

IN THE SUPREME COURT OF FLORIDA

JARED BRETHERICK,
Petitioner,
JIMMY CRUZ,
Amicus Curiae
Intervener,

SUPREME COURT
Case No.: SC13-2312
DCA: 5D12-3840

vs.

STATE OF FLORIDA,
Respondent.

INTERVENOR DCA
Case No.: 2D14-4060
L.T.: 11-CF-007666

FILED
JOSHUA THOMPSON
2014 DEC 19 AM 10:58
CLERK OF SUPREME COURT
BY _____

**MOTION FOR LEAVE TO SERVE A LATER AMICUS
CURIAE BRIEF/EXTENSION OF TIME AND/OR IN THE
ALTERNATIVE MOTION FOR CONSOLIDATION AND
INTERVENTION**

COMES NOW Amicus Curiae/ Intervener, JIMMY CRUZ pro se, pursuant to Rule 9.370, Florida Rules of Appellate Procedure, respectfully moves this Court in the above styled. *Tallahassee Democrat, Inc. v. O'Grady*, 421 So.2d 58 (Fla. 1st DCA 1982) States as follows:

FACTS

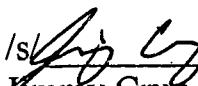
1. This case is of important public interest and JIMMY CRUZ, due to the same issue of shifting the burden of proving self – defense from State to Defendant as in *Bretherick*. This burden as it relates to *Cruz* derives out of *Montanez v. State*, 24 So.3d 799 (Fla. 2nd DCA 2010), which may have in

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Fact been used to shift the burden and denying immunity pursuant to § 776.032 in Cruz's case See attached Exhibit (A).

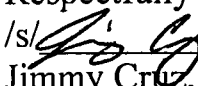
DECLARATION OF OATH

Under the Penalty of Perjury, I declare that I have read the foregoing [document] and that the facts are true.

/s/  _____
Jimmy Cruz, pro se
DC# T24435

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing documents has been placed in the hands of an institution official to be furnished and forwarded by prepaid First Class U.S. Mail delivery, on this 16th day of Dec, 2014, to the following: Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-0950; Office of the Attorney General Criminal Appeals Division PL-01, The Capitol Tallahassee, Florida 32399-1050.

Respectfully Submitted,
/s/  _____
Jimmy Cruz, pro se
DC# T24435
Wakulla C.I. Annex
110 Melaleuca Drive
Crawfordville, Florida 32327

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

September 16, 2014

CASE NO.: 2D14-4060

L.T. No. : 11-CF-007666

Jimmy Cruz

v. State Of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Petitioner's petition alleging ineffective assistance of appellate counsel is denied.

NORTHCUTT, CASANUEVA, and WALLACE, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

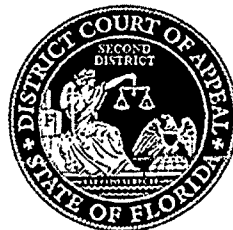
Attorney General

Jimmy Cruz

Pat Frank, Clerk

lb


James Birkhold
Clerk



EX A

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

FILED COURT
CLERK CIRCUIT COURT
2012 JUL 11 PM 1:09
HILLSBOROUGH COUNTY, FL
CIRCUIT CRIMINAL

STATE OF FLORIDA

CASE NO: 11-CF-007666

v.

JIMMY CRUZ,
Defendant.

DIVISION: G

**ORDER DENYING "DEFENDANT'S MOTION TO DISMISS
BASED ON IMMUNITY FROM CRIMINAL PROSECUTION
UNDER FLORIDA STATUTE §776.032"**

THIS MATTER is before the Court on "Defendant's Motion to Dismiss Based on Immunity from Criminal Prosecution under Florida Statute § 776.032," filed by and through counsel on June 25, 2012. An evidentiary hearing was held on June 28 and 29, 2012. After reviewing Defendant's Motion and considering all the testimony, evidence, arguments, and case law advanced by the Defense and the State at the hearing, the Court finds as follows:

In his Motion, Defendant asserts his entitlement to statutory immunity from criminal prosecution pursuant to Florida Statute § 776.032 ("Stand Your Ground" law). (See Motion). Specifically, Defendant requests that the Court enter an Order dismissing the Information filed by the State of Florida. (See Motion). The Information charges Defendant with second-degree murder arising out of the shooting death of Walter "J.J." Revear on May 18, 2011. (See Motion). Defendant sets forth the facts upon which he believes the Stand Your Ground law is applicable to his case. (See Motion).

