

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

STATE OF FLORIDA,
Plaintiff,

v.

CURTIS J. REEVES,
Defendant.

Case No.: CRC-1400216FAES

Division: 1 (J. Barthle)

**MOTION REQUESTING THE PROCEEDING BE HELD IN ABEYANCE PENDING
FINAL RULING FROM THE SECOND DISTRICT COURT OF APPEAL ON
DEFENDANT'S PETITION REQUESTING A WRIT OF PROHIBITION**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through undersigned counsels, and requests an order holding the proceeding in abeyance pending receipt of a final ruling on his petition requesting a writ of prohibition, and as grounds in favor of this Motion:

1. Following this Court's March 10, 2017 ruling on Mr. Reeves's motion requesting immunity from prosecution, the Defense began the process of challenging the order denying relief to the Second District Court of Appeal. A petition requesting a writ of prohibition is the proper vehicle for seeking appellate review of an order denying immunity from prosecution. *Little v. State*, 111 So. 3d 214, 216 n.1 (Fla. 2d DCA 2013).
2. A party that requests a writ of prohibition from an appeals court must order the necessary transcripts, prepare and file a petition requesting a writ of prohibition, and then serve the State (or the opposing party) with both the petition and the appendices.
3. The Defense has commenced the process for pursuing relief from the Second District Court of Appeal. The necessary cost deposit was submitted to the court reporter for the hearing testimony transcripts. Mr. Reeves has fully retained undersigned counsels to pursue the

petition requesting a writ of prohibition. Further, the Defendant's Motion Requesting Order Finding Administrative Order 2011-059, §(I),(4) PA/PI-CIR Does Not Apply to Parties Seeking a Writ from a District Court of Appeal will be argued before Chief Judge Anthony Rondolino.

4. This Court has not scheduled a trial for this case. The Defense has made it clear that it will be seeking appellate review of the March 10, 2017 Order.
5. At the March 30, 2017 status conference, however, Assistant State Attorney Glenn Martin stated that a "rule" requires the Defense to file a motion requesting a stay. During the March 30, 2017 conference, Mr. Martin did not specify the specific "rule" that he believes requires the filing of a motion requesting a stay, nor did he articulate whether said stay was of an order or of the proceeding.
6. During an April 10, 2017 telephone call with undersigned counsel (Rupak Shah), Mr. Martin stated he is opposed to the relief requested in this Motion and that he believes Florida Rule of Appellate Procedure 9.310 requires a stay.
7. The Court has scheduled dates for the filing and hearing of a Defense motion on these matters. The Court directed that any such Defense motion be filed on or before April 20, 2017, that the State be served with said motion on or before that day, and that the hearing on said motion will be held on April 27, 2017 at 1:00 PM.
8. As detailed below, there is neither any Rule of Appellate Procedure nor Rule of Criminal Procedure that requires the Defense to file a motion for a stay of either the Court's March 10, 2017 order or of the entire proceeding when no trial has been scheduled.
9. Nonetheless, there are compelling reasons for why this Court should hold the proceeding in abeyance pending a ruling from the appellate court, as it would both further effectuate the

intent of the Legislature when it amended Section 776.032 to afford defendants the ability to obtain pretrial immunity from prosecution and preserve the resources of the Court and the parties.

The March 10, 2017 order is not subject to a stay

Contrary to the State's contention on March 30, 2017, the Court's March 10, 2017 order is not subject to a stay. Trial courts can issue stays of final or non-final orders pending review upon the filing of a motion. Fla.R.App.P. 9.310(a). Further, an appellate court has the ability to issue a stay of an order under Florida Rule of Appellate Procedure 9.310(f) for the "purpose of preserving the status quo during an appellate proceeding." *Perez v. Perez*, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999) (citation omitted). "Once a stay is issued, the stay remains in effect until the appellate court mandate is issued." *Id.*

The March 10, 2017 Order does not disrupt the "status quo." *Perez*, 769 So. 2d at 391 n.4. This proceeding was initiated by the filing of a felony information on January 31, 2014. Since that time, Mr. Reeves has had the alleged charges listed in the felony information pending against him. This Court's denial of his request for statutory immunity pursuant to Section 776.032 did not change the nature or characteristics of the proceeding.

Nor did the March 10, 2017 Order impose any legal obligations or mandate upon any of the parties. Rather, said Order held that it was this Court's determination that the Defense failed to sustain its burden of proof. The charges remain pending against Mr. Reeves pursuant to the January 31, 2014 felony information.

Accordingly, no stay of the March 10, 2017 Order is necessary, warranted, or even legally viable. A request for a stay of said Order would serve no legal purpose. The State's argument that a motion requesting a stay is necessary to be filed is therefore misguided and incorrect.

This Court should hold the proceeding in abeyance pending a final ruling on the Defendant's petition requesting a writ of prohibition

There are a number of compelling reasons why this Court should not schedule a trial pending issuance of a final decision on the petition requesting a writ of prohibition. As noted above, the appellate courts have ruled that a petition requesting a writ of prohibition is the proper vehicle for seeking review of an order denying immunity from prosecution. *Little*, 111 So. 3d at 216 n.1.

