

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

STATE OF FLORIDA

CASE NO.: 13-CF-011622

v.

**JOSEPH AMORE,
Defendant.**

DIVISION: E

**ORDER GRANTING "MOTION FOR DECLARATION OF IMMUNITY AND
DISMISSAL OF CHARGES AND ACCOMPANYING MEMORANDUM OF LAW" AND
ORDER DISMISSING THE CHARGES IN THE ABOVE-STYLED CASE**

THIS MATTER came before the Court on Defendant's "Motion for Declaration of Immunity and Dismissal of Charges and Accompanying Memorandum of Law" (Motion), filed August 11, 2014, pursuant to section 776.032, Florida Statutes (2013), and Florida Rule of Criminal Procedure 3.190(b). Defendant asserts his entitlement to statutory immunity from criminal prosecution for murder in the second degree with a weapon and attempted murder in the second degree with a weapon. An evidentiary hearing was held on January 16, 2015, and February 3, 2015. At the end of the evidentiary hearing the Court ruled that the parties would be able to provide written arguments to the Court, and that the Court would declare its ruling at a disposition hearing on February 27, 2015. Defendant filed his written argument on February 13, 2015. The State filed its written argument on February 20, 2015. Defendant filed his rebuttal argument on February 24, 2015. After reviewing Defendant's Motion, the Court file, and the record, and considering the arguments, evidence, and case law advanced by the defense and the State at the evidentiary hearing and in written arguments, the Court finds that Defendant's Motion shall be granted. This written Order provides the necessary findings of fact and conclusions of law to support the Court's ruling.

FINDINGS OF FACT

On August 17, 2013, Mr. Joseph Amore (Defendant), Mr. Joshua Rankin, and Mr. William Medeiros engaged in a physical altercation, which led to the stabbing of Mr. Medeiros and the stabbing and death of Mr. Rankin. Defendant bases his claim of Stand Your Ground immunity on the assertion that he was acting in self-defense and that the force used was necessary to stop the imminent and unlawful use of force on him.

The pertinent time period in which the physical altercations took place was approximately eight (8) minutes long, beginning with an initial punch at 2:37 a.m. and ending at 2:45 a.m., when the 9-1-1 call that reported the stabbings was made. *See* January 16, 2015 Transcript (Tr-1), p. 7, attached.

The Court acknowledges that the accounts provided by the defense witnesses and State's witnesses regarding the events to be credible as they were recounted in a reasonably consistent manner regarding the relevant events; however, the Court finds that the defense witnesses provided more detailed and consistent testimony regarding the events. The testimony and evidence adduced at the evidentiary hearing revealed the following:

On Friday, August 16, 2013, around 9:30 p.m. or 10:00 p.m., a group of five young men from Tampa drove to Ybor City. That group consisted of Mr. Medeiros, Mr. Rankin, Mr. Nathan Stasio, Mr. Corey Bailey, and Mr. Kirk Kelly ("Port Tampa group"). *See* Tr-1, p. 240; February 3, 2015 Transcript (Tr-2), pp. 8, 10, 192, attached. Before reaching Ybor City, Mr. Rankin and Mr. Bailey took a combination of Xanax, methyline, marijuana, and alcohol. *See* Tr-1, pp. 235-238; Tr-2, pp. 8-10, attached.¹

¹ Mr. Bailey, who testified both for the defense and the State, presented conflicting testimony and testimony that varied from other witnesses to the events. The Court finds Mr. Bailey's testimony to be less credible, as he admittedly was the only other member of the Port Tampa group, besides Mr. Rankin to have taken a combination of alcohol, methyline, Xanax, and marijuana.

Dr. Julia Pearson confirmed that Mr. Rankin had methyldone in his system. *See* Tr-1, pp. 114-119, attached. Dr. Pearson's deposition was admitted as Defendant's Exhibit Three. *See* Tr-1, pp. 114-115, attached. In her deposition, she explained that methyldone (also known as "bath salts"), is a designer stimulant, that produces a very strong stimulant effect and affects the user's behavior. *See* Defense Exhibit 3, p. 6, attached. She explained that people using bath salts can experience extreme paranoia, hallucinations, delusions, and can be extremely agitated and irritated. *See* Defense Exhibit 3, p. 6, attached. Moreover, she explained that methyldone can make a person more violent. *See* Defense Exhibit 3, p. 7, attached.

