18-20, 164: 3-5 (Testimony of Ja Morant).)

<sup>124</sup> (Hr’g Tr. Of Dec. 11, 2023: 215:15 (Testimony of Ja Morant).

<sup>125</sup> (Hr’g Tr. Of Dec. Dec. 11, 2023: 163:18-21 (Testimony of Ja Morant).

<sup>126</sup> (Hr’g Tr. of Dec. 11, 2023: 163: 18-21, 164: 3-10 (Testimony of Ja Morant).)

<sup>127</sup> (Hr’g Tr. of Dec. 11, 2023: 164: 8-13 (Testimony of Ja Morant).)

<sup>128</sup> (Hr’g Tr. of Dec. 11, 2023: 164: 15-18 (Testimony of Ja Morant).)

<sup>129</sup> (Hr’g Tr. of Dec. 11, 2023: 164: 19-20 (Testimony of Ja Morant).)

<sup>130</sup> (Hr’g Tr. of Dec. 11, 2023: 164: 21-165: 9 (Testimony of Ja Morant).)

<sup>131</sup> (Hr’g Tr. of Dec. 11, 2023: 165:14-166: 4 (Testimony of Ja Morant); Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 23:16-19 (Testimony of Donte White) (“Q: You mentioned that you and some others went over to help Mr. Holloway; is that right? A: Yes. Yes.”); *id.* at 24: 9-11

98). Teniya Morant tried to leave the sidelines to reach Plaintiff and her brother, but Donte White, and then Ashley Shields, held her back.<sup>132</sup>

99). Although Tee Morant did not witness the altercation between his son and Plaintiff, he left the kitchen and returned to the basketball court when he saw, from the window, that something had happened.<sup>133</sup>

100). As Tee was approaching the court, his wife Jamie was walking Plaintiff toward the Morant family home with Mike Miller, saying, “He has to go.”<sup>134</sup>

101). Tee and Miller then walked Plaintiff around the Morant family home to Plaintiff’s car,<sup>135</sup> which was parked near the front door.<sup>136</sup>

102). As he was walking, Plaintiff, using profanity, exclaimed that he would “light this up like the Fourth of July.”<sup>137</sup>

(Testimony of Donte White) (naming himself, Tee Morant, and Mike Miller as people who escorted Plaintiff from the basketball court).)

<sup>132</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 114: 16-115: 17 (Testimony of Teniya Morant); Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 22: 14-23: 11 (Testimony of Donte White).)

<sup>133</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 4: 4-11 and 7: 11-23 (Testimony of Tee Morant).)

<sup>134</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 7: 17-18, 24-8:13 (Testimony of Tee Morant).)

<sup>135</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 8: 11-17 (Testimony of Tee Morant).)

<sup>136</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 10: 13-16 (Testimony of Tee Morant).)

<sup>137</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 8: 17-19 and 10: 3-7 (Testimony of Tee Morant); *id.* at 74: 14-17 (Testimony of Teniya Morant) (“[Plaintiff] yelled, [h]e was going to come back and light our house up like fireworks . . . . To me, it sounded like he was going to shoot our house up.”); Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 24: 15-22 (Testimony of Donte White) (“He was upset from his body language you could tell that. He was saying things, you know, out of anger . . . . Threats. I don’t remember exactly word for word verbatim what he was saying, but I know threats.”); Hr’g Tr. of Dec. 13, 2023: 47: 9-17 (Testimony of Mike Miller) (“He said something with fireworks. I caught the tail end of the fireworks . . . . [t]hat was walking off the court . . . . [s]omething with—some—‘I’ll come back with fireworks’ is all I remember.”); *id.*



103). Tee told Plaintiff “[y]ou can’t say that,” and Jamie said that she was going to call the police,” to which Tee responded, “No, I’ve got it.”<sup>138</sup>

104). Tee continued trying to reason with Plaintiff, telling him that they could go back to the basketball court once he calmed down.<sup>139</sup>

105). But Plaintiff was still angry and responded, “Naw, I want my rounds. I want my rounds,”<sup>140</sup>

106). Tee replied that Plaintiff would not be allowed to fight Mr. Morant in his own backyard.<sup>141</sup>

107). Tee and Mike Miller continued talking with Plaintiff for 10-15 minutes, and then Tee called Plaintiff’s father, explaining that Plaintiff kept saying that he wanted to fight Mr. Morant.<sup>142</sup>

108). Plaintiff’s father suggested that he and Tee “sit [Plaintiff] down together him and Ja,” but Tee refused, responding, “Not if he’s trying to fight.”<sup>143</sup>

at 74: 14-16 (Testimony of Trey Draper) (“And, man, Josh was just like, ‘I’m going to light this’ whatever ‘up.’ Like, a firework, firecracker, and that was it.”).)

<sup>138</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 8: 20-22 (Testimony of Tee Morant).)

<sup>139</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 11: 3-4 (Testimony of Tee Morant); *accord* Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 28: 20-25 (Testimony of Donte White) (“Mr. Tee was just reassuring him that he liked his game, he was a good kid. He actually invited him back. He said, I don’t want him—you know what I’m saying, you’re welcome to come back, you know, it was like that.”).)

<sup>140</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 11: 4-5 (Testimony of Tee Morant).)

<sup>141</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 11: 5-6 (Testimony of Tee Morant) (“You can’t fight with a man in the backyard and I’m talking about my son.”); *see id.* at 11: 7-12 (explaining that “I want my rounds” means “you want to fight . . . [l]ike boxing rounds”).)

