

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

FILED FOR REPORT
Pasco County, Florida
2020 SEP - 3 PM 1:46
KIMBERLY S. SORRIS
CLERK OF CIRCUIT COURT
PASCO COUNTY, FLORIDA

**STATE'S RESPONSE TO DEFENDANT'S
MOTION REQUESTING A PRETRIAL IMMUNITY
HEARING PURSUANT TO §776.032, FLA. STAT. (2017)**

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 enter an order denying Defendant's request for a pretrial immunity hearing and as good cause would show:

STATE'S POSITION

The Court should, without further argument, summarily deny the Defendant's request pursuant to the Florida Supreme Court case Love v. State, 286 So. 3d 177 (Fla. 2019).

SUMMARY OF STATE'S ARGUMENT

But Defendant claims he should get a new immunity hearing based on State v. Martin, SC18-789.

The Florida Supreme Court granted Martin's Petition for Review, denied the request for a rehearing, quashed the Second District Court of Appeal's decision and remanded the case back to the district court for reconsideration in light of their holding in Love v. State, 286 So. 3d 177 (Fla. 2019). The district court is obligated to follow the holding in Love and deny Martin's request for a new immunity hearing.

Likewise, Defendant Reeves is not entitled to a new immunity hearing.

FACTS

After the Florida Supreme Court issued its opinion in Love v. State, 286 So.3d 177 (Fla. 2019) Martin filed his response to the Florida Supreme Court's Order to Show Cause. See, Exhibit A, attached to Defendant's motion. On January 31, 2020, the State filed its reply See, Exhibit #1, attached. For the purpose of this motion, the State adopts and reaffirms all arguments in this reply.

On May 29, 2020, the Florida Supreme Court, after reviewing Martin's response and the State's reply, granted Defendant Martin's Petition for Review, denied the request for a rehearing, quashed the Second District Court of Appeal's decision in State v. Martin and remanded the case to the district court for reconsideration in light of their holding in Love v. State, 286 So. 3d 177 (Fla. 2019). See, Exhibit #2, attached.

As of 11:00 AM, July 8, 2020, the Second District Court of Appeal docket for State v. Martin, 2D16-4468 only reflects the filing of the May 29, 2020 Florida Supreme Court order. The district court has not issued an order for new briefings. No subsequent opinions have been filed.

ARGUMENT

The Florida Supreme Court rejected Defendant Martin's argument that he is entitled to a new immunity hearing. The Defendant Reeves is in the same position as was Defendant Martin. Defendant Reeves is relying on the same argument that was rejected by the Florida Supreme Court in Martin. Id.

The Second District Court of Appeal is obligated to follow its holding in Love. The Florida State Supreme Court held:

"Section 776.032(4) is a procedural change in the law and applies to all Stand Your Ground immunity hearings conducted on or after the statute's effective date. In Love, the pretrial hearing took place after the effective date of section 776.032(4) and should have been conducted under the new standard. Accordingly, we quash Love and remand for further proceedings consistent with this opinion. In the certified conflict case of Martin, the pretrial hearing was properly conducted under Bretherick. We thus

disapprove Martin's decision to order a new hearing."

Love, 286 So. 3d at 190. (Emphasis added)

CONCLUSION

Love, is the controlling case in this matter. As the Florida Supreme Court did in Martin, this court should deny Defendant's motion requesting a new immunity hearing.

WHEREFORE, the State of Florida respectfully requests the Court to enter its Order denying the Defendant's Motion Requesting A Pretrial Immunity Hearing Pursuant To §776.032, Fla. Stat. (2017).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing *State's Response To Defendant's Motion Requesting A Pretrial Immunity Hearing Pursuant to §776.032, Fla. Stat. (2017)* was furnished to Richard Escobar, Esq., Attorney for the Defendant, at 2917 West Kennedy Blvd., Suite 100, Tampa, FL 33609-3163, by U.S. Mail or Personal Service this 3rd day of September, 2020.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

By:



Glenn L. Martin, Jr.
Assistant State Attorney
Bar No. 435988
P.O. Box 5028
Clearwater, FL 33758
(727)464-6221

EXHIBIT # 1

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

TYMOTHY RAY MARTIN,

Respondent.

Case No. SC18-789

L.T. Case No: 2D16-4468

REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

The State of Florida hereby responds to Respondent Martin's response to this Court's January 7, 2020 order to show cause. For the reasons set forth below, the State respectfully submits that the Court should adhere to its decision in *Love v. State* to "disapprove [the Second District's decision in] *Martin* . . . to order a new hearing," because "the pretrial hearing was properly conducted under *Bretherick*." No. SC18-747, 2019 WL 6906479, at *11 (Fla. Dec. 19, 2019).

