

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: 21001007CFMA
DIVISION: 56

STATE OF FLORIDA

vs.

LUIS ARTHUR CASADO,
Defendant.

**ORDER GRANTING DEFENDANT’S MOTION TO DISMISS FOR STATUTORY
IMMUNITY FROM PROSECUTION**

THIS CAUSE came to be heard pursuant to the Defendant’s Amended Motion to Dismiss for Statutory Immunity From Prosecution and Request for Evidentiary Hearing, filed pursuant to section 776.032, Florida Statutes. Having considered the evidence presented at the hearing, the arguments of counsel, and being otherwise fully advised in the premises therein, this Court finds as follows:

PROCEDURAL POSTURE

On June 29, 2021, a St. Johns County grand jury returned an Indictment against the Defendant, charging him with one count of Manslaughter with a Weapon or Firearm. The allegations state that on or about May 29, 2021, the Defendant killed Adam Amoia, and during the commission of the offense used a firearm.

On November 19, 2021, the Defendant filed a “Motion For Immunity From Prosecution Pursuant to Section 776.032, Florida Statutes.” This Court scheduled the motion for a hearing, which began on November 14, 2022, and concluded on November 17, 2022. The motion raised

sufficient factual allegations that established a *prima facie* claim of self-defense immunity. At the beginning of the hearing, the State stipulated that the allegations in the motion asserted a *prima facie* claim of self-defense immunity. As set forth in section 776.032, the burden shifted to the State to prove by clear and convincing evidence that the Defendant was not entitled to immunity under Florida law. Therefore, the Court proceeded to hear evidence first from the State and then from the Defendant to determine whether the State could overcome that burden.

Having established that the Defendant established a *prima facie* claim of immunity, the Court must then consider whether the State has satisfied its burden of overcoming the Defendant's immunity claim by clear and convincing evidence. Under section 776.032, an individual may claim immunity from prosecution under one or more of three circumstances: (1) in defense of himself or others under the conditions set forth in section 776.012, Fla. Stat.; (2) in defense of his home under section 776.013, Fla. Stat.; and (3) in defense of his property under section 776.031, Fla. Stat. In his motion, the Defendant claims immunity under the self-defense provisions of section 776.012. Because this case involves the use of deadly force, the requirements set forth in section 776.012(2) govern the analysis. The Court makes the following findings of fact from the evidence presented at the hearing and its conclusions of law in determining Defendant's entitlement to immunity from prosecution.

FINDINGS OF FACT

The Court heard testimony from 27 witnesses. The State called as witnesses Corporal Eric Yarborough, crime scene technician Marilyn Butts, Allison Seanard, Makayla Pomarzynski, Ryan Wendlandt, Michael Britton, and Ryan Barnes, Medical Examiner Dr. James Fulcher, Evan Moore, Mary Cathryn Jacobs, Jenna Smith, Jamilyn Marsh, and Corporal Wayne Ferrell. The Defendant called as witnesses Christopher Wingate, Ricardo Ruiz, Lindsay Degler, Dr. Charles

Samuel Miles, an optometrist, Charles Brian Moody, an accident reconstructionist, Parris Ward, a forensic video analyst, Nickolas Ray, Corporal Nicholas Argitis, Dr. Roy Bedard, a law enforcement and corrections trainer, Dr. Deirdre Leake, a facial plastic surgeon, and Dr. Laurence Miller, a psychologist. In rebuttal, the State called Dr. Allan Dean, an optometrist, and Dr. Richard Hough, a criminal justice and criminology professor. The Court also received numerous exhibits, including photographs of the scene, autopsy photographs, and – most notably – video and audio evidence capturing the shooting and the minutes leading up to and following the shooting. The video is the best evidence in this case. The evidence – as depicted on the video and based on credible witness testimony – demonstrates the following:

