

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

JOSE MATEO,

Defendant.

Case No. 24-6305CF10A

Judge: Ernest Kollra, Jr.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
PURSUANT TO §776.032, JUSTIFIABLE USE OF FORCE**

THIS CAUSE came before the Court for hearing on August 22, 2025, August 25, 2025, August 26, 2025, August 27, 2025 August 28, 2025, September 2, 2025, September 3, 2025 and September 4, 2025, on Defendant's Verified Motion to Dismiss Pursuant to §776.032, Florida Statutes, and pursuant to Rule 3.190(b), Florida Rules of Criminal Procedure, filed through counsel on March 21, 2025. Present at the hearing were Richard Diaz, Esquire, Counsel for Defendant, and Charles B. Morton, Jr., Esquire, Assistant State Attorney. Testifying for the State were: Alex Villanueva (FDLE Lead Investigator), Erich Smith (FBI Forensics/Toolmark Expert), Bryce Ziegler (FBI Round Trajectory Expert), Officer Xavier Osorio (Miramar Police K-9), Officer Cristina Pacheco (Doral uniform patrol officer), "John Doe" (MDSO undercover narcotics detective), Sgt. Samantha Machado (MDSO plain clothes K-9 officer), Edwin Diaz (Civilian), Manuel Tosado (Civilian), Cheryl Byron (Civilian), Officer Victor Gil (MDSO – plain clothes K-9 officer), Hector Ramirez (MDSO helicopter pilot AR-12), Officer Bryan Young (MDSO PRT officer), and Officer Ryan Lindner (MDSO PRT). Testifying for the Defense were: Liliana Sardi (Civilian), Felicia Barrera (Civilian), Cory Harbinson (Civilian), Lismary Cedeno (Civilian), and Manuel Malgor (MDSO PRT Training/Program Instructor).

Summary of Incident

On December 5, 2019, two innocent Victims, Frank Ordonez ("Victim"), the 27-year-old UPS driver and hostage and Richard "Rick" Cutshaw ("Victim Cutshaw), a 70-year-old union representative, both lost their lives. Lamar Alexander ("Alexander") and Ronnie Jerome Hill ("Hill"), two convicted felons ("Felons"), started this day-long series of crimes with an obviously planned initial armed robbery of the Regent Jewelry Store located in Coral Gables, Florida. After leaving Regent's with the loot with most, if not all, of its jewelry and cash, they fled in a getaway U-Haul van and continued as "full throttle" armed and dangerous felons. They then hijacked a nearby UPS truck, took its driver Frank Ordonez ("Mr. Ordonez")- hostage, fled the area, and, once detected by law enforcement some 20-30 minutes later, they took the police on an over one-hour chase while shooting at them multiple times on north Florida's Turnpike and I-75. After some 15 or so total forcible felonies, those at Regent's and countless other felonies, later the chase ended in a sundown shootout in Broward County, Florida intersection at Miramar Parkway and Flamingo Road ("the intersection"). Alexander, Hill, and the UPS truck hostage, Mr. Ordonez, were all killed. Defendant discharged his departmental Glock issued firearm approximately 18 times, with one round having struck Victim Ordonez in his right buttock. On June 2024, the Defendant was indicted on one count of Manslaughter by Firearm.

The State has argued that the because the Defendant, accidentally shot Victim Ordonez while responding to the incidents of that day as a Police Officer, and was not responding to any intentional act on behalf of the Victim, that he was not entitled to a SYG Immunity Hearing but rather was limited to apply SYG as an affirmative defense at his trial. The State argued that Defendant was limited to defend himself under "justifiable (self-defense) homicide intentional use of force laws or the excusable (accident and misfortune) homicide laws, provided he can show that he 'acted in the proper and prudent exercise of the defense of himself or others[.]'" citing *V.M. v. State*, 766 So. 2d 280 (Fla. 4th DCA 2000) and *David v. State*, 306 So. 3d 228 (Fla. 3d DCA 2020). The Defense argued that first, the Defense had raised a prima facie case causing the

burden to switch to the State. Second the Defense argued that the State's argument that the doctrine of "transferred intent" was unavailable to the Defendant is incorrect and that the Florida Supreme Court spoke to this issue in the case of *Brown v. State*, 94 So. 874, 874 (1922) when found that "[i]f a killing of the party intended to be killed would, under all circumstances, have been excusable or justifiable homicide upon the theory of self-defense, then the unintended killing of a bystander, by a random shot fired in the proper and prudent exercise of such self-defense, is also excusable or justifiable." This Court found that the Defense had, in fact, raised a prima facie case so that the matter proceeded to an evidentiary hearing conducted over a number of days.