That same night, around 11:00 p.m. or 11:30 p.m., a group of friends from Lakeland drove to Ybor City. That group consisted of Mr. Joseph Amore (Defendant), Ms. Cassandra Bivens, Mr. Sean Hogue, Ms. Tiffany Gries, and Mr. Dalton Best ("Lakeland group"). *See* Tr-1, pp. 130-132, attached. Before reaching Ybor City, Defendant, as well as others in his group, consumed alcohol. *See* Tr-1, pp. 129-130, 132-133, 202-206.

Both the Port Tampa group and Lakeland group went to several bars and clubs throughout the evening, many of the members of the group continued drinking, and they stayed until the bars closed. *See* Tr-1, pp. 133-134, 137-139, 206-210, 243-246; Tr-2, pp. 12-13, attached. After having previously met at one of the bars early in the evening, Mr. Stasio approached Ms. Bivens outside of the Buffalo Wildwings, on the sidewalk. *See* Tr-1, pp. 136-137, 141-142; Tr-2, pp. 13-15, 17-18, 246-247 attached. Ms. Bivens was standing with Defendant. *See* Tr-1, p. 142; Tr-2, pp. 18-19, attached. The rest of the Port Tampa group joined Mr. Stasio, Ms. Bivens, and Defendant. *See* Tr-1, p. 142; Tr-2, pp. 18-19, attached. Defendant made a "your momma" joke, or similar comment about Mr. Bailey's mother. *See* Tr-1, pp. 142-143, 248; Tr-2, p. 19, attached.

At that point, Mr. Rankin punched Defendant in the face, knocking Defendant unconscious. *See* Tr-1, pp. 142-146, 249-250, 252; Tr-2, pp. 19-21, attached. Mr. Stasio stated that he was surprised that Mr. Rankin hit Defendant, that he thought everyone was going to walk away, and that his immediate reaction was to apologize to Ms. Bivens. *See* Tr-2, pp. 20-21, 57, attached. Other witnesses testified that Mr. Rankin hitting Defendant was a surprise to them as well. *See* Tr-1, pp. 144, 250, 271, attached. Moreover, the surveillance video, introduced as State's Exhibit Two, acts as corroborating evidence to support this sequence of events, as it shows a person striking a second person and the second person laying on the ground for approximately 20 to 30 seconds. *See* Tr-1, pp. 36-38, 146, attached.

After Mr. Rankin struck Defendant and knocked him unconscious, the Port Tampa group scattered; although Mr. Stasio stayed behind to apologize to Ms. Bivens. *See* Tr-1, pp. 143-145; Tr-2, pp. 21-22, 46 attached. The other members of the Port Tampa group headed west, and eventually so did Mr. Stasio. *See* Tr-1, pp. 254; Tr-2, pp. 22-23. Ms. Bivens and Defendant met up with Mr. Hogue, and they also began to walk in a westerly direction, with Mr. Hogue leading. *See* Tr-1, pp. 147, 149, attached. Mr. Medeiros testified that Mr. Rankin wanted to fight Defendant again, and turned south and then east, walking back behind some buildings toward Defendant, Mr. Hogue, and Ms. Bivens. *See* Tr-1, pp. 256-257. Defendant, Mr. Hogue, and Ms. Bivens were approximately half a block behind the Port Tampa group. *See* Tr-1, p. 255, attached; Tr-2, pp. 58-60, attached. The Port Tampa group ended up walking back east, toward Defendant, Mr. Hogue, and Ms. Bivens. *See* Tr-2, p. 60, attached.

Mr. Stasio reinitiated contact by approaching Mr. Hogue, Ms. Biven, and Defendant, and ultimately both groups approached one another. *See* Tr-1, pp. 150-152; Tr-2, pp. 24-28, attached. Mr. Hogue was acting aggressively and wanted to know who hit Defendant. *See* Tr-1, pp. 152-

153; Tr-2, pp. 29-31, attached. Defendant did not say anything, and looked dazed, confused, and "out of it." *See* Tr-1, pp. 146, 152, 154, 212, 216-217, 220, 254-255, 262; Tr-2, pp. 29-31, attached.