At the evidentiary hearing on June 28 and 29, 2012, the Court reserved the right to make findings of fact and conclusions of law in its written ruling. This written Order provides the necessary findings of fact and conclusions of law to support this Court's ruling.



1 of 17

EX A

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FINDINGS OF FACT

On the evening of May 17, 2011, Defendant, Jimmy Lee Cruz, along with his brother, Michael Cruz, and friend, Sammie Bankston, went to the Interstate Lounge sometime between 11:00 p.m. and 12:30 a.m. to watch a basketball game. (See Transcript p. 161-162). Throughout the course of that evening, altercations arose that ultimately resulted in the shooting death of Walter "J.J." Revear, around 1:30 a.m. on May 18, 2011. (See Transcript p. 133). All relevant events occurred in the parking lot of the Interstate Lounge, located on the corner of N. Nebraska Avenue and E. Wilma Street in Hillsborough County, Florida. (See Transcript p. 12). Testimony and other relevant evidence adduced at the evidentiary hearing revealed the following:

Michael Cruz (M. Cruz) testified that on May 17, 2011 he was watching a basketball game at his friend Mike's house with his brother Jimmy Cruz (Defendant), and friend, Sammie Bankston (Bankston). (See Transcript p. 161). M. Cruz testified that sometime between 11:00 p.m. and 12:30 a.m., he, Defendant, and Bankston drove to the Interstate Lounge in Defendant's car, a red Dodge Charger. (See Transcript p. 161-62). Bankston testified that the scene at the Interstate Lounge was "real crowded and packed."¹ (See Transcript p. 64). M. Cruz testified that after he, Defendant, and Bankston went inside the bar to watch the basketball game for about thirty (30) minutes, they came back outside and walked across the street to the food stand. (See Transcript p. 165-66). Sharod Dozier (Dozier), friend of M. Cruz, testified that he arrived at the Interstate Lounge on May 17, 2011 around 11:45 p.m. with Reggie Hudley (Hudley). (See Transcript p. 11, 13). Dozier testified that he and Hudley walked across the street to the food stand and said hello to Defendant, M. Cruz, and Bankston. (See Transcript p. 16-17). M. Cruz

¹ Multiple witnesses testified that the Interstate Lounge was usually crowded on Tuesday nights, and that it was not uncommon for fights and other forms of violence to occur at the bar. (See Transcript p. 11, 16, 113, 276-78, 312-13).

testified that he, Defendant, and Bankston walked back across the street to the parking lot of the Interstate Lounge after they "observed some fighting going on around the vehicle" among a group of females. (See Transcript p. 167). Bankston testified that he, Defendant, and M. Cruz walked back across the street when the females started fighting near Defendant's car because they did not want anything to hit the car. (See Transcript p. 65). M. Cruz testified that neither he, Defendant, nor Bankston were involved in this altercation, and the fight solely involved females that none of the men knew.² (See Transcript p. 222-25).

Franshawn Vereen (Vereen) testified that she went to the Interstate Lounge on May 17, 2011 with friends Kendra Reveal (K. Reveal), J.J. Reveal (J. Reveal), and Roderick Nelson Vickers (Vickers), in her green Nissan Maxima. (See Transcript p. 309-10, 312, 315). Vickers testified that he is J. Reveal's brother, and Vereen testified that she and K. Reveal are close friends and sometimes call each other "cousins." (See Transcript p. 309, 367). Vereen described the scene at the Interstate Lounge as a "big crowd" that was "hyper," and also testified that there was an altercation between a number of females already going on in the parking lot when they arrived. (See Transcript p. 312-313).

