

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CRC14-00216CFAES

STATE OF FLORIDA

V.

CURTIS J. REEVES

Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

2018 AUG 21 AM 9:59

FILED FOR RECORD
PASCO COUNTY, FLORIDA

**STATE'S RESPONSE TO DEFENDANT'S MOTION
REQUESTING (I) A PRETRIAL IMMUNITY HEARING PURSUANT
TO §776.032, FLA. STAT. (2017), (II) TO HOLD THIS PROCEEDING IN
ABEYANCE, PENDING RESOLUTION OF LOVE V. STATE (SC18-747) AND
STATE V. TIMOTHY RAY MARTIN (SC18-789), AND (III) FOR OTHER RELIEF**

COMES NOW BERNIE McCABE, State Attorney for the Sixth Judicial Circuit in and for Pasco County, Florida by and through the undersigned Assistant State Attorney hereby respectfully requests this Honorable Court to deny the Defendant's request for a pre-trial immunity hearing and his request to hold this proceeding in abeyance, and as good cause shows as follows:

Summary of State's Position

State's Position

The Second District case is an un-published, non-final order that is not binding precedent on this trial court. Due to the inter-district conflicts and the fact that the Second District stayed its mandate, this Court is not bound by the Second District's unpublished, non-final disposition case *Martin*. See *Gawker Media, LLC v. Bollea*, 170 So. 3d 125, 133 (Fla. 2d DCA 2015) (Unpublished dispositions of the district appellate court have no precedential value.)

Summary of Litigation

Finding of non-retroactivity

- *Love v. State*, _____ So. 3d _____, 2018 WL 2169980 (Fla. 3d DCA May 11, 2018), *review granted*, SC18-747, 2018 WL 3147946 (Fla. June 26, 2018).
- *Bailey v. State*, _____ So. 3d _____, 2018 WL _____ (Fla. 3d DCA May 23, 2018).
- *Hight v. State*, _____ So. 3d _____, 2018 WL 3769191 (Fla. 4th DCA Aug. 8, 2018).

Finding of retroactivity

- *Martin v. State*, _____ So. 3d _____, 2018 WL 2074147 (Fla. 2d DCA May 4, 2018).
- *Aldrich v. State*, _____ So. 3d _____, 2018 WL 3629436 (Fla. 2d DCA May 29, 2018).
- *Commander v. State*, _____ So. 3d _____, 2018 WL 3351295 (Fla. 1st DCA July 9, 2018). (due to the State's concession of error on appeal)
- *Catalano v. State*, _____ So. 3d _____, 2018 WL 3447247 (Fla. 2d DCA July 18, 2018).
- *Sullivan v. State*, _____ So. 3d _____, 2018 WL 3636749 (Fla. 2d DCA Aug. 1, 2018).

History of the Case

1. On January 31, 2014, Curtis J. Reeves (Defendant) was charged with Murder In the Second Degree, alleging that, on January 13, 2014, he unlawfully killed Chad Oulson.
2. A pre-trial immunity hearing occurred between February 20, 2017 and March 3, 2017.
3. At the time of the offense and immunity hearing, sections 776.013(3) and 776.032(1)-(3) were controlling, in conjunction with *Bretherick v. State*, 170 So. 3d 766 (Fla. 2015) (Burden of proof is on the defendant who files pretrial motion to dismiss a charge pursuant to "Stand Your Ground" law to show by a preponderance of evidence that immunity attaches under the statute.).
4. On March 10, 2017, this Court entered its order denying the Defendant's motion for immunity.
5. Effective June 9, 2017, the immunity hearing burden shifted from the defense to the State to prove by clear and convincing evidence that the Defendant is not entitled to immunity. § 776.032(4), Fla. Stat. (2017)

6. The Defendant filed a Writ of Prohibition challenging this Court's order, which on May 8, 2018 was denied.

7. On May 4, 2018, in an unpublished, non-final disposition, the Second District held that the 2017 amendment to section 776.032(4) was retroactive. *Martin v. State*, _____ So. 3d _____, 2018 WL 2074147 (Fla. 2d DCA May 4, 2018).

8. On May 11, 2018, in an unpublished, non-final disposition, the Third District held that the amendment to section 776.032(4) was **not** retroactive. *Love v. State*, _____ So. 3d _____, 2018 WL 2169980 (Fla. 3d DCA May 11, 2018), *review granted*, SC18-747, 2018 WL 3147946 (Fla. June 26, 2018).

9. On May 18, 2018, the Second District stayed its mandate in *Martin*.

10. The Third District certified the conflict with the Second District regarding the issue of retroactivity of section 776.032 (4), Florida Statute (2017) to the Florida Supreme Court for final resolution.

11. On May 23, 2018, in an unpublished opinion, the Third District, following its the opinion in *Love*, held that the amendment to section 776.032(4) was **not** retroactive. *Bailey v. State*, _____ So. 3d _____, 2018 WL 2324833 (Fla. 3d DCA May 23, 2018).

12. On or about July 12, 2018, the Florida Supreme Court stayed the mandate in *Bailey*.

13. On May 29, 2018, in an unpublished opinion, the Second District, followed its opinion in *Martin*, held that the amendment to section 776.032(4) was retroactive. *Aldrich v. State*, _____ So. 3d _____, 2018 WL 3629436 (Fla. 2d DCA May 29, 2018).

14. The Florida Supreme Court has yet to stay the mandate in *Aldrich*.

15. On June 26, 2018, the Florida Supreme Court accepted jurisdiction in *Love*. *Love v. State*, _____ So. 3d _____, 2018 WL 2169980 (Fla. 3d DCA May 11, 2018), *review granted*, SC18-747, 2018 WL 3147946 (Fla. June 26, 2018).