BACKGROUND

This case arose from a February 2016 altercation between Respondent Tymothy Ray Martin and his girlfriend. *Martin v. State*, No. 2D16-4468, 2018 WL 2074171, at *1 (Fla. 2d DCA May 4, 2018), *disapproved of by Love v. State*, No. SC18-747, 2019 WL 6906479 (Fla. Dec. 19, 2019). Martin was arrested and charged with one count of felony battery causing great bodily harm, permanent disability, or

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permanent disfigurement under section 784.041(1), Fla. Stat. *Id.* Martin moved to dismiss based on the Stand Your Ground law, the trial court held a pretrial immunity hearing in 2016, and the court subsequently denied Martin's motion to dismiss. *Id.* A jury convicted Martin as charged. *Id.*

Martin appealed. While his appeal was pending before the Second District, the Legislature amended the Stand Your Ground law. *See* ch. 2017-72, § 1, at 898-99, Laws of Fla. (2017). Martin argued to the Second District that the amendments to the Stand Your Ground law should apply to his case, even though his crime, his pretrial Stand Your Ground hearing, and his trial all occurred before those amendments took effect. *Id.*

The Second District agreed with Martin. *Id.* Specifically, the court reasoned that "statutory changes to the burden of proof . . . are invariably deemed procedural in nature for purposes of retroactive application." *Id.* at *2. For that reason, the court found that the amendment "can be applied retrospectively" to pending cases. *Id.* Because "Martin's case was still pending when the legislature amended section 776.032," *id.* at *3, the Second District held that "Martin is entitled to a new evidentiary hearing" on his assertion of Stand Your Ground immunity, *id.* at *3. In so doing, the Second District also held that Article X, Section 9 of the Florida Constitution, which prohibits any "[r]epeal or amendment of a criminal statute" from "affect[ing] prosecution or punishment for any crime previously committed," Art.

X, § 9, Fla. Const., did not independently bar retroactive application of the Stand Your Ground amendment. *Id.* at *2 n.5. The Second District then “certif[ied] the following question of great public importance” to this Court:

IS THE 2017 AMENDMENT TO SECTION 776.032 OF THE FLORIDA STATUTES PROCEDURAL IN NATURE SUCH THAT THE AMENDMENT SHOULD BE APPLIED RETROACTIVELY TO CASES THAT WERE PENDING IN FLORIDA COURTS AT THE TIME OF THE AMENDMENT’S ENACTMENT?

Id. at *4.

The State then sought this Court’s review. But because *Love v. State*, No. SC18-747 (Fla.) was already pending in this Court, the Court stayed Martin’s case pending disposition of *Love*.

On December 19, 2019, the Court decided *Love*. The Court held that “section 776.032(4)—a statute that imposes a new procedural ‘burden’—is procedural rather than substantive.” *Love v. State*, No. SC18-747, 2019 WL 6906479, at *6 (Fla. Dec. 19, 2019). As a result, “the statute applies to those immunity hearings, including in pending cases, that take place on or after the statute’s effective date” of June 9, 2017. *Id.* at *9. The Court also rejected the argument that Article X, section 9 of Florida’s Constitution prevents the statute from applying in pending cases to immunity hearings taking place on or after the statute’s effective date. *Id.* at *10.

Applying its holding in *Love*, the Court simultaneously “disapprove[d] [the Second District’s decision in] *Martin* . . . to order a new hearing,” because “the

pretrial hearing was properly conducted under *Bretherick*.” 2019 WL 6906479, at *11.

After *Love* was decided, the Court directed Martin to show cause “why this Court should not exercise jurisdiction in this case, summarily quash the decision being reviewed, and remand to the district court for reconsideration in light of our decision in *Love*.” Martin argues in his response that the Court should “either (1) reconsider its disapproval of the Second DCA’s decision in *Martin*, and instead approve that decision, or (2) allow Martin an opportunity to brief and orally argue the Second DCA’s certified question as applied to him.” Response 11. The State’s reply to Martin’s response follows.

