

**IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION "X"**

CASE NO.: 2016CF005507AXX

STATE OF FLORIDA

v.

NOUMAN KHAN RAJA,
Defendant.

**MOTION TO DISMISS ON THE BASIS OF FLORIDA'S
"STAND YOUR GROUND" LAW**

Pursuant to Rule 3.190, *Fla. R. Crim. P.*, the defendant moves to dismiss the charges in the instant case after evidentiary hearing, stating as follows:

Introduction.

This is a classic case of self-defense. Officer Raja faced a man who pointed a gun at him, and did what any citizen is entitled to do: he defended himself. No ordinary citizen would be prosecuted for Officer Raja's conduct. In fact, the state's entire theory of prosecution is that Officer Raja should be prosecuted *because* he is a law enforcement officer. But, like all law enforcement in Florida, Officer Raja is also a "person" under Florida's "Stand Your Ground" law. He invokes here the immunity conferred by that law, and seeks this Court's pretrial dismissal of the charges. As will be more fully discussed below, depositions of the lead investigators in this case demonstrate the State has no idea how this shooting occurred. The sworn statement of Officer Raja, given within hours of the incident, unequivocally establishes that he acted in self-defense. After over two years of investigation (and, in fact, even before charges were filed in this case), the State has no evidence as to: a) where Corey Jones was when he was shot; b) what position Corey Jones was in when he was shot; c) what Corey Jones was doing when he was shot; d) which of the

six shots fired struck Corey Jones; e) which of the six shots caused his death; and f) which of the six shots caused the injuries to Corey Jones' arms.

Factual Basis.

1. Officer Raja is charged by Amended Information with manslaughter by culpable negligence while armed (Count 1), and attempted first degree murder with a firearm (Count 2), alleged to have been committed on October 18, 2015. *Amended Information*.

2. The shooting in this case was wholly justifiable. Officer Raja raises justifiable use of force as a defense and invokes his immunity from prosecution provided by Sections 776.032 and 776.012, *Florida Statutes*, and related law. He requests an evidentiary hearing at which the state bears the burden of proof of demonstrating by clear and convincing evidence the shooting was not justifiable, and after such hearing, dismissal of all charges.

3. At all times material to this matter Officer Nouman Raja ("Officer Raja") was a certified police officer as defined by Chapter 943 of the Florida Statutes, employed as such with the Palm Beach Gardens Police Department ("PBGPD"), and acting within the scope of his employment and in his capacity as a police officer.

4. Officer Raja is immune from criminal prosecution because while tragic, the shooting of Corey Jones was legally justifiable. On the date of the shooting, Nouman Raja was 38 years old and had been a law enforcement officer over seven years. He had been a sergeant with the Atlantic Police Department before beginning work for the Palm Beach Gardens Police Department as a road patrol officer in April of 2015. In addition, Officer Raja was a firearms instructor at the Police Academy.

5. The events leading to the early morning shooting began well before the fateful moments during which it occurred. For several weeks, the Palm Beach Gardens Police Department had

observed an increasing number of burglaries in the city. The evening of the shooting, Officer Raja and other officers had also been advised of a concert at Lux, a nearby nightclub. Field force equipment had been prepared and stored in his van in case things got out of hand.

6. For the four nights prior to the shooting, Officer Raja had been assigned to work plain clothes surveillance in the area in an effort to catch the perpetrators of the automobile burglaries. He set up decoy vehicles, and monitored them while driving around in the surveillance van dressed in street clothes.

7. On October 17, 2015 at approximately 19:00 hours, Officer Raja began his work day as a patrol officer for the City of Palm Beach Gardens Police Department. Officer Raja began his tour that evening in the standard police uniform driving a marked police patrol cruiser. Later in the shift, Officer Raja was instructed by his supervisor to change into plain clothes in order to perform a special plain clothes surveillance assignment, and was directed to use an unmarked vehicle to patrol the parking lots of the local hotels in an effort to surveil and detect auto burglars.

8. Officer Raja was provided a white unmarked passenger van as his vehicle to conduct the surveillance detail. The van had no police markings or emergency lighting, and Officer Raja was dressed in blue jean pants, a tan tee-shirt (turned inside out) and a ball cap. In the van, Officer Raja carried his tactical vest with police markings, his gun belt and radio.

9. Shortly after 3:00 a.m. on October 18, 2015, there was a general callout to a disturbance at the Marriott hotel. While on his way to the call, Officer Raja observed a gray, smaller SUV parked on the west shoulder of the I-95 southbound off ramp just north of PGA Boulevard. Officer Raja, believing the car was abandoned, asked for (and was granted) permission from his supervisor Sergeant Randall Anderson to investigate the vehicle.

10. In order to approach the vehicle, Officer Raja traveled north in the wrong direction up the southbound ramp, just beyond the median and was attempting to turn back south around the median when he observed the driver's front door opening. Officer Raja immediately brought the white passenger van to a stop facing west, perpendicular to the SUV. Officer Raja exited the van without his tactical vest, gun belt or radio and attempted to approach the vehicle to make contact with the driver, who by this time had gotten out of the SUV. The driver was later identified as Corey Jones ("Mr. Jones").