Charles Dixon (Dixon), friend of the Reveal family, testified that he was also at the Interstate Lounge on the night of May 17, 2011. (See Transcript p. 274). Dixon testified that he was inside the bar when someone told him about a fight between two females in the parking lot. (See Transcript p. 278-79). Dixon testified that once he walked outside, the fight was already over but he managed to videotape "the end part of it" on his cell phone. (See Transcript p. 279).

² There is extensive video evidence and testimony about an altercation between a number of females in the parking lot of the Interstate Lounge. (See Transcript p. 22, 64-65, 169-71, Defense Exhibit 1). None of the females involved in this altercation could be identified by the witnesses at the hearing and none of the females involved in that fight became witnesses in this case. (See Transcript p. 42, 222-25). After considering the testimony advanced at the evidentiary hearing and reviewing the video admitted into evidence, the Court finds that this altercation was unrelated to the events that ultimately led to this case.

Dixon confirmed that the video recordings were broken into three different segments because he had turned the cell phone camera off and on several times. (See Transcript p. 280-82). All three videos, along with a slow-motion version of the third segment, were admitted into evidence at the evidentiary hearing, and were viewed in open court during the evidentiary hearing. (See Transcript p. 170-76, 180, 182-92, 194-204, 207-209).

M. Cruz testified that shortly after he, Defendant, and Bankston walked over to the parking lot to protect Defendant's car, the initial fight between the females "cooled off a slight bit." (See Transcript p. 177). M. Cruz testified that, shortly thereafter, he saw three (3) to five (5) females with tasers and mace "within feet," and "sometimes [within] arm distance," of Defendant while he was standing near the end of his car. (See Transcript p. 179). Bankston testified that these females were "within inches" of Defendant's face. (See Transcript p. 69). Using Defense Exhibit 1, which was one of the segments of the video taken by Dixon, M. Cruz identified the females as Lyshunda Jackson (Jackson), Hennashia Hughes (Hughes), and Shaderria Bland (Bland). (See Transcript p. 182-83). M. Cruz testified that these females were not the same females who were in the initial fight that drew the men back over to the parking lot. (See Transcript p. 223). Vereen testified that neither she, J. Revear, K. Revear, nor Vickers knew any of the females with the tasers and mace. (See Transcript p. 319). M. Cruz testified that he saw both Jackson and Bland with a taser, saw a taser being ignited, and also saw Jackson with mace when she was only inches away from Defendant. (See Transcript p. 187-90). M. Cruz testified that he heard the females threatening Defendant with the tasers and mace, saying "I'll tase you, mace you [...] just stuff that they will do." (See Transcript p. 179-180). Vereen testified that she saw one of Jackson's friends with a taser and saw that female ignite the taser. (See Transcript p. 321). Vereen testified that Jackson was not "real close but [...] pretty close

to" Defendant, and that they were "maybe three feet" away from each other. (See Transcript p. 321-22).

Bankston testified that Defendant became involved with the females through "regular cordial conversation," and that the conversation was disturbed by one of the females who was "agitated," "upset," and "mad." (See Transcript p. 67). Bankston testified that the female, later identified by M. Cruz as Jackson, was upset about something Defendant had said to another female.³ (See Transcript p. 67, 183). However, Vereen testified that Jackson, whom she knows as "Sweetie," was angry about something having to do with her boyfriend. (See Transcript p. 345-46). Vereen also testified that Jackson said she would mace her boyfriend if she saw him that night. (See Transcript p. 316). Vereen testified that during the confrontation between Defendant and Jackson, Defendant cracked a smile and called Jackson vulgar names. (See Transcript p. 346). Vereen testified that K. Revear approached Defendant and Jackson, but only to try to break up the argument. (See Transcript p. 322). However, M. Cruz testified that K. Revear approached Defendant and Jackson in order to tell another male, identified as "Mike," who was trying to break up the argument, to stay out of the argument because "he's [Defendant] fuckin' with my [K. Revear's] cousin." (See Transcript p. 186). M. Cruz testified that he did not think K. Revear got as close to Defendant's face as the other females. (See Transcript p. 231). Vickers testified that K. Revear did not have any weapons that night. (See Transcript p. 368). Bankston testified that, at this point, Defendant did not have a gun and did not threaten anyone with a gun. (See Transcript p. 70).