REPLY

This Court should adhere to its decision in *Love* to disapprove the Second District’s decision to order a new hearing in this case. Under *Love*, Martin is not entitled to a new Stand Your Ground Hearing: *Love* dictates that “Section 776.032(4) . . . applies to all Stand Your Ground immunity hearings conducted on or after the statute’s effective date.” 2019 WL 6906479, at *11. Martin’s Stand Your Ground hearing took place in 2016, more than a year before the statute’s effective date of June 9, 2017. Thus, the Court correctly held that *Martin* is not entitled to a new hearing: “there is no indication the Legislature intended the statute to undo pre-effective-date immunity hearings.” *Id.* at *1.

In his response to the Court's order to show cause, Martin argues that the Court should either reverse course and approve the Second District's decision to order a new hearing or allow him to "brief and orally argue the Second DCA's certified question as applied to him." Response 11. Neither course is warranted.

Although Martin is correct that the various defendants with "tag cases" pending the Court's decision in *Love* "were not all similarly situated," the Court announced a bright-line rule in *Love* that applies to all of those defendants. Section 776.032(4) applies in all Stand Your Ground hearings that take (or took) place on or after the statute's effective date of June 9, 2017, and nothing indicates that the Legislature intended to undo pre-effective-date hearings. Thus, defendants—like Martin—whose Stand Your Ground hearings took place before the statute's effective date are not entitled to a new hearing.

Even so, Martin now maintains that the Legislature intended that Section 776.032(4) apply in "all pending cases." Response 10. The Court unanimously rejected precisely that argument in *Love*. It held that Section 776.032(4) "was intended to and does apply in [a] 'commonsense' and 'ordinar[y]'" manner. That is, the statute applies to those immunity hearings, including in pending cases, that take place on or after the statute's effective date." 2019 WL 6906479, at *9 (citation omitted). In fact, the Court considered and unanimously rejected the Second District's holding in this case that the statute has "a true retroactive application,"

explaining that “[t]he caselaw does not support such a default application of a procedural statute,” and “the legislation itself is devoid of any suggestion that the Legislature intended section 776.032(4) to undo pre-effective-date hearings.” *Id.* at *9. After all, “the legislation on its face is plainly forward-looking”; as a result, because there was no “expressed legislative intent” that the statute apply retroactively to all pending cases, the Court held that it did not so apply. *Id.*

In effect, Martin’s response to the Court’s order to show cause is a request for rehearing—either summarily on the basis of Martin’s response or with full briefing and argument. But the Court has already considered and unanimously rejected the argument, advanced in Martin’s response, that the statute should apply in all pending cases. Rehearing is thus unwarranted.

For these reasons, the State respectfully submits that the Court should adhere to its decision to disapprove of the Second District’s decision in this case to order a new hearing.

Respectfully submitted.

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Christopher J. Baum

Christopher J. Baum (FBN 1007882)

Deputy Solicitor General

Office of the Attorney General

1 SE 3rd Ave Suite 900

Miami, FL 33131

(786) 792-6269

(850) 410-2672 (fax)

christopher.baum@myfloridalegal.com

Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing brief has been furnished by electronic service through the Florida Courts E-Filing Portal on this 31st day of January, 2020, to the following:

Steven L. Bolotin
Assistant Public Defender
P.O. Box 9000 – Drawer PD
Bartow, FL 33831
sbolotin@pd10.state.fl.us

Counsel for Respondent

/s/ Christopher J. Baum
Christopher J. Baum

EXHIBIT #2

Supreme Court of Florida

FRIDAY, MAY 29, 2020

CASE NO.: SC18-789

Lower Tribunal No(s).:

2D16-4468; 292016CF002331000AHC

STATE OF FLORIDA

vs. TYMOTHY RAY MARTIN

Petitioner(s)

Respondent(s)

Upon review of the response(s) to this Court's Order to Show Cause dated January 7, 2020, the Court has determined that it should exercise jurisdiction in this case. It is ordered that the Petition for Review is granted, that the Second District Court of Appeal's decision in this case is quashed, and this matter is remanded to the district court for reconsideration upon application of our decision in *Love v. State*, 286 So. 3d 177 (Fla. 2019).

No motion for rehearing will be entertained by the Court.

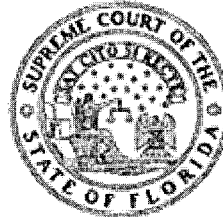
CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.

A True Copy

Test:

[REDACTED]

John A. Tomasino
Clerk, Supreme Court



dl

Served:

CHRISTOPHER J. BAUM
STEVEN L. BOLOTIN
KEVIN BRIGGS
HON. PAT FRANK, CLERK
HON. CHET ALLEN THARPE, JUDGE
HON. MARY BETH KUENZEL, CLERK