- Adam Amoia and his friends were gathered inside the Dos Gatos establishment on one end of the bar, while Luis Casado was inside at the other end of the bar. None of the parties interacted inside and the parties did not know each other prior to the incident.
- Adam Amoia and Luis Casado were both drinking alcohol inside Dos Gatos and both had been drinking at other establishments prior to Dos Gatos.
- Adam Amoia had a blood alcohol level of .266 and had hydrocodone in his system, as detected at autopsy. The blood alcohol level of Luis Casado is unknown because a sample of his blood was never taken for testing.
- As Dos Gatos closed, Adam Amoia and his friends gathered outside the establishment on the sidewalk in a group. They communicated with each other and other individuals walking by on the street.
- After exiting the bar, the Defendant also stood outside on Hypolita Street and struck up conversations with a number of people. After several

minutes, he made his way to the group with Mr. Amoia and started speaking with Darrell Wierzba and Felix Ramos Santiago. Mr. Santiago and Mr. Wierzba were standing near Mr. Amoia, who was leaning against the wall and not engaged in their conversation.

- The conversation between the Defendant, Mr. Wierzba, and Mr. Santiago lasted approximately five minutes.
- After approximately five minutes of this conversation with Mr. Amoia's friends, Mr. Amoia, for unknown reasons, became agitated with the Defendant and insisted that the Defendant leave. Mr. Amoia then pushed the Defendant away from the group, told him to leave and threatened to smack him. The Defendant quickly put his hands up in a submissive posture and seemed confused by Mr. Amoia's action. Immediately in response, Mr. Amoia struck the Defendant in the face with enough force to knock the Defendant's glasses off his face. Mr. Amoia's strike was immediately followed by a second and very violent blow by Mr. Santiago to the Defendant's face. That blow caused the Defendant's head to be thrown violently backward and sent the Defendant stumbling backwards. It is clear from the video that these blows were so hard that the Defendant's head snapped backwards, which can clearly be heard on the enhanced video.
- The Defendant appeared to stagger after the second blow.
- Mr. Amoia continued to advance and delivered at least four additional open handed slaps to the Defendant's face. The Defendant continuously retreated backwards as Mr. Amoia advanced on him. During Mr. Amoia's continued

attack, Mr. Santiago started to reengage and began advancing towards the Defendant in an aggressive manner. Then Mr. Britton turned toward Mr. Amoia and the Defendant. The Defendant kept retreating from Mr. Amoia until he backed up to the outer wall of Dos Gatos.

- Mr. Amoia then delivered two additional strikes to the Defendant's face. At this point, and after absorbing several violent and continuous blows to his face, the Defendant pulled a gun from his pants pocket and fired it at Mr. Amoia.
- The entire event – from the moment Mr. Amoia and Mr. Santiago began their attack, to the moment the Defendant began defending himself – occurred in less than fifteen seconds.
- All seven shots were fired in 1.6 seconds: the second shot occurred .4 seconds after the first shot; the third shot occurred .6 seconds after the first shot; the fourth shot occurred .9 seconds after the first shot; the fifth shot occurred 1.13 seconds after the first shot; the sixth shot occurred 1.37 seconds after the first shot, and the seventh shot occurred 1.6 seconds after the first shot.

Additionally, the testimony and evidence presented during the immunity hearing established the following unrefuted facts:

- the Defendant had a valid carrying a concealed firearm permit at the time of the incident;
- The Defendant possessed the firearm while he was drinking inside Dos Gatos;