Dixon testified that he was videotaping the altercation between Defendant and the group of females. (See Transcript p. 281-82). Bankston testified that when Defendant realized he was

³ In his motion, Defendant alleges that Jackson was upset because Defendant had "flirted" with another female who, although unknown to Defendant at the time, was 17 years old. (See Motion p. 4). However, this was neither confirmed nor denied by any witness at the hearing.

being videotaped by Dixon, Defendant told Dixon to get the camera out of his face. (See Transcript p. 72). M. Cruz testified that Dixon moved his camera "in between the girls" and toward Defendant. (See Transcript p. 190). However, M. Cruz is the only witness to testify that Dixon moved toward Defendant, and the video clearly shows Defendant approaching Dixon and the camera.⁴ (See Defense Exhibit 1). Vereen testified that "when the person [Defendant] came up to him [Dixon], he [Dixon] passed his phone to Kendra." (See Transcript p. 329). Dixon testified that Defendant physically grabbed Dixon's hand, and tried to stop him from videotaping.⁵ (See Transcript p. 287, 298-99). Dixon testified that after Defendant hit his hand, he handed the camera to K. Revear and walked out into the street saying "you wanna fight" to Defendant. (See Transcript p. 287). Dixon testified that K. Revear continued videotaping the altercation. (See Transcript p. 287-88). Bankston testified that Dixon threw his arms up as if he wanted to fight. (See Transcript p. 73).

M. Cruz testified that Defendant did not follow Dixon into the street to fight and did not pull out a gun. (See Transcript p. 191). Dixon testified that although Defendant did not threaten to shoot him, someone told him that Defendant had a gun, but he could not remember who said this. (See Transcript p. 289-90). A voice can be heard on the video saying "he got a gun;" however, M. Cruz could not identify who said that. (See Transcript p. 195). M. Cruz testified that although Defendant did not threaten to shoot Dixon nor did he pull out a weapon at that point, he had previously told the females arguing with him that he had a gun. (See Transcript p.

⁴ Vereen agreed that the video recordings are the best evidence of what occurred that night in the parking lot of the Interstate Lounge. (See Transcript p. 360).

⁵ Although Dixon testified that Defendant physically grabbed his hand when trying to stop him from videotaping, no other witness testified to a physical interaction between Defendant and Dixon. (See Transcript p. 298-99). The Court further notes that the video does not show a physical interaction between Defendant and Dixon. (See Defense Exhibit 1).

192). Dixon testified that after leaving his cell phone with K. Revear, who continued to videotape the altercation, he walked back inside the bar. (See Transcript p. 290).

M. Cruz testified that after the altercation between Defendant and Dixon, he walked over to the red Dodge Charger along with Defendant and Bankston. (See Transcript p. 195-96). M. Cruz testified that he was standing on the passenger side of the car, and Defendant and Bankston were standing on the driver's side of the car. (See Transcript p. 196). M. Cruz described the situation at that point as "agitated" and "aggressive." (See Transcript p. 199). M. Cruz testified that once he was on the driver's side of the car, Defendant threw a drink over the hood of the car in the direction of the crowd which was standing on the passenger side of the car. (See Transcript p. 200). It is unclear from available testimony whether the whole cup, or just the liquid inside the cup, was thrown. (See Transcript p. 76, 200). Although Bankston and M. Cruz testified that the drink did not hit anyone, Vereen testified that she got wet when the drink was thrown. (See Transcript p. 75, 239, 352). Vereen testified that after the drink was thrown, "the crowd got rowdy," and she heard J. Revear say "we ain't got nothin' to do with that." (See Transcript p. 324, 327).

Bankston testified that after Defendant threw the drink, four (4) males from the crowd started to aggressively approach the car where he, Defendant, and M. Cruz were standing. (See Transcript p. 78). Bankston testified that M. Cruz walked toward the crowd with his arm out, saying "don't get in this . . . just chill . . . this ain't nothing." (See Transcript p. 79). Dixon testified that at this point he walked back outside from the bar and saw J. Revear arguing with M. Cruz. (See Transcript p. 291-92). Vickers testified that J. Revear did not have any weapons on him that night. (See Transcript p. 368). M. Cruz testified that two males came from behind him,

and when he turned in their direction to look at them, J. Revear punched him on the right side of his head, above his ear, causing him to fall to the ground. (See Transcript p. 208).

