IN THE FIRST DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA

RASHAD STEWART MARTINEZ,
DEFENDANT,

PETITIONER,

Case No.: _____

v. LT No.: 162010CF003429AXXXMA

STATE OF FLORIDA,

RESPONDENT.

PETITION FOR WRIT OF PROHIBITION, OR, ALTERNATIVELY, WRIT OF MANDAMUS AS PROSCRIBED BY FLA. R. APP. P. 9.030(c)(3)

ON ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS AND/OR PROHIBITION WITH REGARD TO PRETRIAL PROCEEDINGS IN THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

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INTRODUCTION

This petition presents the question of whether a trial court may deny a defendant the right to a separate and distinct pretrial hearing regarding immunity under Fla. Stat. Sections 776.032(1), 776.013(3) and 776.031 (2008) (otherwise known as Florida's "Stand Your Ground" law) by forcing a defendant to proceed to trial to present such evidence after trial has begun.

Pursuant to Rule 9.100 of the Florida Rules of Appellate Procedure, Petitioner Rashad Stewart Martinez submits his Petition for Writ of Prohibition, or, alternatively, Mandamus to request this Honorable Court to require the Trial court to hold a detached pretrial evidentiary hearing on Petitoner's immunity-based motion to dismiss, separate from trial, as provided by law.

Petitioner filed a motion requesting a full pretrial evidentiary hearing as provided by the "Stand Your Ground" statute, but the lower court ordered that the issue be commingled with trial because of the intense/complex nature of the motion, and that there is not sufficient time prior to the August 9, 2010 trial date.

Speedy trial does not expire until September 20, 2010, and a request for a motion for limited waiver of speedy trial was denied verbally by the lower court.

Petitioner contends that the effect of the Trial court's order denying a separate, pretrial hearing, forces the defendant to proceed to trial and forego the opportunity to enter into plea negotiations or seek relief via other pretrial motions

and hearings. Furthermore, issues would likely arise due to the varying burdens of proof (*preponderance of the evidence* with regard to immunity versus *beyond a reasonable doubt* with regard to the State's burden at trial). The lower court's order creates an undue burden on defense counsel. The effect of burden shifting would most likely render the trial a mistrial or cause counsel to be deemed inadequate or at conflict.

The lower court cites Fla. R. Crim. P. 3.190(h) (2010), which provides that the trial court may hear a motion to suppress evidence during trial, and states that the motion for immunity is similarly dispositive in nature. Petitioner, however, contends that motions for suppression and motions for immunity are distinguishable by virtue of their legislative purpose and the statutory procedures for resolving such matters.

Petitioner appeals the order of the lower court, and contends that the legislature has clearly codified an immunity provision, defined through case law, which requires the trial court to adjudicate disputed facts prior to trial, not during trial. The intent of the legislature was to provide an accused with protection from "'criminal prosecution' [which] includes arresting, detaining in custody, and charging or prosecuting the defendant." Fla. Stat. 776.032 (1) (2009).

JURISDICTIONAL STATEMENT

The Petitioner invokes this Court's original jurisdiction pursuant to Fla. R. App. P. 9.100 (2010) which governs writs of mandamus and prohibition regarding trial court pretrial proceedings.

STATEMENT OF THE FACTS

On March 30, 2010, the Petitioner was arrested for murder following the death of Tremayne Lovett in Jacksonville, Duval County, Florida due to multiple gunshot wounds sustained after an altercation at the petitioner's home. (Petitioner's Appendix ("App.") 1).

On May 24, 2010, the State formally charged the Petitioner, by information, with Second Degree Murder and Aggravated Assault. (App. 2).

On June 21, 2010, by and through his defense counsel, the Petitioner filed his *Motion for Determination of Immunity from Prosecution and Motion to Dismiss* pursuant to Sections 776.032(1), 776.013(3) and 776.031, Florida Statutes (also referred to as Florida's "Stand Your Ground" law). (App. 3).

In an order dated July 8, 2010, the lower court denied a separate pretrial immunity-based evidentiary hearing, and ordered that trial be set on August 9, 2010, with the evidentiary/immunity hearing scheduled to take place during trial with accommodation for the presentation of evidence outside of the jury's presence. (App. 4).

The lower court contends that the motion was filed so close in time to the trial date that the court does not have sufficient time available on its calendar, and that there exist no procedural rules expressly addressing the new "Stand Your Ground" law procedures. Furthermore, the lower court contends that the procedural rule is

similar in nature to a motion to suppress as it gives the lower court the discretion to hear the motion during trial. (App. At 4).

Counsel for defendant filed the motion for immunity 90 days prior to the expiration of speedy trial and less than 30 days after the filing of the charges after attempting to discuss immunity with the State prior to seeking the Court's intervention. Defendant has made no motions for the invocation of speedy trial rights or requests to set for trial. (App. 5).

Defense counsel made an e-mail request for a limited waiver of speedy trial for purposes of hearing the immunity motion prior to trial, but that *ore tenus* motion was denied and the case remains on the trial calendar for the immunity hearing and trial on August 9, 2010. (App. at 5).

On July 12, 2010, defense counsel became aware of and presented the case of State v. Yoquibie, 35 Fla.L. Weekly D1342a (Fla. 3d DCA 2010) and requested an immunity hearing again, but was further denied.

NATURE OF RELIEF SOUGHT

Petitioner seeks an order of this Court to prohibit Honorable Judge Charles Arnold, Circuit Court Judge in the Duval County Circuit Court, in and for the Fourth Judicial Circuit, from commingling the immunity hearing with a jury trial, and mandate a separate and distinct hearing as required by Florida law in Case Number 162010CF003429AXXXMA.