11. Earlier in the evening Mr. Jones and his band, the Future Prezidents, (sic) had performed music at a local venue. After the performance, Jones had car trouble with his vehicle and had stopped on the west side of the southbound exit ramp from I-95 at PGA Boulevard just north of the intersection. He called a friend, who stopped to assist, but was unable to get the SUV running. Jones stayed with his SUV and eventually called AT&T Wireless Roadside Assistance ("AT&T") for help with his vehicle. The phone call between Jones and AT&T was recorded by AT&T. A conversation between Officer Raja and Jones was partially recorded by AT&T Roadside Assistance. The recorded conversation [CJ for Corey Jones and NR for Nouman Raja] was as follows:

CJ: Huh?

CJ: [to NR outside of CJ's car] No. I'm good. Yeah, I'm good.

NR: Really?

CJ: Yeah.

NR: Get your fuckin' hands up! Get your fuckin' hands up!

CJ: Hold on. Hold on.

NR: Get your fuckin' hands up! Drop.

[00:28:49 – 00:28:51 - sounds of gunfire (3 shots heard)]

[00:28:52 – 00:28:55 - sounds of car door open noise (bell)]

NR: [in distance] Drop it!

[00:28:57 – 00:29:00 - sounds of three (3) gunshots heard]

[00:29:00 – 00:29:27 - sounds of car door open noise (bell)]

NR: [in distance] Aim!

12. In a sworn statement, Officer Raja told investigators he identified himself as a police officer as he exited the van. As Officer Raja approached the vehicle, the door swung open and a male (since identified as Corey Jones) immediately jumped out, saying “I’m okay, man.” The male immediately drew a gun and pointed it at Officer Raja. Officer Raja repeatedly yelled for the male to put his hands up and to “drop the gun,” but the male did not do so. Officer Raja stated he saw the silver muzzle pointing at him, and that he believed the gun was equipped with a red laser. It was later determined by the police that the gun was not equipped with a red laser, but testing conducted by the Palm Beach County Sheriff’s Office and State Attorney Investigator Thomas Wills revealed that the reflection from the red traffic light on the muzzle of the gun mimicked a red laser.

13. Officer Raja could see the muzzle and the flickering red light and he yelled “Drop!” Fearing imminent death or great bodily harm, he drew his back up gun from his waist and fired three (3) rounds from hip level in the direction of Jones. Mr. Jones turned and ran northwest into the grassy area on the west side of the interstate off ramp. Officer Raja, without the benefit of cover or concealment, followed behind him. Mr. Jones spun around toward Officer Raja as he ran past the guard rail along the west side of the off ramp. Officer Raja saw a flash and Mr. Jones raise his right arm as if to point the gun again. Officer Raja described the motion as a whole body spin

and Officer Raja saw the gun in the man's right hand. Officer Raja, again fearing great bodily harm or imminent death stated that in his head, he told himself "aim, aim" and fired three (3) more rounds toward Jones. Officer Raja testified that he saw Mr. Jones drop, but lost sight of him in the darkness.

14. Officer Raja retrieved his cellular phone from his pocket and called 911. Although he was unable to see Jones, Officer Raja continued to shout commands into the darkness while waiting to talk to the 911 operator and call for backup. Units arrived, a perimeter was established and the search for Mr. Jones began. Mr. Jones' body was located approximately 64 yards north of the vehicle in the grass. Two independent pathologists retained by the State Attorney's Office have opined that after receiving the fatal wound, Mr. Jones could have run from where his gun was located to where his body was found. Mr. Jones was pronounced dead at the scene; he had suffered three gunshot wounds. The fatal shot struck Mr. Jones with a round to his right side just below his nipple. Mr. Jones was also struck with a round in his right upper arm and a round in the left forearm.

LEGAL BASIS.

"The Legislature enacted section 776.013, *Florida Statutes*, effective October 1, 2005, to provide for an expanded right of self-defense for individuals. It eliminates the duty to retreat found under Florida common law." *State v. Smiley*, 927 So. 2d 1000 (Fla. 4th DCA 2006). The legislation also similarly amended other statutes governing justifiable use of force in a near-complete erasure of the duty to retreat, including:

776.012. Use of force in defense of person

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.

This legislation amending §776.012, *F.S.*, addresses the justifiable use of force in general, and eliminates the duty to retreat. In fact, the legislation goes far beyond providing a defense, and *immunizes* citizens from civil or criminal prosecution when its requirements are met. As section 776.032, *Fla. Stat.* provides: “Immunity from criminal prosecution and civil action for justifiable use of force

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force . . .” (e.s.).