Bankston described the situation as "a little chaotic," "a real intense hostile situation," and that it was "so quick . . . like, five minutes." (See Transcript p. 79-81, 85). Bankston testified that he saw J. Revear punch M. Cruz and then saw M. Cruz get kicked three (3) to four (4) times once he had fallen down. (See Transcript p. 94). Bankston testified that he did not know whether M. Cruz ever sought medical attention for any injuries he may have received. (See Transcript p. 94-95). Bankston testified that M. Cruz was "red in the face," but that M. Cruz was not bleeding and did not have any scratches, scrapes, or bruises on him. (See Transcript p. 96-97). Bankston further stated "I don't think he was like hospital bound." (See Transcript p. 94). Dozier testified that he saw numerous males "all over" M. Cruz; however, Dozier confirmed that he was witnessing the altercation from across the street, about thirty-five (35) to forty-five (45) feet away. (See Transcript p. 23, 35-36).

Vickers testified that someone came from around the driver's side of the red Dodge Charger and tried to hit him first but missed, that someone then tried to hit J. Revear, and that he saw J. Revear swing back and cause someone to fall to the ground. (See Transcript p. 371-72). Vereen also testified that she saw someone try to hit Vickers, that she saw someone approach J. Revear, and that she saw J. Revear swing back and hit someone. (See Transcript p. 333-34). M. Cruz denied trying to hit J. Revear first. (See Transcript p. 251).

M. Cruz testified that once he fell to the ground, he "balled up" in the fetal position, and then he heard a gunshot. (See Transcript p. 209). Vereen testified that she saw Defendant retrieve a gun from his car, run around the side of his car, and shoot J. Revear. (See Transcript p. 335, 357). Vickers also testified that he saw Defendant walk to the driver's side rear door, reach

into the car, retrieve a gun, and then hold it in his hand near his waist. (*See* Transcript p. 380). Vickers testified that when he saw Defendant come from around the side of his car, he pushed K. Reveal out of the way, and then saw Defendant shoot J. Reveal. (*See* Transcript p. 373). M. Cruz testified that he, Defendant, and Bankston then got into Defendant's car and left the scene because they were "in danger." (*See* Transcript p. 210-11). Vickers testified that after running to his brother and holding him in his arms, he left the scene, called one of his friends, and then came back to the scene about thirty (30) minutes later. (*See* Transcript p. 374, 394).

Detective Danny Rhodes (Detective Rhodes) testified that he was called to the scene in the early morning hours of May 18, 2011, as part of the homicide squad of the Tampa Police Department. (*See* Transcript p. 112). Detective Rhodes testified that he recovered a stun gun, also identified as a taser, a pocket knife, and a can of mace from the scene. (*See* Transcript p. 118-120). Detective Rhodes testified that although tasers are electrical weapons that have debilitating effects and could render someone defenseless, the taser he recovered from the scene was much less powerful than those used by law enforcement officers to defend themselves. (*See* Transcript p. 122-123). Detective Rhodes testified that the type of taser recovered from the scene is the type that requires engaging the person's body, skin, or clothing with the electrical probes to have an effect. (*See* Transcript p. 125). Detective Rhodes also testified that mace can be used to defend oneself or to render someone defenseless, but it is only effective if used within a range of three (3) to ten (10) feet. (*See* Transcript p. 123, 126). Detective Rhodes testified that he did not recover any weapons from J. Reveal's body, nor did he learn from any witness that J. Reveal ever possessed any weapon that night. (*See* Transcript p. 127, 151). Detective Rhodes also testified that he did not become aware of any injuries on M. Cruz. (*See* Transcript p. 142).