Ms. Bivens testified someone from the Port Tampa group started fighting Mr. Hogue. *See* Tr-1, pp. 153-154, attached. She also testified that two people then ran or walked quickly by her toward Defendant, who was standing behind her. *See* Tr-1, pp. 153-156, 159, 161, attached. She further testified that although she did not see the fighting, she heard what sounded like fighting. *See* Tr-1, pp. 155, 161, attached. Mr. Hogue also testified that one person from the Port Tampa group came toward him and that they started fighting, but he also testified that all four of the other men from the Port Tampa group went toward Defendant, or at least in that direction. *See* Tr-1, pp. 215-216. Although he did not see the fighting, he also heard what sounded like fighting. *See* Tr-1, pp. 216-217, attached.

Mr. Medeiros testified that Mr. Rankin went toward Defendant, and although he did not see any actual fighting between Mr. Rankin and Defendant, he assumed they were fighting because Mr. Rankin went toward Defendant. *See* Tr-1, p. 264, attached. Mr. Medeiros testified that Mr. Hogue tried to go toward Mr. Rankin, who was fighting with Defendant, so Mr. Medeiros pushed Mr. Hogue away. *See* Tr-1, pp. 264-267, attached. Mr. Medeiros grabbed Defendant, threw him on the hood of a car, and then Mr. Bailey came from behind Mr. Medeiros and punched Defendant in the face several times. *See* Tr-1, pp. 267-269; Tr-2, pp. 35-36, attached. Then Mr. Rankin dispersed from the group, holding his neck and yelling. *See* Tr-1, pp. 269-270; Tr-2, p. 36, attached. Mr. Rankin was stabbed three times and succumbed to his injuries. *See* Tr-2, p. 90, attached. Mr. Medeiros was also stabbed three times during the

altercation; he sustained wounds to his right arm, left arm, and chest; but had no lasting injuries. *See* Tr-2, pp. 154-156, attached.

Both Ms. Bivens and Mr. Hogue testified that it was common for Defendant to carry a pocket knife and that it is common for young men to carry pocket knives in Lakeland. *See* Tr-1, pp. 126-127, 200, attached. No one else in the altercation had a weapon. *See* Tr-2, p. 56, attached.

Detective Kenneth Nightlinger testified that after the second incident occurred, Defendant ran looking for the police, and he came in contact with Officer Kuhn. *See* Tr-2, p. 177, attached. Detective Nightlinger testified that during his interview with Defendant, Defendant complained about his chin, which seemed to be a major concern to him, but did not complain about other injuries. *See* Tr-2, pp. 167-168, attached. However, later in his testimony, Detective Nightlinger also testified that he felt Defendant might have been drinking, and remembered Defendant complaining about being dazed or woozy, and although he did not remember Defendant stating that his head still hurt, he trusted that Defendant said it during the interview. *See* Tr-2, pp. 179-180, attached. Moreover, Dr. Gamash testified that during his interview with Defendant, Defendant stated that when he reached the squad car he finally felt safe and was glad to be away from the five people. *See* Tr-1, p. 64, attached. Dr. Gamash further testified that Defendant suffered from a concussion, and appeared to be in an acute confusional state. *See* Tr-1, p. 41, attached. Dr. Gamash testified that someone suffering from an acute confusional state, within the first fifteen minutes, could experience a number of different symptoms, depending on the severity of the concussion and individual variables, including headaches, difficulty walking or standing, difficulty remembering certain things, disorientation, irritability, sadness, nervousness, and anxiety. *See* Tr-1, pp. 42-43, attached.