<sup>142</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 11: 13-22 (Testimony of Tee Morant).)

<sup>143</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 11: 22-25 (Testimony of Tee Morant).)

109). Plaintiff eventually drove himself home.<sup>144</sup>

110). Before he left, however, Plaintiff said again that he would “light up” the Morant family home.<sup>145</sup>

111). Jamie Morant, who had come out to the front porch, responded, “No, he’s really got to go.”<sup>146</sup>

**D. Factor Five: Reasonable Belief**

112). Every time that Plaintiff had visited the Morant family home before July 26, 2022, he was well-behaved and respectful.<sup>147</sup>

113). In fact, “[a]t first, he was kind of nervous, you know. Like, scared to talk. He was, you know, kind of quiet.”<sup>148</sup>

114). “As he . . . came around a little more,” however, Plaintiff “started . . . opening up a little bit.”<sup>149</sup>

115). At one point, Plaintiff and Mr. Morant would even laugh and joke “[a]ll the

<sup>144</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 12: 14-17 (Testimony of Tee Morant); Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 30: 15-18, 31: 1-3 (Testimony of Donte White).)

<sup>145</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 12: 1-2 (Testimony of Tee Morant).)

<sup>146</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 12: 2-4 (Testimony of Tee Morant).)

<sup>147</sup> (Hr’g Tr. of Dec. 11, 2023: 83:13-23 (Testimony of Tee Morant); *see also id.* at 134: 14-16 (Testimony of Ja Morant) (describing interactions with Plaintiff as “positive,” “for sure); Hr’g Tr. of Dec. 13, 2023: 22: 2-6 (Testimony of Jamie Morant) (“**Q:** We talked about, you know, you having met Josh a few times or seen Josh at the house a few times. Had you ever seen Josh, ever experience Josh, like, get into a fight or be disrespectful in any way? **A:** No.”).)

<sup>148</sup> (Hr’g Tr. of Dec. 11, 2023: 134: 1-2 (Testimony of Ja Morant).)

<sup>149</sup> (Hr’g Tr. of Dec. 11, 2023: 134: 3-4 (Testimony of Ja Morant); *cf.* Hr’g Tr. of Dec. 12, 2023, Morning Session: 75: 8-11 (Testimony of Teniya Morant) (“I mean, I’ve never seen him act like that, so I don’t know if it’s normal or not. I just know Josh when he was always smiling and happy[.]”).)

time.”<sup>150</sup>

116) Morant considered Holloway to be like a little brother. Holloway’s Exhibit B, 85:15-16.

117). Plaintiff’s change of behavior on July 26, 2022, surprised Mr. Morant.<sup>151</sup>

118). Before July 26, 2022, Mr. Morant had never seen Plaintiff be verbally or physically abusive.<sup>152</sup>

119) Holloway was not bigger than Morant.<sup>153</sup>

120). Before July 26, 2022, Mr. Morant had no reason to fear or be concerned about Plaintiff.<sup>154</sup>

121). On July 26, 2022, Mr. Morant thought that Plaintiff wanted to fight him and would hit him a second time.<sup>155</sup>

122). On July 26, 2022, Plaintiff also surprised Teniya Morant; she felt betrayed by Plaintiff’s change of behavior and the way that he treated her brother.<sup>156</sup>

123). Everyone who saw Plaintiff’s behavior on July 26, 2022, thought that he wanted to fight.<sup>157</sup>

124). Chip Brunt testified that Mr. Morant’s response was “normal,” that he would have

<sup>150</sup> (Hr’g Tr. of Dec. 11, 2023: 134: 17-18 (Testimony of Ja Morant).)

<sup>151</sup> (Hr’g Tr. of Dec. 11, 2023: 156: 22, 159: 20-22 (Testimony of Ja Morant).)

<sup>152</sup> (Hr’g Tr. of Dec. 11, 2023: 156: 22, 159: 20-22, 231:11-13 (Testimony of Ja Morant).)

<sup>153</sup> (Hr’g Tr. Of Dec. 12, 2023: 86:12-14 (Testimony of Tenia Morant)

<sup>154</sup> (Hr’g Tr. of Dec. 11, 2023: 231: 14-18 (Testimony of Ja Morant).)

<sup>155</sup> (Hr’g Tr. of Dec. 11, 2023: 233:20-234:7 (Testimony of Ja Morant).)

<sup>156</sup> *See, supra*, note 38 and accompanying text.

<sup>157</sup> *See, supra*, notes 114-119 and accompanying text.

done the same thing, “[e]specially if they don’t apologize and you square up with me.”<sup>158</sup>

125). “That’s personal,” Chip explained. “Then you did that on purpose.”<sup>159</sup>

126). Plaintiff, like Mr. Morant, is a point guard, a position traditionally reserved for skilled passers.<sup>160</sup>

127). Often in basketball, passes are made to players who are moving.<sup>161</sup>

128). No one is moving during a check ball.<sup>162</sup>

129). Mike Miller, a 17-year NBA veteran who has played in thousands of basketball games, has never seen one player hit another player in the face with a basketball accidentally.<sup>163</sup>

130). Donte White, a high school basketball coach who has been playing basketball for most of his life, has never seen anybody hit in the face during a check ball—accidentally.<sup>164</sup>

131). Teniya Morant has been playing basketball for fifteen years; she has never seen anyone get hit in the face with a basketball during a check ball.<sup>165</sup>

132). In ten or more pickup basketball games at the Morant family home on July 26, 2022 before the incident, with multiple check balls before and during each game, no one was hit in the face with a basketball.<sup>166</sup>

<sup>158</sup> (Hr’g Tr. of Dec. 13, 2023: 134: 3-13 (Testimony of Chip Brunt).)