CONCLUSIONS OF LAW

Section 776.032, Florida Statutes, commonly known as the "Stand Your Ground" statute, provides that where a person is justified in using force as permitted in Sections 776.012, 776.013, or 776.031, that person is immune from criminal prosecution and civil action for the use of such force, unless the victim is a law enforcement officer. See § 776.032, Fla. Stat. (2005). When a criminal defendant files a motion to dismiss⁶ on the basis of the Stand Your Ground statute, the trial court must decide the factual question of whether the statutory immunity applies. See *Dennis v. State*, 51 So.3d 456, 458 (Fla. 2010).⁷ As such, when a motion to dismiss or other motion or petition filed pursuant to Rule 3.190(a), is properly filed, based on the Stand Your Ground statute, a trial court "must decide the matter by confronting and weighing only factual disputes. The court may not deny a motion simply because factual disputes exist." See *id.* at 459, citing *Peterson*, 983 So.2d at 29. Upon presentation of live testimony at an evidentiary hearing, the trial court shall weigh the credibility of the witnesses, make findings of fact based on that evidence, and apply the preponderance of the evidence standard in making its final determination. See *Horn v. State*, 17 So.3d 836, 839 (Fla. 2d DCA 2009). Defendant bears the burden of showing, by a preponderance of the evidence, that he is entitled to immunity under section 776.032, Florida Statutes. See *Horn*, 17 So.3d at 839; see also *Peterson*, 983 So.2d at 28.

⁶ The Court notes that some district courts have explained that a motion for immunity based on section 776.032, Florida Statutes, need not be filed under or interpreted as a motion to dismiss pursuant to Florida Rule of Criminal Procedure 3.190(c)(4). See generally *Horn v. State*, 17 So.3d 836, 839 (Fla. 2d DCA 2009), contrast with *Velasquez v. State*, 9 So.3d 22 (Fla. 4th DCA 2009). Rather, a motion or petition filed under section 776.032 must comply with the general requirements of Rule 3.190(a) for pretrial motions. See *Horn*, 17 So.3d at 839. Additionally, a trial court has general authority to hear and rule upon such motions necessary to resolve criminal cases. See *id.* at 839 (citations omitted). The Court mentions this simply to acknowledge that the Stand Your Ground argument need not be made exclusively through a motion to dismiss.

⁷ The *Dennis* Court approved of the First District Court of Appeal's procedure in *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008), for ruling on motions to dismiss filed pursuant to the Stand Your Ground statute. See *Dennis*, 51 So.3d at 460.

Section 776.012, Florida Statutes, permits the use of force in defense of a person as follows:

A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

- (1) He or she reasonably believes that 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; or
- (2) Under those circumstances permitted pursuant to s. 776.013.

§ 776.012, Fla. Stat. (2005).

Section 776.013, Florida Statutes, in relevant part, provides as follows:

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

§ 776.013(3), Fla. Stat. (2005). Although Defendant argued for immunity under Sections 776.012 and 776.013, the Court finds that immunity under neither section is warranted, as Defendant did not prove by a preponderance of the evidence that he was entitled to such immunity.

After reviewing Defendant's Motion and considering all the testimony, evidence, arguments, and case law advanced by the Defense and the State at the hearing, the Court first finds that the State's argument that Defendant's request for immunity should be denied because he was involved in an unlawful activity is without merit. At the conclusion of the evidentiary hearing, the State attempted to argue that Defendant was not entitled to statutory immunity

because he involved himself in an unlawful activity when he grabbed Dixon's hand to stop him from videotaping, and also when he threw a drink in the direction of the crowd in the parking lot. (See Transcript p. 427-429). The Court finds that this argument lacks merit as Defendant is charged only with second-degree murder, and the claimed unlawful activity was not directly connected to or resulted in the charged crime, but rather was only tangentially related.