Although the State argues that Defendant was the initial aggressor, the Court finds that he was not. During the first altercation, Defendant directed a “your momma” joke, or similar comment, at Mr. Bailey’s mother. Mr. Rankin then punched Defendant in the face, which was surprising, under the circumstances, to several of the witnesses. After Defendant was hit for the first time, and knocked unconscious, the Port Tampa group dispersed, but came back around toward Defendant, Mr. Hogue, and Ms. Bivens. Mr. Medeiros testified that Mr. Rankin was acting out of character. *See* Tr-1, p. 251, attached. Moreover, Mr. Medeiros testified that he had never seen him act that way before and that he thought it was “over the top” that Mr. Rankin wanted to go back to fight a semiconscious person. *See* Tr-1, pp. 258-259, attached. Mr. Medeiros also testified that Mr. Kelly and Mr. Bailey both tried to get Mr. Rankin to just go home; however, Mr. Rankin ignored the suggestions. *See* Tr-1, pp. 259-260, attached. Further, the Court’s finding that Defendant was not the initial aggressor is supported by testimony that when the groups met again, Defendant did not act aggressively, but still appeared out of it, confused, and dazed. *See* Tr-1, pp. 146, 152, 212, 220, 254-255; Tr-2, pp. 29-31, attached. After meeting again, witness testimony supports the contention that Mr. Rankin moved toward Defendant and they began to fight. *See* Tr-1, pp. 153-156, 159, 161, 215-217, 264, attached.

The State’s witnesses provided testimony to suggest that Defendant gave different variations of the events, thereby attempting to discredit his account of the events. However, the Court finds that Defendant’s different variations of the events is explained by the contention that Defendant suffered a grade three cerebral concussion, as corroborated by the testimony of Dr. Robert Martinez and Dr. Michael Gamache.² *See* Tr-1, pp. 15-23, 34-36, 41, 44-45, 47-53, 77-

² Dr. Taylor also testified that he agreed that Defendant suffered a grade three concussion, and was suffering from post-traumatic stress disorder and post-concussion headaches, but stated that in his opinion the different variations in Defendant’s story was due to his intentional altering or omitting facts to negate criminal liability. *See* Tr-2, pp. 146-151, attached.

80, 88-92, 97-98, 104-106, attached. As multiple witnesses testified, Defendant appeared dazed and confused, was wobbling and "out of it" after being punched by Mr. Rankin the first time. *See* Tr-1, pp. 146, 152, 212, 220, 254-255; Tr-2, pp. 29-31, attached.

CONCLUSIONS OF LAW

Section 776.032, Florida Statutes, commonly referred to as the "Stand Your Ground" statute, provides that a person is immune from criminal prosecution and civil actions for the use of force if the person is justified in using such force as permitted in sections 776.012, 776.013, or 776.031, unless the victim is a law enforcement officer. Fla. Stat. § 776.032(1) (2013). 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. (2013).

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, Fla. Stat. (2013).

When a criminal defendant files a motion to dismiss on the basis of the Stand Your Ground statute, the trial court must decide the factual question of whether the statutory immunity applies. *Dennis v. State*, 51 So. 3d 456, 462–463 (Fla. 2010).³ Accordingly, when such a motion is filed, the 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 v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008)). After each party is afforded the opportunity to present live testimony at an evidentiary hearing, the trial court must 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 id.* at 462–463; *Mederos v. State*, 102 So. 3d 7, 11 (Fla. 1st DCA 2012); *see also State v. Gallo*, 76 So. 3d 407, 409 (Fla. 2d DCA 2011) (explaining that “section 776.032 placed the burden of weighing the evidence in ‘Stand Your Ground’ cases squarely upon the trial judge’s shoulders” and finding that the trial judge’s factual findings were properly supported by substantial, competent evidence). In filing a motion to dismiss based on statutory immunity under section 776.032, the defendant bears the burden of showing, by a preponderance of the evidence, that he or she is entitled to immunity. *See Dennis*, 51 So. 3d at 460.

The Court finds that immunity under sections 776.032, 776.012(1), and 776.013(3) Florida Statutes, is warranted in this case, as Defendant has proven by a preponderance of the evidence that he is entitled to such immunity.

First, the Court finds that Defendant’s use of a knife was deadly force. Deadly force is “force likely to cause death or great bodily harm” and when used, “the natural, probable, and foreseeable consequences of the defendant’s acts are death.” *See Stewart v. State*, 672 So. 2d

³ 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 under the Stand Your Ground statute. *See Dennis*, 51 So. 3d at 460.