<sup>159</sup> (Hr’g Tr. of Dec. 13, 2023: 134: 13-14 (Testimony of Chip Brunt).)

<sup>160</sup> (Hr’g Tr. of Dec. 11, 2023: 171:19-172:4 (Testimony of Ja Morant).)

<sup>161</sup> (See Hr’g Tr. of Dec. 11, 2023: 170: 13-20 (Testimony of Ja Morant).)

<sup>162</sup> (Hr’g Tr. of Dec. 11, 2023: 172: 5-6 (Testimony of Ja Morant).)

<sup>163</sup> (Hr’g Tr. of Dec. 13, 2023: 48: 17-21 (Testimony of Mike Miller).)

<sup>164</sup> (Hr’g Tr. of Dec. 12, 2023, Afternoon Session: 30: 10-12 (Testimony of Donte White).)

<sup>165</sup> (Hr’g Tr. of Dec. 12, 2023, Morning Session: 117: 21-118: 1 (Testimony of Teniya Morant).) Teniya also has never herself hit anyone in the face during a check ball. (*Id.* at 118: 2-3.)

<sup>166</sup> (Hr’g Tr. of Dec. 11, 2023: 172: 7-12 (Testimony of Ja Morant); *see also, supra*, note 91 and accompanying text.)

133). Plaintiff remained angry and violent even after being escorted off the basketball court.<sup>167</sup>

134) Holloway was not stronger than Morant. Holloway's Exhibit B, 85:15-16.

**E. Factor Six: Immediacy or Imminence**

135). From the time that Plaintiff struck Mr. Morant in the face with the basketball, the entire exchange between Plaintiff and Mr. Morant lasted seconds.<sup>168</sup>

136) After the Holloway throw hit Morant in the fact, the ball was in neither parties' hands.<sup>169</sup>

137). Mr. Morant had only seconds to determine why Plaintiff's behavior had changed, whether he needed to protect himself from Plaintiff, and, if so, how best to do so.<sup>170</sup>

138) Mr. Morant admits he had time to consider other options, such as pushing Holloway, mentoring the Plaintiff, talking to him, or say "[h]ey man, like, this isn't what we do here. Leave my property." <sup>171</sup>

**F. Factor Seven: Proportionality**

139) In basket, "[y]ou can get hit, bumped or grabbed the wrong way. And guys have words about it, but it's normal. That's pretty normal." Holloway's Exhibit C, 17:21-24.

140) In basketball, there is an inherent risk that one may miss a pass and get hit on the

<sup>167</sup> See, *supra*, notes 125 and 129 and accompanying text.

<sup>168</sup> (Hr'g Tr. of Dec. 13, 2023: 74: 16-17 (Testimony of Trey Draper) ("I mean, it was literally, like, a ten-second incident."); *accord id.* at 131: 9-13 (Testimony of Chip Brunt) ("Q: From the time that the ball hits Ja to the time that they kind of pulled their pants and clench their fists and square and get chest to chest, how much times passes, you think? A: Not—it was, like, a split second.").)

<sup>169</sup> (Hr'g Tr. Of Dec. 11, 2023: 212:25; 213:1-2; 235:5-14 (Testimony of Ja Morant).

<sup>170</sup> See, *supra*, notes 137 and 141 and accompanying text.

<sup>171</sup> (Hr'g Tr. Of Dec. 11, 2023:220:3-25; 221: 1-25; 222:1-5 (Testimony of Ja Morant).

head or in the face by the basketball. Holloway's Exhibit C, 30:1-6; 36:12-16.

141). Mr. Morant hit Plaintiff once; his strike did not knock Plaintiff down.<sup>172</sup>

142). Chip Brunt described the strike as a "chin check," explaining that "[i]t wasn't a hard hit at all."<sup>173</sup>

143). Plaintiff had no visible bruises or injuries when he left the Morant family home on July 26, 2022.<sup>174</sup>

144). There were no marks on his face or body.<sup>175</sup>

145). Plaintiff also "didn't seem dazed or hurt or anything."<sup>176</sup>

146). He drove himself home.<sup>177</sup>

147). Shortly after the events of July 26, 2022, Plaintiff left Memphis to play basketball for Oak Hill Academy, a boarding school in Virginia with a top-ranked basketball team.<sup>178</sup>

148). Plaintiff currently plays Division 1 college basketball.<sup>179</sup>

#### **G. Factor Eight: Consent**

149). In a pickup basketball game, Mr. Morant does not expect to get hit intentionally

<sup>172</sup> See, *supra*, notes 127 and 130 and accompanying text.

<sup>173</sup> (Hr'g Tr. of Dec. 13, 2023: 131: 23-24 (Testimony of Chip Brunt).) Brunt's testimony is the only direct evidence in the record regarding the force or lack thereof of Mr. Morant's response.

<sup>174</sup> (Hr'g Tr. of Dec. 12, 2023, Afternoon Session: 30:19-25 (Testimony of Donte White).)

<sup>175</sup> (Hr'g Tr. of Dec. 12, 2023, Morning Session: 12: 11-13 (Testimony of Tee Morant).)