The Court further finds that Defendant was not justified in the use of deadly force for two reasons. First, the Court finds that Defendant did not "meet force with force," as is required by Section 776.013(3), and that Defendant's use of deadly force was excessive under the facts and circumstances of this case. Second, the Court finds that Defendant did not have a reasonable belief that he or his brother, M. Cruz, were in danger of death or great bodily harm, so as to justify the use of deadly force. To justify the use of force, Section 776.013(3), Florida Statutes, requires an individual to "*meet force with force, including deadly force.*" See § 776.013(3), Fla. Stat. (2005) (emphasis added). This Court construes such language as a requirement that to justify the use of force, an individual must use an amount of force equivalent to that which is being responded to. Thus, to justify responding with force to prevent death or great bodily harm, or to prevent the commission of a forcible felony, an individual must respond with an amount of force comparable to that which was presented to the defendant. See § 776.013(3), Fla. Stat. (2005).⁸

⁸ Although this Court could find no explicit guidance from this district or others as it relates to defining the permissible amount of force that can be used under this statute, the Court notes that the intent of including the clause "meet force with force" was understood by at least some legislators to allow only a use of force equivalent to that used against the person. See Zachary Weaver, Florida's 'Stand Your Ground' Law: The Actual Effects and the Need for Clarification, 63 U. Miami L. Rev. 395 (2008) (explaining that Representative Kottkamp said the law's intent was to allow a person only to use force that is commensurate with the force used against him or her).

Simply put, the Court finds that Defendant brought a gun to a fist fight. Defendant responded, with deadly force, to a fist fight between his brother and the victim, J. Revear. No witness testified that J. Revear ever presented a gun to Defendant or M. Cruz, or that J. Revear ever threatened to shoot Defendant or M. Cruz. Vickers testified that J. Revear did not carry any weapons with him to the Interstate Lounge that night, and also did not acquire any weapons while he was there that night. (See Transcript p. 368). Vereen also testified that she never saw J. Revear with any weapons that night. (See Transcript p. 348). Detective Danny Rhodes testified that, through his investigation, he never recovered any weapons from J. Revear's body and never learned from any witness that J. Revear possessed any weapons that night. (See Transcript p. 127, 151, attached).

Although there was conflicting testimony about who hit whom first, or whether M. Cruz ever did actually hit J. Revear, all testimony indicates that only fists were used between M. Cruz and J. Revear. Further, even though there was some testimony about M. Cruz being kicked once he had fallen to the ground, the Court finds more credible the testimony that M. Cruz was punched only once by J. Revear. Witnesses testified that the entire altercation, from the time the females were arguing with Defendant to the moment that J. Revear was shot, occurred within a five minute time span. (See Transcript p. 81). Additionally, any threat that the females—Jackson, Bland, and Hughes—had originally posed to Defendant by igniting tasers or presenting mace had subsided by the time M. Cruz was punched by J. Revear.

Defendant's argument that the tasers and mace used by the females to threaten Defendant earlier in the night justified his use of deadly force against J. Revear is without merit. Available testimony and the video evidence indicate that while the females who originally argued with Defendant were still in the crowd at the time Defendant threw the drink and the crowd moved

toward Defendant and M. Cruz, they were no longer threatening Defendant or presenting their tasers or mace. Vereen testified that J. Revear, K. Revear, and Vickers had nothing to do with the females that were in Defendant's face with the tasers and mace. (See Transcript p. 344-45). Vereen testified, and Vickers confirmed, that she, J. Revear, K. Revear, and Vickers went to the Interstate Lounge together that night, and other than K. Revear telling "Mike" to stay out of the argument, none of them were involved in the altercation between Defendant and the females. (See Transcript p. 322-24, 345, 370). Vereen also testified that she believed Jackson, who was one of the females seen with mace, was angry and upset about something having to do with her boyfriend, and not Defendant. (See Transcript p. 316). Vereen testified that she heard Jackson threaten to use mace on her boyfriend, and not Defendant. (See Transcript p. 316). Moreover, Vereen testified that Defendant even cracked a smile while Jackson was in his face and then proceeded to call her vulgar names. (See Transcript p. 346). As such, all available evidence indicates that J. Revear was not involved in the altercation between the females and Defendant, and that the only threat Defendant was responding to at the time he shot J. Revear was a punch. Under these circumstances, the Court finds that Defendant's use of deadly force was excessive when compared to the type of force to which he was responding, which was, according to all available testimony, only the use of hands. The Court finds that Defendant did not meet force with force when he used a gun to respond to the force used by J. Revear against M. Cruz.