- the sidewalk and street outside the bar were public spaces;
- the Defendant's uncorrected vision was – at best – 20/80, and without his glasses, the Defendant's vision would have been “blurry” and “distorted;”
- Dr. Fulcher, the medical examiner presented by the State, stated that a single punch to the head can kill a person, and that a slap could kill a person. He has conducted one or two autopsies where a single punch caused the death. Dr. Fulcher testified that a slap that results in contact with the base of the hand can be as strong as a fist and can be more dangerous than a slap that merely involves contact with the fingers. He opined that being hit by the base of a person's hand can cause death or serious bodily injury. Dr. Fulcher stated that he reviewed the video of the incident in this case, and that at least one of the blows received by the Defendant was “considerable,” and could have caused a concussion. Dr. Fulcher opined that it is reasonable to conclude that the blows that the Defendant received to his head would have caused the Defendant to be “dazed,” and it takes “[s]econds to minutes” to recover from being dazed;
- Dr. Leake, the facial plastic surgeon who treated the Defendant following the incident, stated that the Defendant had the following injuries: a small hematoma contusion on the left upper eyelid, abrasions along the left side of his face, a laceration on the outer portion of the left upper lip, an abrasion on the inner surface of his upper lip, and swelling and bruising to his nasal cavity. Dr. Leake testified that she observed the video depicting the attack

on the Defendant, and the blows the Defendant received during the attack amounted to “blunt trauma.” Dr. Leake stated that if the Defendant had fallen down and hit his head as a result of the blows, he could have suffered a concussion, possible subarachnoid hemorrhage, or even broken his neck. Dr. Leake further testified that had the attack on the Defendant continued, the Defendant “probably would have had head trauma, orbital blowout fracture, maxilla fracture, zygoma fracture, nasal fracture, mandibular fracture, [and] loss of teeth.”

Finally, the defense presented the testimony of Dr. Miller, who explained that (1) it takes 1.3 seconds for “cessation of shooting”; (2) Mr. Amoia began to turn away 0.9 seconds after the first shot; and (3) the last shot was fired 1.6 seconds after the first shot. Thus, Dr. Miller opined that it was impossible for the Defendant’s brain and body to have stopped shooting between the time Mr. Amoia began to turn away and the last shot was fired. Dr. Miller’s testimony was not refuted by the State so the Court accepts this testimony as factual.

CONCLUSIONS OF LAW

Florida law confers immunity from criminal prosecution, without the obligation to retreat, on those who use deadly force reasonably believing that the use of such force is necessary to either prevent imminent death or great bodily harm to self or others or to prevent the imminent commission of a forcible felony. *See* sections 776.012, 776.013, and 776.032, Fla. Stat. Subsections (1) and (2) of section 776.012 clearly state that where the danger of death, great bodily harm, or the commission of a forcible felony is “imminent,” the use of deadly force is justified.

In examining whether a person “reasonably believe[d] that using or threatening to use [deadly force was] 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,” as required by section 776.012(2), the Court must apply an objective, reasonable person standard. *See Bouie v. State*, 292 So. 3d 471, 481 (Fla. 2d DCA 2020) (“The question under this *objective* evaluation of a defendant’s conduct is whether, based on the circumstances as they appeared to the defendant at the time of the altercation, a *reasonable and prudent person* in the same position as the defendant would believe that the use of deadly force is necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony.”) (emphasis added); Fla. Crim. Std. Jury Instr. 3.6(f) (“[T]o justify the [use] [or] [threatened use] of deadly force, the appearance of danger must have been so real that a *reasonably cautious and prudent person* under the same circumstances would have believed that the danger could be avoided only through the use of that [force] [or] [threat of force].”) (emphasis added).

Once a court finds that a defendant’s motion sets forth a *prima facie* claim of immunity, the burden shifts to the State to prove by clear and convincing evidence that the defendant is not entitled to immunity. Clear and convincing evidence is “evidence making the truth of the facts asserted ‘highly probable.’” (internal citations omitted). *Bouie*, 292 So. 3d at 480. “The legislature has directed that a defendant who files a sufficient motion to dismiss on grounds of immunity is entitled to it unless the State clearly and convincingly establishes that he is not.” *Id.* at 292. In *Derossett v. State*, the Fifth District Court of Appeal addressed “clear and convincing evidence” in the context of immunity under the Stand Your Ground statutes and explained:

Clear and convincing evidence is an exacting standard that requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

311 So. 3d 880, 890 (Fla. 5th DCA 2019) (citing *Acevedo v. State*, 787 So. 2d 127, 130 (Fla. 3d DCA 2001)).

Additionally, the determination of whether the use of force is justified under section 776.012(2) is to be made “in accord with the objective, reasonable person standard by which claims of justifiable use of deadly force are measured.” *Cummings v. State*, 310 So. 3d 155, 158 (Fla. 2d DCA 2021) (internal citations omitted). Section 776.012(2) provides, in relevant part:

A person is justified in using or threatening to use deadly force if he ... reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself . . . 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 . . . 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 . . . has the right to be.