<sup>176</sup> (Hr'g Tr. of Dec. 12, 2023, Afternoon Session: 30:15-17 (Testimony of Donte White).)

<sup>177</sup> (Hr'g Tr. of Dec. 12, 2023, Morning Session: 12: 14-17 (Testimony of Tee Morant); Hr'g Tr. of Dec. 12, 2023, Afternoon Session: 30: 15-18, 31: 1-3 (Testimony of Donte White).)

<sup>178</sup> (Hr'g Tr. of Dec. 11, 2023: 89: 18-20 and 102: 21-22 (Testimony of Tee Morant); *id.* at 242: 8-14 (Testimony of Ja Morant); *see also id.* at 54:25-55:5 (Plaintiff's Opening Statement); (Hr'g Tr. of Dec. 12, 2023, Morning Session: 119: 3-4 (Testimony of Teniya Morant).)

<sup>179</sup> (Hr'g Tr. of Dec. 11, 2023: 242: 15-18 (Testimony of Ja Morant); *see also id.* at 55: 5-7 (Plaintiff's Opening Statement); Hr'g Tr. of Dec. 12, 2023, Morning Session: 119: 5-7 (Testimony of Teniya Morant).)

hit in the face with a baseball-type pass during a check ball.<sup>180</sup>

150). In a pickup basketball game, Mr. Morant does not expect to get intentionally hit in the face with a chest pass.<sup>181</sup>

151). The next pickup game had not yet started when Plaintiff hit Mr. Morant in the face with the basketball.<sup>182</sup>

#### **H. Factor Nine: Provocation**

152). According to Mike Miller, “Josh fired the ball to Ja and hit him in the mouth. That kind of started everything.”<sup>183</sup>

### **III. LEGAL STANDARD**

The ultimate question and “sole issue” before the Court in an evidentiary hearing under the SDI Statute is “whether the defendant used force . . . in a manner permitted by [one of several justification statutes].” Tenn. Code Ann. § 39-11-622(e)(3). If so, then the defendant is “immune from civil liability.” *Id.* One of those justification statutes, Tenn. Code Ann. § 39-11-611, permits the use of force in self-defense.

The question presented at this stage of the proceedings is whether Mr. Morant has “fairly raise[d]” self-defense. Tenn. Code Ann. § 39-11-622(e)(4).<sup>184</sup> Under the SDI Statute, “[t]he burden

<sup>180</sup> (Hr’g Tr. of Dec. 11, 2023: 171: 3-6 (Testimony of Ja Morant).)

<sup>181</sup> (Hr’g Tr. of Dec. 11, 2023: 171: 7-9 (Testimony of Ja Morant).)

<sup>182</sup> *See, supra*, note 59 and accompanying text.

<sup>183</sup> (Hr’g Tr. of Dec. 13, 2023: 43: 12-13 (Testimony of Mike Miller).)

<sup>184</sup> Section 39-11-622(e)(4) reads in full as follows:

The burden of proof at the hearing is initially on the defendant to present sufficient admissible evidence to fairly raise the issue of whether the use of force was justified under §§ 39-11-611—39-11-614, § 29-34-201, or § 49-6-4107. If the court finds that the permissible use of force has been fairly raised, a presumption of immunity

of proof at the [evidentiary] hearing is initially on the defendant to present sufficient admissible evidence to fairly raise the issue of whether the use of force was justified[.]” *Id.* If the Court concludes that Mr. Morant has “fairly raised” self-defense, then “a presumption of immunity is created and the burden of proof shifts to the plaintiff to demonstrate that civil liability is *not* barred.” *Id.* (emphasis added).

To “fairly raise” self-defense under § 39-11-611, Mr. Morant must address the following nine factors (also identified, above, in § II):

- **Factor One: Location.** At the time that he claims to have used force in self-defense, Mr. Morant must have been “in a place where [he] had a right to be.”<sup>185</sup>
- **Factor Two: Conduct.** At the time that he claims to have used force in self-defense, Mr. Morant must “not [have been] engaged in conduct that would constitute a felony or a Class A misdemeanor.”<sup>186</sup>

If the first two factors are satisfied, then Mr. Morant “ha[d] no duty to retreat before . . . using force.” Tenn. Code Ann. § 39-11-611(b)(1); *id.* at § 39-11-611(b)(2). The remaining seven factors are as follows:

- **Factor Three: Use of Force.** A defendant may use force to respond to another person’s “use . . . of unlawful force.”<sup>187</sup>
- **Factor Four: Attempted Use of Force.** A defendant also may use force to respond to another person’s “attempted use of unlawful force.”<sup>188</sup>

is created and the burden of proof shifts to the plaintiff to demonstrate that civil liability is not barred by this section.

<sup>185</sup> Tenn. Code Ann. § 39-11-611(b)(1); *id.* at § 39-11-611(b)(2).

<sup>186</sup> Tenn. Code Ann. § 39-11-611(b)(1); *id.* at § 39-11-611(b)(2).

<sup>187</sup> Tenn. Code Ann. § 39-11-611(b)(1).

<sup>188</sup> Tenn. Code Ann. § 39-11-611(b)(1).