The Court additionally finds that any belief Defendant had that he or his brother was in danger of death or great bodily harm was not reasonable under the unique facts and circumstances presented in this case. To justify the use of deadly force in defense of others, a "person must be *reasonably certain* that the person whom they are defending is in immediate danger of death or great bodily harm." See *Montanez v. State*, 24 So.3d 799, 803 (Fla. 2d DCA

2010) (emphasis added). To be reasonably certain, a defendant must have known or should have known that death or great bodily harm was certain to occur. *Id.* This determination is in accord with an objective, reasonable person standard. *See id.* (citing Fla. Std. Jury Instr. Crim. 3.6(f)(2010), and explaining that under the objective, reasonable person standard, persons making claims of self-defense or defense of others must be judged by the circumstances with which they were faced at the time deadly force was used). Defendant requests that this Court find that he had a reasonable belief that his brother was in danger of death or great bodily harm because of the hectic, intense crowd he faced that night at the Interstate Lounge. (See Transcript p. 420, attached). The Court declines to make such a finding.

Testimony revealed that the parking lot of the Interstate Lounge was crowded and became an intense, hostile situation as a result of the altercations in the parking lot. Yet, M. Cruz testified that although he was not a regular at the Interstate Lounge, he did visit the bar at least "once or twice in a couple of months span." (See Transcript p. 163). Dozier, friend of M. Cruz, also testified that he—Dozier—visited the Interstate Lounge about two to three times a month, and that it was usually crowded on Tuesdays, just as it was on May 17, 2011. (See Transcript p. 12). Bankston also testified that the Interstate Lounge was "crowded and packed" when the men arrived that night. (See Transcript p. 64). Vereen described the scene as "hyper," and testified that was "normal" for the Interstate Lounge. (See Transcript p. 312-13). The Court finds that, despite the intensity of the crowd that night, Defendant was not reasonably certain that he or his brother were in immediate danger of death or great bodily harm.

As the Court found herein, M. Cruz was only punched one time, even though it is unclear who punched whom first. Bankston, Vickers, and Vereen all testified that they saw M. Cruz get punched once, and M. Cruz himself testified that he was punched only once. (See Transcript p.

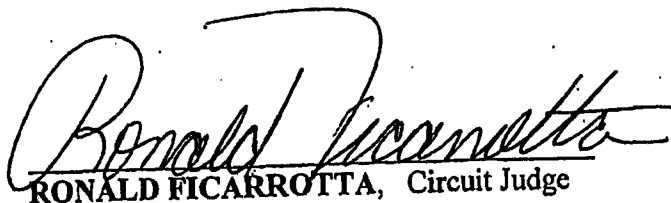
94, 241, 333-34, 371-72, attached). Neither Defendant nor M. Cruz was threatened by J. Revear, or anyone else for that matter, with any weapon. Witnesses testified that J. Revear did not have any weapons that night and did not threaten Defendant or M. Cruz with one so as to make them believe he was carrying a weapon. Although M. Cruz testified he thought he saw someone with a gun, he could not confirm who it was or that it was J. Revear. (See Transcript p. 268-69). The only weapons that were presented that night—tasers and a can of mace—were no longer involved in the altercation at the time M. Cruz was punched. Based on the unique facts and circumstances presented in this case, the Court finds that a reasonable person in Defendant's situation would not be in fear of death or great bodily harm. The Court holds that statutory immunity from criminal prosecution cannot be appropriately afforded to Defendant under the facts and circumstances of this case.

Based on the foregoing, the Court finds that Defendant has not shown by a preponderance of the evidence that he is entitled to statutory immunity under the Stand Your Ground statute. However, Defendant is not precluded from submitting the matter to the jury as an affirmative defense, should his case eventually proceed to a jury trial. See *Dennis*, 51 So.3d at 459, citing *Peterson*, 983 So.2d at 29.

It is therefore **ORDERED AND ADJUDGED** that "Defendant's Motion to Dismiss Based on Immunity from Criminal Prosecution under Florida Statute §776.032" is hereby **DENIED**.

Defendant has thirty (30) days from the date of this Order within which to appeal.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this 10 day of July, 2012.


RONALD FICARROTTA, Circuit Judge

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