Having considered Defendant's instant motion, the testimony of the witnesses, the evidence presented, oral arguments of counsel, applicable case law, and the court record, and being otherwise fully advised in the premises, this Court finds and decides as follows:

Factual Findings¹

- On December 5th, 2019, Lamar Alexander and Ronnie Hill committed an armed robbery at the Regent Jewelry store in Coral Gables at which time an employee of the store was injured by a bullet fired by Hill into the floor ricocheted injuring her. The robbers made off with almost all the cash and jewelry in the store by fleeing in a U-Haul truck which had been damaged by gunfire from the owner and manager who chased after them as they escaped. Alexander and Hill then abandoned the U-Haul and carjacked a UPS truck, kidnapping Mr. Ordonez and fleeing from the area.
- Police were called and provided the details of the robbery and the fact that they were now in a UPS vehicle. Eventually also being made aware that there was a kidnap/hostage victim in the vehicle.
- Ultimately several police departments began pursuit of the truck through Miami-Dade and into Broward County.
- During the pursuit on the turnpike and I-75 police sought to do a "containment" of the truck to hopefully get it to stop but to no avail as the driver continued to avoid any attempt either by the police or general traffic conditions to bring it to a halt.
- The pursuit went on for over an hour during the heart of rush hour with either Hill or Alexander on one occasion firing four rounds into the marked police vehicle of Bryon Young who was

¹ The Rule was invoked prior to the start of this hearing.

trying to verify information to relate to the other officers in pursuit, but as result of the gunfire had to pull back.

- Additionally one of them aimed a firearm at Sgt. Machado and may have actually fired.
- As evidenced by the vehicle crashing through the guard gate at Century Village, the driver of the UPS truck never had any intention to stop and surrender nor did they exhibit any concern for Mr. Ordonez safety or life.
- All of the above factors were known to the police when reaching the intersection of Miramar Parkway and Flamingo road.
- Finally, though the driver had spent over one hour avoiding police and traffic congestion by various maneuvers, and with possible avenues to continue such avoidance, the driver pulls into a lane that offered no possible escape route, as numerous vehicles were stopped at the intersection and the vehicle finally stops. Moments thereafter gunfire erupts from the vehicle causing return fire from the officers on the scene.

Legal Analysis

In the instant motion, Defendant argues that he is entitled to immunity under §776.012, Florida Statutes, which provides as follows:

A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

The trial court must weigh and decide factual disputes as to a defendant's use of force to determine whether to dismiss a case based on immunity. *Peterson v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008); *Velasquez v. State*, 9 So. 3d 22, 23 (Fla. 4th DCA 2010). The legislature's enactment of §776.032 placed the burden of weighing the evidence in "Stand Your Ground" ("SYG") cases upon the trial judge. *State v. Gallo*, 76 So. 3d 407, 409 (Fla. 2d DCA 2011). The State must overcome immunity by clear and convincing evidence. §776.032(4), Fla. Stat. The term "clear and convincing evidence" means that "the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy." *Guida v. State*, 356 So. 3d 310, 311 (Fla. 5th DCA 2023) (quoting *Edwards v. State*, 257 So. 3d 586, 588 (Fla. 1st DCA 2018)).

An objective standard is to be applied by a trial court in evaluating the factual circumstances presented in a SYG motion to dismiss. *Huckelby v. State*, 313 So. 3d 861, 866 (Fla. 2d DCA 2021). That standard requires the court to determine whether, based on circumstances as they appeared to the defendant when he acted, a reasonable and prudent person situated in the same circumstances and knowing what the defendant knew would have used the same force as did the defendant." *Id.* (quoting *Garcia v. State*, 286 So. 3d 348, 351 (Fla. 2d DCA 2019)). See *Mobley v. State*, 132 So. 3d 1160 (Fla. 3d DCA 2014).