- **Factor Five: Reasonable Belief.** Under § 39-11-611, a defendant may use either ordinary force, under subsection (b)(1),<sup>189</sup> or deadly force, under subsection (b)(2),<sup>190</sup> in self-defense. In either case, the defendant must have a reasonable belief that the use of force is appropriate.<sup>191</sup>
- **Factor Six: Immediacy (ordinary force) or Imminence (deadly force).**
  - To use ordinary force, under subsection (b)(1), Mr. Morant must have “reasonably believe[d] the force [wa]s immediately necessary to protect against [Plaintiff’s] use or attempted use of unlawful force.”<sup>192</sup>
  - To use deadly force, under subsection (b)(2), Mr. Morant must have “ha[d] a reasonable belief that there [wa]s an imminent danger of death, serious bodily injury, or grave sexual abuse.”<sup>193</sup> The imminent danger also must have been “real, or honestly

<sup>189</sup> Tenn. Code Ann. § 39-11-611(b)(1) reads in full as follows:

Notwithstanding § 39-17-1322, a person who is not engaged in conduct that would constitute a felony or Class A misdemeanor and is in a place where the person has a right to be has no duty to retreat before threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other’s use or attempted use of unlawful force.

<sup>190</sup> Tenn. Code Ann. § 39-11-611(b)(2) reads in full as follows:

Notwithstanding § 39-17-1322, a person who is not engaged in conduct that would constitute a felony or Class A misdemeanor and is in a place where the person has a right to be has no duty to retreat before threatening or using force intended or likely to cause death or serious bodily injury, if:

- (A) The person has a reasonable belief that there is an imminent danger of death, serious bodily injury, or grave sexual abuse;
- (B) The danger creating the belief of imminent death, serious bodily injury, or grave sexual abuse is real, or honestly believed to be real at the time; and
- (C) The belief of danger is founded upon reasonable grounds.

<sup>191</sup> Tenn. Code Ann. § 39-11-611(b)(1); *id.* at § 39-11-611(b)(2).

<sup>192</sup> Tenn. Code Ann. § 39-11-611(b)(1).

<sup>193</sup> Tenn. Code Ann. § 39-11-611(b)(2)(A).

believed to be real at the time.”<sup>194</sup> And Mr. Morant’s “belief of danger [must have been] founded upon reasonable grounds.”<sup>195</sup>

- **Factor Seven: Proportionality.**

- Ordinary force, under subsection (b)(1), is force “when and to the degree the person reasonably believes . . . is immediately necessary to protect against the other’s use or attempted use of unlawful force.”<sup>196</sup>
- Deadly force, under subsection (b)(2), is “force intended or likely to cause death or serious bodily injury.”<sup>197</sup>

- **Factor Eight: Consent.** Under § 39-11-611, the use of force is not justified “[i]f the person using force consented to the exact force used or attempted by the other individual.”<sup>198</sup>

- **Factor Nine: Provocation.** Under § 39-11-611, the use of force also is not justified “[i]f the person using force provoked the other individual’s use or attempted use of unlawful force.”<sup>199</sup> But there is an exception to this rule: *If* the provocateur “abandons the encounter or clearly communicates to the other the intent to do so,”<sup>200</sup> *and* “[t]he other person nevertheless continues or attempts to use unlawful force against the [provocateur],”<sup>201</sup> then provocation does *not* prevent the use of force from being justified.

In addressing these nine factors, Mr. Morant must adduce an amount of proof *less than* a preponderance of the evidence, *see State v. Hawkins*, 406 S.W.3d 121, 129 (Tenn. 2013), and the

<sup>194</sup> Tenn. Code Ann. § 39-11-611(b)(2)(B).

<sup>195</sup> Tenn. Code Ann. § 39-11-611(b)(2)(C).

<sup>196</sup> Tenn. Code Ann. § 39-11-611(b)(1).

<sup>197</sup> Tenn. Code Ann. § 39-11-611(b)(2).

<sup>198</sup> Tenn. Code Ann. § 39-11-611(e)(1).

<sup>199</sup> Tenn. Code Ann. § 39-11-611(e)(2).

<sup>200</sup> Tenn. Code Ann. § 39-11-611(e)(2)(A).

<sup>201</sup> Tenn. Code Ann. § 39-11-611(e)(2)(B).

Court must consider all evidence in the light most favorable to Mr. Morant, *id.* “This is because it would be improper for a court to withhold a defense from the jury’s consideration because of judicial questioning of any witness credibility.” *State v. Bult*, 989 S.W.2d 730, 733 (Tenn. Crim. App. 1998).

#### IV. CONCLUSIONS OF LAW

For the following reasons, the Court **CONCLUDES** that Mr. Morant has fairly raised self-defense:

1). **Factor One: Location:** The Court **CONCLUDES** that on July 26, 2022, Mr. Morant was at a place he had a right to be—his family home, where Mr. Morant’s parents live and expressly had authorized Mr. Morant, the other players, and spectators to be present.

2). **Factor Two: Conduct:** The Court **CONCLUDES** that on July 26, 2022, Mr. Morant was not engaged in conduct that would constitute a felony or a Class A misdemeanor. Playing basketball is not a crime.

Neither of these factors is contested here. The Court therefore **CONCLUDES** that Mr. Morant “ha[d] no duty to retreat before . . . using force” on July 26, 2022. Tenn. Code Ann. § 39-11-611(b)(1); *id.* at § 39-11-611(b)(2).