This text establishes three conditions to immunity. The defendant must (1) reasonably believe that using deadly force was necessary to prevent imminent death or great bodily harm to himself or to prevent the imminent commission of a forcible felony, (2) was not engaged in a criminal activity, and (3) was in a place where he had a right to be. *State v Chavers*, 230 So. 3d 35, 39 (Fla. 4th DCA). If the State proves any one of those three factors by clear and convincing evidence, the Defendant is not entitled to immunity from prosecution. As explained below, the State failed to meet its burden, and the Defendant in this case satisfies all three conditions.

Regarding the first factor, based on the unrefuted facts of this case, the State has not met its burden of proving by clear and convincing evidence that the Defendant did not reasonably believe that deadly force was necessary to prevent imminent death or great bodily harm. Mr. Amoia and Mr. Santiago were the initial aggressors and they struck the Defendant numerous times in the face and head. The blow by Mr. Santiago was by far the most violent and did the most damage to the Defendant. Based on the video evidence and credible eyewitness testimony, the

Defendant was dazed and disoriented by the ongoing and persistent attack. The Defendant kept backing away from the attack until he backed up to the building. There was no break in the attack, and without his glasses and being dazed from the impact of the blows, there was no opportunity for the Defendant to regain his orientation and perception. He was incapable of determining how long and how violent this attack was going to last. Based on the video, eyewitness and the medical evidence presented in this case – including evidence from the State’s own witness (Dr. Fulcher) – the State failed to meet its burden that the Defendant did not reasonably believe he was facing imminent death or great bodily harm.

Regarding the second factor, during the immunity hearing, the State conceded that the Defendant was not engaged in a criminal activity at the time that he used deadly force. The Defendant had previously carried his gun into Dos Gatos bar and consumed alcohol in violation of section 790.06(12), Fla. Stat., minutes before he first encountered Mr. Amoia. The State conceded that the section 790.06(12) offense was complete when the Defendant left the bar, and therefore, it failed to meet its burden to prove that the Defendant was engaged in a criminal activity at the time that he used the deadly force against Mr. Amoia.

Finally, regarding the third factor, at the time of the Defendant’s encounter with Mr. Amoia, the Defendant was in a place where he had a right to be. During the immunity hearing, Corporal Ferrell confirmed that the sidewalk and street outside the bar were public spaces. This factor was also unrefuted and accepted by the State. This was a public street and public sidewalk. The area where the shooting occurred could not be considered curtilage of the business and the Defendant was in a place where he had a right to be. The State failed to meet its burden as to this factor as well.

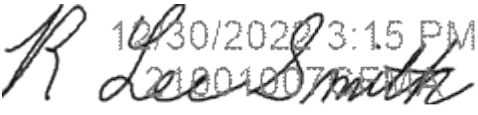
Based on the credible evidence presented by the parties at the hearing, this Court finds that

the State failed to meet its burden by clear and convincing evidence that the Defendant's use of force was unreasonable. As a result, the Defendant is entitled to immunity under section 776.032.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Defendant's Amended Motion to Dismiss for Statutory Immunity From Prosecution is **GRANTED**.

DONE AND ORDERED in chambers, in St. Johns County, Florida, on 30 day of December, 2022.


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CIRCUIT JUDGE

cc: Mark Johnson, Assistant State Attorney

Patrick Canan, Defense Attorney

Daniel Hilbert, Defense Attorney

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