16. On July 9, 2018, due to the State's concession of error on appeal based on the prosecutor's agreement at the "Stand Your Ground" immunity hearing that the State had the burden of proof, the First District, in an unpublished, non-final disposition, held that section 776.032(4) applied to a 2016 incident. *Commander v. State*, _____ So. 3d _____, 2018 WL 3351295 (Fla. 1st DCA July 9, 2018).

17. On July 18, 2018, relying on their previous holding in *Martin*, the Second District, in an unpublished, non-final disposition, held for a second time that the 2017 amendment to section 776.032(4) was retroactive. *Catalano v. State*, _____ So. 3d _____, 2018 WL 3447247 (Fla. 2d DCA July 18, 2018)

18. On July 27, 2018, the Florida Supreme Court stayed the mandate in *Catalano*.

19. On August 1, 2018, relying on their previous holding in *Martin*, the Second District, in an unpublished, non-final disposition, held for a third time that the 2017 amendment to section 776.032(4) was retroactive. *Sullivan v. State*, _____ So. 3d _____, 2018 WL 3636749 (Fla. 2d DCA Aug. 1, 2018)

20. The Florida Supreme Court has yet to stay the mandate in *Sullivan*.

21. On August 8, 2018, in an unpublished opinion, the Fourth District held that the amendment to section 776.032(4) was **not** retroactive. *Hight v. State*, _____ So. 3d _____, 2018 WL 3769191 (Fla. 4th DCA Aug. 8, 2018)

22. The Florida Supreme Court has yet to stay the mandate in *Hight*.

State Argument

The Second District case is an un-published, non-final order that is not binding precedent on this trial court. Due to the inter-district conflicts and the fact that the Second District stayed its mandate, this Court is not bound by the unpublished, non-final disposition in *Martin*.

This court is bound by the legal precedent of *Bretherick v. State*, 170 So. 3d 766 (Fla. 2015) (FSS 776.032(1) grants a person immunity from prosecution if the person is able to prove at a pretrial hearing, by a preponderance of the evidence, that the use of force was justified as outlined in the statute). Until the Florida Supreme Court resolves the conflict, the only controlling precedent is *Bretherick* and this court must follow the controlling precedent.

The Defendant is not entitled to a new immunity hearing unless the Florida Supreme Court decides to follow the reasoning of *Martin* and reject the conflicting reasoning of the Third District in *Love*, which held the amendments of section 776.032(4) was **not** retroactive. The Defendant has had the benefit of a pre-trial immunity hearing. He is not entitled to a second pre-trial immunity hearing absent the Florida Supreme Court, in the future deciding otherwise. Until the Florida Supreme Court decides the retroactivity issue of section 776.032(4), the court has jurisdiction in the above-styled case to proceed with the scheduled trial.

Memorandum of Law

“In general, the mandate in any case functions to end the jurisdiction of the appellate court and to return full jurisdiction of the case to the trial court.” *State v. Miyasato*, 805 So. 2d 818, 824 (Fla. 2d DCA 2001).

“The mandate of an appellate court is a final judgment in the cause, and compliance [therewith] is a ministerial act to be performed by the trial court.” *Superior Garlic, Inc. v. E & A Produce*, 934 So. 2d 484, 485 (Fla. 3 DCA 2004).

Unpublished dispositions of the district appellate court have no precedential value. *Gawker Media, LLC v. Bollea*, 170 So. 3d 125, 133 (Fla. 2d DCA 2015)¹.

Conclusion

Until the Florida Supreme Court decides the retroactivity issue of section 776.032(4) this Court is not bound by the unpublished, non-final disposition, Second District’s case of *Martin v. State*, this Court has full jurisdiction of the above-styled case to exercise its decision over all matters, including setting a trial date.

¹ “We discuss these dispositions because Bollea emphasizes *Jay Properties* in the response he filed in this case. He maintains that it is controlling here, and that we cannot grant the Gawker defendants the relief they seek without departing from our own precedent. But the fact is that we are not bound by the results or reasoning in any of those cases. The reason is that *Dolan*, *Jay Properties*, and *Anderson* all were unpublished dispositions. The disposition orders are discoverable online, but they were not meant to be printed in the official reporter of this court’s decisions. Indeed, in the printed reporter they appear merely as entries among the table decisions; the associated “opinions” are not reproduced. As such, they have no precedential value. See *Citizens Prop. Ins. Corp. v. Ashe*, 50 So. 3d 645, 651 n. 3 (Fla. 1st DCA 2010). They do not enunciate the law of this district, and they are of no consequence to our decision today.” *Gawker Media, LLC*, 170 So. 3d at 133.

WHEREFORE, the State of Florida respectfully asks this court to deny the Defendant's Motion Requesting (I) A Pretrial Immunity Hearing Pursuant To §776.032, Fla. Stat. (2017), (II) To Hold This Proceeding In Abeyance, Pending Resolution Of Love v. State (SC18-747) And State v. Timothy Ray Martin (SC18-789), And (III) For Other Relief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the *State's Response To Defendant's Motion Requesting (I) A Pretrial Immunity Hearing Pursuant To §776.032, Fla. Stat. (2017), (ii) To Hold This Proceeding In Abeyance, Pending Resolution Of Love v. State (Sc18-747) And State v. Timothy Ray Martin (Sc18-789), And (iii) For Other Relief* was furnished to Richard Escobar, Esq., Escobar & Associates, P.A., 2917 West Kennedy Blvd., Ste. 100, Tampa, FL 33609, Attorney for the Defendant by U.S. Mail / Hand / Facsimile this 21st day of August, 2018.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

By 

Manuel Garcia, III
Assistant State Attorney