3). **Factor Three: Use of Force:** Tenn. Code Ann. § 39-11-611 authorizes Mr. Morant to use force in response to either the use of unlawful force or the attempted use of such force. Mr. Morant asserts that Plaintiff’s striking him in the face during a check ball on July 26, 2022, is the use of unlawful force. But the Court need not reach that issue. Instead, the reasonableness of Mr. Morant’s belief that his response to Plaintiff was warranted—and, if so, also meets the statutory requirements for immediacy or imminence, proportionality, lack of consent, and lack of

provocation—is what controls.<sup>202</sup>

4). **Factor Four: Attempted Use of Force:** Mr. Morant also asserts that other conduct by Plaintiff constitutes the attempted use of force against him. For similar reasons to those discussed regarding **Factor Three**, above, the Court need not reach this issue.

5). **Factor Five: Reasonable Belief:** Under this factor, the Court must address a threshold question: Whether Mr. Morant used ordinary force, such that the standards of § 39-11-611(b)(1) govern, or deadly force, which would require applying § 39-11-611(b)(2). As our Supreme Court clarified in *State v. Benson*, “[t]he bar is *substantially higher* for one trying to fairly raise the issue of the valid use of deadly force,” as opposed to ordinary force. 600 S.W.3d 906-07 (2013) (emphasis added).<sup>203</sup>

<sup>202</sup> See Tn. Criminal Trial Practice 23:17 (2023-24 ed.), *fn.* 3 (“The force does not have to be unlawful. All that is required is that the defendant had a reasonable belief that it was unlawful. See A.L.I. Model Penal Code and Commentaries, 3.04 (1985), Comments.); Tenn. Prac. Crim. Prac. & Procedure 28:36 (“...the circumstances of the situation may permit the defendant to be mistaken so that if the defendant ‘reasonably believes’ the actions were necessary, self-defense would still apply.”); 23:19 Self-defense, 2 Wharton’s Criminal Law (16<sup>th</sup> ed.) (“A defendant’s use of force in self-defense is justified even though there is no actual danger; it is sufficient merely that defendant believe there is danger, provided the belief is reasonable.”)

<sup>203</sup> Persuasive authority from two sister states further illustrates the distinction. In *Commonwealth v. Abubardar*, the Massachusetts Supreme Judicial Court reversed the conviction of a defendant whose conduct consisted solely of non-deadly force but who received a jury instruction on deadly force couched as “proper self-defense.” 120 N.E.3d 1228, 1229-30 (2019). That court held that, under the circumstances, the absence of an instruction on the use of non-deadly force “created a substantial risk of a miscarriage of justice.” *Id.* at 1232. The high court also compared the trial court’s error in *Abubardar* to that of the trial court in *Commonwealth v. Baseler*, 645 N.W.2d 1179 (Mass. 1995), which the high court held erroneously had lowered the prosecution’s burden of proof as to self-defense by failing to give a non-deadly force instruction in connection with charges of simple assault and battery. *Id.*

The Ohio Court of Appeals came to a similar conclusion in *City of Akron v. Dokes*, 507 N.E.2d 1158 (Ohio App. 1986). There the court vacated the conviction of a defendant for assault because the trial court had instructed the jury that the defendant “had to have reasonably believed that the other party intended to kill him or do him great bodily harm” to properly invoke self-defense. *Id.* at 1159. The intermediate appellate court explained that “[w]hile . . . a real or perceived threat of death or great bodily harm is required in order for the use of deadly force to be justified as self-defense . . . such a grave threat is not necessary in cases where less than deadly force is

Here, the Court **CONCLUDES** that the greater weight of the evidence—indeed, all evidence adduced to date in these proceedings—reflects the use of ordinary force by Mr. Morant. The only direct evidence of the amount of force used by Mr. Morant is the testimony of Chip Brunt, who described Mr. Morant’s single punch as a “chin check” and not “a hard hit at all.”<sup>204</sup> Circumstantial evidence—the fact that Plaintiff was not felled by the punch and showed no visible bruising or other injuries, did not appear dazed,<sup>205</sup> and drove himself home—supports Brunt’s observations. This quantum exceeds the showing that the SDI Statute requires.<sup>206</sup> And there is no conflicting indication in the record that Mr. Morant “threaten[ed] or us[ed] force intended or likely to cause death or serious bodily injury.” Tenn. Code Ann. § 39-11-611(b)(2).

Subsection (b)(1) therefore anchors the remainder of the Court’s analysis under **Factor Five**. That subsection required Mr. Morant to “reasonably believe th[at] force [wa]s immediately necessary to protect against [Plaintiff’s] use or attempted use of unlawful force.” Here, again, the greater weight of the evidence at this stage of the proceedings<sup>207</sup> supports that view. The Court

used to repel a feared attack.” *Id.* at 1160. Instead, the court went on, “one may use such force as the circumstances require to protect oneself against such danger as one has good reason to apprehend.” *Id.*

<sup>204</sup> Relatedly, all witnesses who saw the altercation, including Mr. Morant himself, testified that Mr. Morant hit Plaintiff only once, and not more than once.

<sup>205</sup> To the contrary, the evidence reflects that Plaintiff initially gathered himself in an attempt to respond to Mr. Morant’s punch. Also evident from the record is that after Plaintiff was punched a second time—this time by Mr. Pack—and knocked to the ground, he remained sufficiently undamaged to twice threaten to “light up” the Morant family home “like fireworks” and to demand “rounds” with Mr. Morant.

<sup>206</sup> Our Supreme Court has made clear that *less than* a preponderance of the evidence is sufficient to “fairly raise” self-defense. *See State v. Hawkins*, 406 S.W.3d 121, 129 (Tenn. 2013).