In *Dennis v. State*, 51 So. 3d 456 (Fla. 2010), the Florida Supreme Court reviewed the law and determined the legislative grant of immunity for those using force under the “Stand Your Ground” law required the trial court to conduct a pretrial hearing to determine its applicability. The Florida Supreme Court adopted the procedure previously announced in such cases by the First District in *Peterson v. State*, 983 So. 2d 27 (Fla. 1st DCA 2008):

Likewise, we hold that a defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches. As noted by the trial court, courts have imposed a similar burden for motions challenging the voluntariness of a confession. *See, e.g., McDole v. State*, 283 So.2d 553, 554 (Fla.1973). We reject any suggestion that the procedure established by rule 3.190(c) should control so as to require denial of a motion whenever a material issue of fact appears.

Peterson, 983 So.2d at 29–30.” *Dennis*, 51 So. 3d at 460.

After *Dennis*, the Florida Supreme Court in *Bretherick v. State*, 170 So. 3d 766, 768 (Fla. 2015) made “explicit what was implicit in *Dennis* - that the defendant bears the burden of proof by a preponderance of the evidence at the pretrial evidentiary hearing.” But in its next session after

that decision, the Florida legislature amended the statute to clarify the burden and standard of proof in the pretrial “Stand Your Ground” hearing. It added subsection 4 to §776.032, which now provides: “In a criminal prosecution, once a *prima facie* claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1).” That burden and standard of proof applies to the case at bar.

There has been disagreement among Florida courts whether the immunity conferred by sections 776.012 and 776.032 applies to police officers. In *State v. Caamano*, 105 So.3d 18 (Fla. 2d DCA 2012), the Second District quashed a circuit court order requiring an evidentiary hearing for a law enforcement officer who claimed immunity under section 776.032 for conduct during an arrest. Its decision invoked the interpretive doctrine of *in pari materia*, and that court held “the specific language of section 776.05, titled “Law enforcement officers; use of force in making an arrest,” must apply to the behavior of law enforcement officers during the course of an arrest, rather than the language of section 776.032, which applies generally to the public at large. We agree with the State’s argument that holding otherwise would render the specific statute meaningless.” *Id.* at 22.

The Fourth District Court of Appeal recently rejected the reasoning of *Caamano* in *State v. Peraza*, 226 So.3d 937 (Fla. 4th DCA 2017) (conflict certified), *notice to invoke discretionary jurisdiction filed Nov. 7, 2017*, Case Number: SC17-1978.¹ In *Peraza*, the Fourth District affirmed

¹ The petition for review does not undermine the binding authority of *Peraza* in the Fourth District. Two of Florida’s precedential pillars dictate “if the district court of the district in which the trial court is located has decided the issue, the trial court is bound to follow it. Contrarily, as between District Courts of Appeal, a sister district’s opinion is merely persuasive” and “[t]he decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court.” *Pardo v. State*, 597 So. 2d 665, 666 (Fla. 1992)(cleaned up).

the pretrial “Stand Your Ground” dismissal of a murder charge against a law enforcement officer. In doing so, it rejected the state’s argument that the immunity from prosecution did not apply to law enforcement officers because the statutes refer to “persons,” not officers. It also rejected *in toto* the *Caamano* court’s flawed reasoning:

Respectfully, to suggest that the doctrine of *in pari materia* applies in every case is incorrect as a matter of law. As the circuit court correctly found in this case, because sections 776.012(1)’s and 776.032(1)’s plain language is clear and unambiguous, *Caamano* need not have gone into the doctrine of *in pari materia* at all.

The Fourth District’s *Peraza* precedent is not only binding, it is unquestionably correct: “As the circuit court found, “There is nothing in the term ‘a person’ that is unclear or ambiguous. A law enforcement officer under any reasonable understanding of our language qualifies as ‘a person.’” *Peraza*, 226 So. 3d at 947.

WHEREFORE, the Court should set an evidentiary hearing on this motion, and after hearing, dismiss all charges in this case.

I HEREBY CERTIFY that a true copy hereof has been electronically provided to **BRIAN FERNANDES, ESQ.**, (bfernandes@sa15.org), Office of the State Attorney and **ADRIENNE ELLIS, ESQ.**, (aellis@sa15.org), Office of the State Attorney, 401 North Dixie Highway, West Palm Beach, FL 33401 on this 18th day of January, 2018.

Respectfully submitted,

RICHARD G. LUBIN, P.A.
Second Floor, Flagler Plaza
1217 South Flagler Drive
West Palm Beach, FL 33401
Telephone: 561/655-2040
Facsimile: 561/655-2182
rich@lubinlaw.com

By: /s/ Richard G. Lubin
RICHARD G. LUBIN
Fla. Bar No. 182249

SCOTT N. RICHARDSON, P.A

1401 Forum Way, Suite 720

West Palm Beach, FL 33401

561-471-9600

561-471-9655 FAX

snr@scottnrichardsonlaw.com

By /s/ Scott N. Richardson

SCOTT N. RICHARDSON, ESQ.

FLA. BAR NO.: 266515

RALPH E. KING, III

Palm Beach County PBA

2100 North Florida Mango Road

West Palm Beach, FL 33409

Telephone: 561-689-3745

Facsimile: 561-687-0154

rickk@pbcpga.org

By: /s/ Ralph E. King

RALPH E. KING, ESQ.

Fla. Bar No.90473