Initial Provocation:

At a SYG hearing, the determination of initial provocation is crucial because it affects the availability of self-defense immunity. Under Florida law, the justification for the use of deadly force is not available to a person who initially provokes the use or threatened use of force against themselves, unless certain conditions are met. § 776.041, FSA. Specifically, the statute provides exceptions if the person reasonably believes they are in imminent danger of death or great bodily harm and have exhausted every reasonable means to escape such danger, or if they withdraw from physical contact and clearly indicate their desire to withdraw, but the assailant continues or resumes the use of force § 776.041, FSA. Here, there is no question that the Defendant was responding to a threat initiated and continued by two armed convicted felons who shot and hit multiple Victims, Civilian and Law Enforcement and did not cease this mass shooting event until they were neutralized by the Defendant, his fellow PRT Team Members and multiple other officers from the many agencies that responded.

Reasonable Belief of Imminent Threat:

Under Florida law, a person is justified in using or threatening to use deadly force if they reasonably believe that such force is necessary to prevent imminent death or great bodily harm to themselves or another, or to prevent the imminent commission of a forcible felony. This justification applies as long as the person using or threatening to use deadly force is not engaged in criminal activity and is in a place where they have a right to be. *State v. Quevedo*, 357 So.3d

1249 (Fla. 3rd DCA 2023); § 776.012, FSA. The belief that deadly force is necessary must be objectively reasonable, meaning that a reasonable and prudent person in the same circumstances would believe that the use of deadly force is necessary to prevent imminent death or great bodily harm. *Edwards v. State*, 351 So.3d 1142 (Fla. 1st DCA 2022). The appearance of danger must be so real that a reasonably cautious and prudent person under the same circumstances would believe that the danger could be avoided only through the use of that force. *Huckelby v. State*, 313 So.3d 861 (Fla. 2nd DCA 2021).

Credibility of Witnesses:

In a SYG hearing, the court is responsible for weighing conflicting evidence and making determinations regarding witness credibility. This includes evaluating the defendant's testimony, especially when it presents facts that no other witness corroborates. The trial court is tasked with weighing conflicting evidence and making credibility determinations to decide if the defendant was entitled to immunity under the SYG law. *Huckelby v. State*, 313 So.3d 861 (Fla. 2nd DCA 2021). Similarly, in *Bouie v. State*, 292 So.3d 471 (Fla. 2nd DCA 2020), the trial court did not resolve the differing accounts of the altercation, which left the evidence uncertain and conflicting, impacting the court's ability to determine credibility. In *Elder v. State*, 296 So.3d 440 (Fla. 4th DCA 2020), the trial court found the victim's girlfriend's testimony more believable than the defendant's, leading to a denial of the motion to dismiss based on SYG immunity. These cases illustrate that the court's role in a SYG hearing involves a careful assessment of all testimonies and evidence to determine the credibility of the defendant's account and whether the legal standards for immunity are met.

After applying the statutory and case law to the facts of this case and determining the credibility of the witnesses who testified at the hearing, the Court finds the facts and testimony support the application of immunity under Florida's "Stand Your Ground" law. In the instant case, the Court finds that the testimony of the collective witnesses, State and Defense witnesses all reach the same conclusion: that this was an unusual and highly aggressive situation beginning

with two armed convicted felons committing multiple forcible felonies at the jewelry store then shooting first at civilians and escalating the situation by hijacking a UPS truck and taking its driver as a hostage, followed by shooting at multiple Officers both during the pursuit and also at the confinement in the traffic. Importantly, the collection of the various Officers' Body Worn Camera video confirms the testimony of the law enforcement witnesses and civilian witnesses as to how it was the two convicted felons who started, continued and chose to fire first at anyone that came near the UPS truck to try to contain it and save Mr. Ordonez, the hostage.

The Court finds that the State has not established by clear and convincing evidence that Defendant did not have a reasonable belief that his use of deadly force was necessary to prevent imminent death or great bodily harm to himself or another or to prevent the imminent commission of a forcible felony. Based on the foregoing, it is:

ORDERED AND ADJUDGED that Defendant's Stand Your Ground Motion to Dismiss Pursuant To §776.032, is hereby **GRANTED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 16 day of September, 2025.


ERNEST KOLLRA, JR.
CIRCUIT COURT JUDGE

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