<sup>207</sup> *See also*, T.P.I.—Crim. 40.06: Self-defense, 7 Tenn. Prac. Pattern Jury Instr., *fn.* 2 (“[t]he quantum of proof necessary to fairly raise a general defense is less than that required to establish a proposition by a preponderance of the evidence. To determine whether a general defense has

**CONCLUDES** at this stage of the proceedings that Mr. Morant's belief was reasonable.

On cross-examination, Plaintiff's counsel asked Mr. Morant whether he had options available to him other than punching Plaintiff. Could Mr. Morant have pushed Plaintiff, instead of chin-checking him, or stepped away altogether? But the answers to such questions are irrelevant where Mr. Morant had no duty to retreat and state law entitled him to use ordinary force. Moreover from the proof submitted thus far, Mr. Holloway's animosity was evident in that he did not confirm that the aggressive pass was unintentional to Mr. Morant's query, did not retreat himself,<sup>208</sup> and instead squared up.

As set forth in the Tennessee Pattern Jury Instructions- CIVIL 8.07 Self-Defense- Defense of Property:

A person who is unlawfully attacked or who reasonably fears an unlawful attack may use as much force in self-defense as reasonably appears necessary.<sup>209</sup>

Persuasive authority makes the point more emphatically: The use of a specified class of authorized force (here, a punch) need not be the only option, or even the best option, to be justified—it need only be reasonable. In *Commonwealth of Kentucky v. Hasch*, the Kentucky Supreme Court reinstated a conviction for reckless homicide, holding that the evidence was sufficient to sustain the conviction under the imperfect self-defense theory. 421 S.W.3d 349, 359 (2013). In reaching that conclusion, the court expressly declined to rely on evidence that the defendant could have escaped or retreated from the scene of the crime without using violence. *Id.* But because the defendant argued that the evidence improperly encouraged the jury to disregard

been fairly raised by the proof, a court must consider the evidence in the light most favorable to the defendant and draw all reasonable inferences in the defendant's favor.”)

<sup>208</sup> The issue of whether or not Mr. Holloway could have retreated, and whether or not he had a duty to do so, was not raised by either party. However, it appears relevant as to his argument that Mr. Morant should have walked away after being intentionally hit in the face with the ball.

<sup>209</sup> See also, Tn, Criminal Trial Practice 23:17 (2023-24 3ed.).

her right to “stand her ground” under Kentucky law, the court “[f]ound] it appropriate to examine the admissibility of such evidence.” *Id.*

Like § 39-11-611, the Kentucky law at issue in *Hasch* codified a “no duty to retreat” rule. *Id.* at 360. The court construed that rule to eliminate the need for a defendant to “exhaust all other alternatives before his use of force in self-defense c[ould] be justified,” holding that “necessity” in the self-defense context refers to “the nature of the attack” and whether force is require to repel it. *Id.* at 361. The term “necessity,” the court concluded, did not “limit the right to use force only to those situations where there were no other means by which imminent physical injury or death could be avoided.” *Id.* Thus, the court held, “an ‘ability to retreat’ is not relevant to the determination of whether the use of force in self-defense was necessary.” *Id.* at 362.

Similarly, in *State v. Iverson*, the Idaho Court of Appeals held that “the prosecutor’s statement at closing arguments that the jury could find [the defendant] acted lawfully in self-defense only if it found the use of force was his ‘only and best option according to a reasonable person’ was a misstatement of the law.” 155 Idaho 766, 775 (2014). Instead, the court explained, “the use of force need not be the only option, it must merely be a reasonable choice.” *Id.*

As explained in 2 Wharton’s Criminal Law 23:19 (16<sup>th</sup> ed.), “...in the heat of conflict or in the face of impending peril, a person cannot nicely assess the quantum of force necessary to repel an attack; therefore, the force used will not be deemed improper unless clearly excessive.”<sup>210</sup>

Neither these precedents nor Tennessee law required Mr. Morant, in the ten seconds afforded him here, to survey the universe of ordinary force expressions and select one to which his attacker was amenable before repelling him. Plaintiff already had struck Mr. Morant in the face in

<sup>210</sup> See also, *Poret v. Wilson*, 612 So. 2d 888 (La. App. 4<sup>th</sup> Cir)(1993)(plaintiff may not recover damages for civil battery if evidence establishes that she was aggressor, unless defendant used force beyond that necessary to repel aggression, i.e. excessive force).

Mr. Morant's own home, and everyone could see that he was spoiling for a fight. Moreover, it is possible that a push by Mr. Morant could have landed Mr. Holloway on the ground and be deemed excessive force. Mr. Morant already had queried Mr. Holloway, and he did not respond to indicate it was an accident. Mr. Morant checked Plaintiff's chin without knocking him down or even leaving him a shiner for good measure. No more is necessary.

6). **Factor Six: Immediacy:** In addition to having a reasonable belief, Mr. Morant must, under § 39-11-611(b)(1), establish immediacy. Here, where the upper limit for the entire sequence of events at issue is ten seconds (Trey Draper) and the lower is "a split second" (Chip Brunt), immediacy is self-evident. But also significant to the Court's analysis is the fact that Mr. Morant did not strike Plaintiff until Plaintiff (1) hit him in the face with a basketball, (2) failed to apologize, (3) failed to answer Mr. Morant's question, "What you on?" (4) squared up, (5) shoulder-bumped Mr. Morant, and (6) squared up again. Multiple witnesses testified to each of these points. According to the proof at this stage of the proceedings, Mr. Holloway's animosity was evident in that he did not verbally confirm that the aggressive throw to Mr. Morant's face was unintentional, or indicate otherwise with his body language. To have required Mr. Morant to wait any longer would have been to force him to let Plaintiff hit him—again—before he could protect himself. That outcome cannot be what the legislature intended. The Court **CONCLUDES** at this juncture that Mr. Morant's use of force was "immediately necessary."