First, the intent of the Legislature would be undermined if, in a case like this, a trial was scheduled. In 2005, what is commonly referred to as the "Stand Your Ground" amendments ("SYG") were passed unanimously by the Florida Senate and overwhelmingly by the House of Representatives. *Peterson v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008); S.J. 8, Reg. Sess., at 262-63 (Fla. 2005) (39 yeas to 0 nays in the Senate); H.R. J. 12, Reg. Sess., at 342-43 (Fla. 2005) (94 yeas to 20 nays in the House). The SYG law created, among other provisions, section 776.032, which provides defendants immunity from both criminal prosecution and civil action for justifiable use of force.

The "heart of the Stand Your Ground amendments" is section 776.032, Fla. Stat. (2013). *Hill v. State*, 143 So. 3d 981, 984 (Fla. 4th DCA 2014). "The plain language of section 776.032 grants defendants a substantive right to assert immunity from prosecution and to avoid being subjected to a trial." *Dennis v. State*, 51 So. 3d 456, 462 (Fla. 2010) (emphasis added). The purpose of section 776.032 was therefore to allow defendants like Mr. Reeves to obtain pretrial immunity for the use of deadly force when it was legally justified under sections 776.012 or 776.013. § 776.032, Fla. Stat. (2013).

The Florida Supreme Court and the Second District Court of Appeal, by reviewing petitions requesting writs of prohibition before any trial was held, have clearly indicated that

defendants should be able to obtain a dispositive, appellate ruling prior to the holding of a trial. *See, e.g. Bretherick v. State*, 170 So. 3d 766 (Fla. 2015); *Montanez v. State*, 24 So. 3d 799 (Fla. 2d DCA 2010). In these two cases, for example, no trial was held pending completion of the appellate proceedings on the petition requesting a writ of prohibition.

Second, the scheduling of a trial would require the expenditure of additional resources that will likely serve no useful purpose. If a trial were to be scheduled, the Defense would be compelled to file a motion to continue. In the event such a motion to continue is denied, then that order would be required to be appealed to the Second District Court of Appeal. *See* Fla.R.App.P. 9.310(a). Pending a resolution of this aforementioned request by the appeals court, the Defense (and presumably the State as well) would be required to take the necessary steps to prepare for a scheduled trial, which would include but not be limited to: the subpoenaing of witnesses; the clearing of calendars and rescheduling of other matters; and the coordination of expert witnesses to be available for testimony. Resources used to prepare for trial may be needlessly expended if the Second District Court of Appeal ultimately grants a stay of the order denying the motion to continue.

Third, although the applicable court rules contemplate an appeals court issuing a stay of proceedings pending a final ruling on a petition requesting a writ of prohibition, such an order cannot be issued in this case for several months. At this time, the transcripts are not completed and the Defense has not had an opportunity to prepare and file the petition requesting a writ.

Appeals courts can issue a stay of the trial court proceedings under Florida Rule of Appellate Procedure 9.100(h) if a petition requesting prohibition is filed. This is referenced because if a trial is scheduled, the Defense would continue the process of pursuing the appellate remedy of a writ of prohibition. In the circumstance that a trial was scheduled, the parties and the

Court may expend substantial resources to prepare only to find that the Second District Court of Appeal has issued a stay of proceedings pursuant to Rule 9.100(h). This scenario would also serve no useful purpose, and only cause the parties (and the Court) to employ resources that would have otherwise been preserved – had no trial been scheduled.

For these reasons, it is respectfully requested that this proceeding be held in abeyance pending a final ruling from the Second District Court of Appeal on the Defendant's prospective petition requesting a writ of prohibition. As noted above, the Defense is taking every reasonable opportunity to complete and file the petition in an expedited and diligent manner.

WHEREFORE, the Defendant, Curtis Reeves, respectfully requests that this Motion be granted and that no trial be scheduled pending the issuance of a final decision from the Second District Court of Appeal (or the Florida Supreme Court) on Defendant's prospective petition requesting a writ of prohibition.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and accurate copy of this Motion Requesting Stay of Proceeding Pending Final Ruling From the Second District Court of Appeal on Petition Seeking a Writ of Prohibition has been furnished by United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758, this 10th day of April 2017.

/s/ Richard Escobar, Esq.
Richard Escobar, Esq.
FBN: 375179
Escobar & Associates, P.A.
2917 West Kennedy Blvd.
Tampa, Florida 33609
(813) 875-5100 (office)
(813) 877-6590 (Facsimile)
rescobar@escobarlaw.com

/s/ Rupak R. Shah, Esq.
Rupak R. Shah, Esq.
FBN: 0112171
Escobar & Associates, P.A.
2917 West Kennedy Blvd.
Tampa, Florida 33609
(813) 875-5100 (office)
(813) 877-6590 (Facsimile)
rshah@escobarlaw.com