

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

CASE NO.: 2023CF00562CFAWS

v.

DIVISION: 3

WILLIAM CLIFTON,
Defendant.

Filed For Record
Pasco County, Fla.
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EMILY ALVARADO
Clerk & Computer
Pasco County, Fla.

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS BASED UPON
STATUTORY IMMUNITY PURSUANT TO FLORIDA STATUTE §776.032 (2017)**

THIS MATTER came before this Court on the Defendant's Motion to Dismiss Based Upon Statutory Immunity Pursuant to Florida Statute §776.032 (2017) filed on July 14, 2023, pursuant to Florida Rule of Criminal Procedure 3.190(b) and Florida's "Stand Your Ground" statute, found at sections 776.032(1) and 776.012(2) Florida Statutes.

On October 13, 2023, a hearing was held on the Defendant's Motion. At the hearing, the State called Michael Krnjaich and the three victims; Will Adams, Sarah Connelly and Daniel Zweifel. Additionally, the State admitted into evidence a door bell camera video that shows the action that occurred on that day. The Defendant's motion was not sworn to when filed and the Defendant did not testify. After careful consideration of the evidence and testimony presented, and having considered the arguments of counsel and the case law provided to the Court, and having otherwise been fully advised, this Court finds as follows:

I. Standard of Review

"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. §776.012(2) Fla. Stat. (2017). In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection. The trial court must

weigh the credibility of the witnesses and evidence and make findings of fact on a substantial, competent basis. Peterson v. State, 983 So.2d 27 (Fla. 1st DCA 2008); Horn v. State, 17 So.3d 836 (Fla. 2d DCA 2009). Then, the trial court must determine whether the State has shown by clear and convincing evidence that the Defendant was not justified in using force likely to cause great bodily harm.

II. Facts of the Case

The Defendant is charged by information with three count of Aggravated Assault with a firearm. Pursuant to sections 776.032(1) and 776.012(2), Florida Statutes (2017), the Defendant seeks statutory immunity from prosecution based on justified use of force in self-defense, and requests that his pending charges be dismissed. The State argues that the Defendant should not be immune from prosecution because the Defendant was not justified in using deadly force. The testimony of all four of the State's witnesses and the video was consistent. The victims, Michael Krnjaich and several other people, including multiple children were socializing outside their homes on Barber Trail a sub-development in Starkey Ranch neighborhood around 5:50 p.m.. The video shows the people all in the front yard of Michael Krnjaich house and the video is taken from his house's door-bell camera. You can see the children playing in the yard and street as the video begins. A car stops in the road at the edge of the Krnjaich property. A person later identified as the Defendant, exits the vehicle and walks up to something in the road. The video also has audio. The item in the road was a small plastic speed bump put down by a neighbor with child at play flags so that the traffic would slow while the children were playing. All the witnesses testified that it was very small and just used to make sure traffic slowed down so the children were safe. This is a small two lane residential street. The street is not a thoroughfare to SR 54, but an interior road to the residence in the neighborhood. The Defendant stops his vehicle in the road, gets out of his vehicle and walks over the other side of the street yelling "fucking people, illegal ..." and picks up the plastic speed bump and threw it at the Krnjaich yard. Michael Krnjaich's wife can be heard yelling for Michael's help as the Defendant moves towards the item in the street. You can hear Michael ask the Defendant, "Hey buddy, what are you doing? Don't touch that. Hey, hey" The

Defendant does not speak back at Michael but moves past him after throwing the first plastic item to the other one on the street on Michael's side of the street. Before the Defendant can get to the second plastic item, Michael Krnjaich steps in front of the Defendant and pushes him away from the plastic item. The Defendant is seen stepping back a couple of steps. Michael Krnjaich remains in front of the plastic item on the street. As the Defendant steps back he then pulls a firearm out of under his shirt and points it at Michael Krjaich. Michael immediately runs backward out of the view of the camera. The Defendant then turns towards the three victims who are standing in Michael's yard and points the gun at them. All three put their hands up and slightly move back from where the Defendant is standing. You can hear Will Adams say "I have an apple".

All of the witnesses testified that no one other than the Defendant had a weapon. Other than a slight push by Michael Krnjaich to move the defendant away from his property (the plastic item on the ground) no force was used against the Defendant. At no time did anyone make any verbal threats against the defendant. Even as Michael Krnjaich was moving to stop the defendant from grasping his property, he only used words that would be considered non-threatening

The video admitted by the State in the Motion is consistent with the testimony of the victim and contradicts the allegations of the Defendant in the Motion to Dismiss. *See also Viera, 163 So.3d at 605* (affirming denial of Stand Your Ground immunity where there was conflicting testimony and competent substantial evidence contradicting Viera's version of the events); *Mederos, 102 So.3d at 11* (affirming denial of Stand Your Ground immunity where the testimony below "contradict[ed] wildly")

III. Findings

Initially, this Court notes that "[t]he admissibility of evidence is within the sound discretion of the trial court, and the trial court's ruling will not be reversed unless there has been a clear abuse of that discretion." *Filomeno v. State, 930 So.2d 821, 822* (Fla. 5th DCA 2006) (citing *Rav v. State, 755 So.2d 604, 610* (Fla. 2000)). The Court finds that the State has shown by clear and convincing evidence that the Defendant was not justified in using force against the victim.

Therefore, the Defendant was not justified in using deadly force in self-defense and thus is not entitled to immunity from prosecution. Specifically:

The Court finds that the Defendant's statements contained in the Motion are inconsistent with the testimony of the other witnesses and the video reviewed by the court. Additionally, the statements in the motion are not sworn to, and can not be used by the court in its evaluation. The defendant did not testify so the Court must look to the sworn testimony of the State's witnesses and the video introduced into evidence.

Accordingly it is:

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss Based Upon Statutory Immunity Pursuant to Florida Statute §776.032 (2012), is hereby **DENIED**. **THE DEFENDANT IS HEREBY NOTIFIED** that he has 30 days from the date of this order in which to file an appeal should he wish to do so.

DONE and ORDERED in Chambers at New Port Richey, Pasco County, Florida, this 1st day of November 2023.



Mary M. Handsel - Circuit Judge

cc. State Attorney
Bret Metcalf, Esquire