7). **Factor Seven: Proportionality:** Under § 39-11-611(b)(1), the use of ordinary force in self-defense must match the unlawful force resisted or anticipated: Only force "when and to the degree" necessary is appropriate. Here, after being hit in the face with a basketball and fearing that he was about to be punched, Mr. Morant "chin checked" Plaintiff once. These facts could not be farther afield from *State v. Benson*, where the defendant "respond[ed] to a punch in



the nose by pulling out a gun and shooting a small, unarmed woman five times, including twice in the back.” 600 S.W.3d 896, 907 (Tenn. 2020). At most, the court opined, such facts “fairly raised the issue of whether the defendant was justified in using *non-lethal* force to protect himself from the victim,” not deadly force. *Id.* (emphasis added).

It is reasonable under *Benson* to respond to a simple assault or the threat of the same with non-lethal force. That response describes the proof from Mr. Morant’s case-in chief of exactly what Mr. Morant did on July 26, 2022. The Court **CONCLUDES** at this stage of the proceedings that Mr. Morant’s actions were proportionate.

8). **Factor Eight: Consent:** Section 39-11-611 generally does not allow a person to who consents to contact and then retaliates to raise self-defense. In other words, if you “consent[] to the exact force used or attempted by the other individual,” then self-defense is no defense. Tenn. Code Ann. § 39-11-611(e)(1). But any risks to which a person consents when playing basketball are not at issue here because the next game had not yet started when Plaintiff hit Mr. Morant in the face with a basketball. Mr. Morant, his father, his sister, Mr. Pack, Mike Miller, and Donte White all testified that a check ball starts a pickup basketball game and therefore occurs before the game begins.<sup>211</sup>

Moreover, the defense of consent is not available if the force used against the other party exceeded the scope of that party’s consent.<sup>212</sup> The proof from Mr. Morant’s case-in chief is that getting intentionally hit in the face during a check ball is not an ordinary risk of basketball. Mike Miller and Donte White have never seen it happen accidentally. Teniya Morant has never seen it happen at all. In ten or more pickup basketball games on July 26, 2022, with multiple check balls

<sup>211</sup> See, *supra*, notes 56, 59, and 61 and accompanying text.

<sup>212</sup> Tenn. Code Ann. 39-11-611, Comments.

in each game, no one got hit in the face before the incident. Mr. Morant testified that while he expects to miss and make shots and to be fouled when he plays basketball, he does not expect to be hit in the face during a check ball.<sup>213</sup>

Mr. Morant was the first person to be hit. He was hit in the face with a ball by Mr. Holloway. He gave Mr. Holloway a chance to verify that his forcefully throwing the ball to Mr. Morant's face was not intentional, with his query "What's you on?" Mr. Holloway did not verbally respond or walk away. Instead, he squared up, bumped Mr. Morant's chest and got ready to fight. Therefore, the proof at this juncture does not demonstrate justification for his behavior.

Mr. Morant needs less than a preponderance of the evidence to meet his burden, and no contrary evidence appears in the record of these proceedings. The Court **CONCLUDES** that Mr. Morant did not consent to being intentionally hit in the face with a basketball during a check ball by virtue of showing up to play.

9). **Factor Nine: Provocation:** Like someone who consents to contact, a provocateur generally cannot invoke self-defense; if you start a fight, then you should be ready to finish it. *See* Tenn. Code Ann. § 39-11-611(e)(2). Here, however, the only provocateur is Plaintiff. Everyone else just wanted to play basketball. Mike Miller testified that Plaintiff's hitting Mr. Morant in the face with a basketball "kind of started everything." Other record proof accords with this view; none contradicts it. The Court **CONCLUDES** that Mr. Morant did not provoke Plaintiff to attack him.

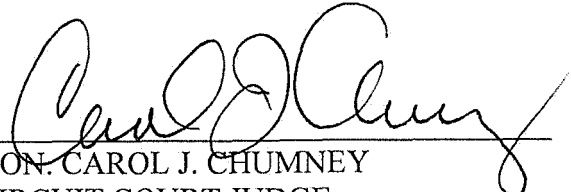
\* \* \*

For these reasons, the Court **CONCLUDES** that Mr. Morant has fairly raised self-defense.

<sup>213</sup> *See*, Tn. Criminal Trial Practice 23:17 (2023-24 ed.)(the consent must be to the "exact force used or attempted by the other individual.")

Under Tenn. Code Ann. § 39-11-622(e)(4) of the SDI Statute, Mr. Morant therefore enjoys a presumption of civil immunity, “and the burden of proof shifts to . . . [P]laintiff to demonstrate that civil liability is not barred by this section.” The Court denies Mr. Holloway’s motion for involuntary dismissal.

SO ORDERED this 8th day of April 2024.

  
HON. CAROL J. CHUMNEY  
CIRCUIT COURT JUDGE

CLERK’S CERTIFICATE OF SERVICE

A TRUE COPY ATTEST  
JAMITA E. SWEARENGEN, Clerk

BY A. Wells D.C.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing order has been mailed postage prepaid to the parties of record or their counsel, if represented at their last known address, this the 8<sup>th</sup> day of April 2024.

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