865, 868 (Fla. 2d DCA 1996). A deadly weapon, such as a knife, can be used with or without deadly force. *See Larsen v. State*, 82 So. 3d 971, 974 (Fla. 4th DCA 2011). To determine whether such weapon is used with or without deadly force, a court should determine whether the use is likely to cause death or great bodily harm. Here, the Court finds that the use of the knife to stab Mr. Rankin in the neck and chest, and Mr. Medeiros in the chest and arms was deadly force. *See DeLuge v. State*, 710 So. 2d 83, 84 (Fla. 5th DCA 1998) (finding that a single slash toward the victim's hand was not deadly force because death was not the natural, foreseeable consequence of that act); *compare with Larsen*, 82 So. 3d at 975 (finding that stabbing the victim with a knife in the neck, which includes vital anatomical structures, was deadly force).

To justify the use of deadly force, as Defendant did employ in this case, one must “reasonably believe[] 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 “reasonably believe[] 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.” *See* Fla. Stat. §§ 776.012(1), 776.013(3), Fla. Stat. (emphasis added). Whether immunity attaches is an objective standard. *See Mobley v. State*, 132 So. 3d 1160, 1164-1165 (Fla. 3d DCA 2014) (explaining that the standard “requires the court to determine whether, based on circumstances as they appeared to the defendant when he or she 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”). The Court finds that the use of deadly force was justified. Defendant was attacked by Mr. Rankin and Mr. Medeiros, in a place where he had a right to be, and he met force with force because he reasonably believed it was necessary to do so to prevent death or great bodily harm. *See* Fla. Stat. § 776.013(3). Moreover, the Court finds that Defendant reasonably believed

that the force was necessary to prevent *imminent* death or great bodily harm to himself. *See* Fla. Stat. § 776.012(1) (emphasis added).

Defendant has demonstrated by a preponderance of the credible evidence that when he stabbed both Mr. Rankin and Mr. Medeiros, he was defending himself and attempting to prevent his own death or great bodily harm. Mr. Rankin attacked Defendant twice. Defendant stated an inappropriate joke; however, Mr. Rankin responded with surprising and unreasonable physical force by punching Defendant in the face. After the initial attack, Defendant was rendered unconscious and suffered a concussion. Defendant, after regaining consciousness and getting up, proceeded to follow his friends. Defendant did not say much, if anything, and was noticeably injured from the first attack. Despite Defendant's condition, Mr. Rankin wanted to fight Defendant again. After being called over to Defendant and his friends by Mr. Stasio, Mr. Rankin went toward Defendant. Mr. Medeiros threw Defendant against a car and Mr. Bailey began hitting Defendant. At this point, Defendant had been attacked by three people. During this altercation, Defendant stabbed Mr. Rankin and Mr. Medeiros three times each. After considering all of the circumstances, and specifically, given the second attack on Defendant and Defendant's state after having already been knocked unconscious once, the Court finds that Defendant reasonably believed that the use of deadly force was necessary to prevent imminent death or great bodily harm to himself.

Based on the foregoing, the Court finds that Defendant has shown by a preponderance of the evidence that his use of force was justified and he is entitled to statutory immunity under the Stand Your Ground statute.

It is therefore **ORDERED AND ADJUDGED** that Defendant's "Motion for Declaration of Immunity and Dismissal of Charges and Accompanying Memorandum of Law" is hereby **GRANTED**.

It is further **ORDERED AND ADJUDGED** that the charges against Defendant in the above-styled case are hereby **DISMISSED**.

The parties have thirty (30) days from the date of this Order within which to appeal. However, a timely-filed motion for rehearing shall toll the finality of this Order.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of February, 2015.

ORIGINAL SIGNED

FEB 26 2015

GREGORY P. HOLDER
CIRCUIT JUDGE

GREGORY P. HOLDER, Circuit Judge

Attachments:

Motion (without exhibits)
January 16, 2015 Transcript (Tr-1)
February 3, 2015 Transcript (Tr-2)
Defense Exhibit 3
Defendant's Written Argument
State's Response
Defendant's Rebuttal Argument

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