This petition demonstrates a preliminary basis for relief, as the lower court has departed from the essential requirements of law to the extent that there will be material injury for which there is no adequate remedy by appeal.

Petitioner requests the respondent to show cause why relief should not be granted.

ARGUMENT

I. The legislative intent of the "Stand Your Ground" law was to provide the accused with a separate and distinct pretrial evidentiary hearing when immunity is sought.

As described by this Court in Peterson v. State, "the wording selected by our Legislature makes clear that it intended to establish a true immunity and not merely an affirmative defense. In particular, in the preamble to the substantive legislation, the session law notes, '[T]he Legislature finds that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.' Ch. 2005-27, at 200, Laws of Fla." Peterson v. State, 983 So. 2d 27 (Fla. 1st DCA 2008). The vote in the Senate was thirty-nine yeas to zero nays, and the vote in the House of Representatives was 94 yeas to 20 nays. See, H.R. J. 12, Reg. Sess., at 342–43 (Fla. 2005); S. J. 8, Reg. Sess., at 262–63 (Fla. 2005). Representative Dennis K. Baxley, a sponsor of the "Stand Your Ground" bill said that the statute would "curb violent crime and make the citizens of Florida safer," See, Abby Goodnough, Florida Expands Right To Use Deadly Force in Self-Defense, N.Y. TIMES, Apr. 27, 2005.

The legislature prefaced the immunity statute with the following:

"WHEREAS, the Legislature finds that it is proper

> for law-abiding people to protect themselves, their families, and others from intruders and attackers **without fear of prosecution or civil action for acting in defense of themselves and others**, and
>
> WHEREAS, the castle doctrine is a common-law doctrine of ancient origins which declares that a person's home is his or her castle, and
>
> WHEREAS, Section 8 of Article I of the State Constitution guarantees the right of the people to bear arms in defense of themselves, and
>
> WHEREAS, the persons residing in or visiting this state have a right to expect to remain unmolested within their homes or vehicles, and
>
> WHEREAS, no person or victim of crime should be required to surrender his or her personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack ."
>
> 2005 Fla. Laws 199, 200. (emphasis added).

The intent of the legislature was to provide an accused with protection from "'criminal prosecution' [which] includes arresting, detaining in custody, and charging or prosecuting the defendant." Fla. Stat. 776.032 (1) (2009).

If the legislature had intended for the "Stand Your Ground" statute to be addressed similar to motions to dismiss or suppress, the statute would mandate that such issues be addressed in accordance with Fla. R. Crim. P. 3.190. Rather, the remedy is a separately codified and defined statute, and Fla. R. Crim. P. 3.190 (c)(3) addresses the procedures for dismissal after immunity has been attached,

creating a clear distinction between the hearing on immunity and the applicable procedures under the criminal procedure rules for dismissal after immunity is granted.

The order of the lower court in this action effectively precludes Petitioner from protecting himself from prosecution by mandating trial and prohibiting a separate and distinct evidentiary hearing on the matter of immunity. The lower court's order undermines the legislative intent of the "Stand Your Ground" law's pretrial hearing requirement.

II. Case law has established a right to an evidentiary hearing on immunity to take place prior to trial, and that hearing cannot be commingled with trial.

This Court has found 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." Peterson v. State, 983 So. 2d 27 (Fla. 1st DCA 2008). (emphasis added).

Having no previously established procedure, this Court outlined that the "Stand Your Ground" statutory immunity claim is resolved by the trial court after a pretrial evidentiary hearing where the defendant bears the burden of proof to show entitlement to immunity by a preponderance of the evidence. Id. at 29.

With guidance from the Colorado Supreme Court case of People v. Guenther, 740 P.2d 971 (Colo.1987), this Court opined that, "Colorado's similar immunity statute authorize[s] a trial court to dismiss a criminal prosecution at the pretrial stage and did not merely create an affirmative defense for adjudication at trial. Id. at 976. The court further determined that a defendant raising the immunity would have the burden of establishing the factual prerequisites to the immunity claim by a preponderance of the evidence. Id. at 980. The court imposed the same burden of proof as it would in motions for post-conviction relief or motions to suppress. Id." Id.

In the most recent case addressing stand-your-ground-immunity-based evidentiary hearings, the Third District Court of Appeal opined that, "the immunity provision requires a trial court to **adjudicate disputed fact issues rather than passing them on to a jury**." State v. Yaquibie, 35 Fla.L. Weekly D1342a (Fla. 3d DCA 2010). (emphasis added.)

This Court and other Florida District Courts of Appeal, have distinguished the immunity-based pretrial evidentiary hearing from motions to dismiss and motions to suppress, because the legislature purposefully created a specified, pretrial procedure for lower courts to follow when addressing such motions for relief whereby even factual disputes do not render the motion deniable. The motion to dismiss for immunity grounds cannot be denied solely due to a trial

court's finding that issues of material fact exist. See, Peterson, *supra*. It is therefore inherently distinguishable from motions to dismiss filed under Fla. R. Crim. P. 3.190 (c)(4). The trial court judge must *weigh* the facts in a case where an immunity-based motion to dismiss is at issue, and cannot deny the motion due to factual disputes. This distinction indicates the legislature's intent to separate such motions from other pretrial pleadings (i.e. motions to suppress and motions to dismiss). See, Hair v. State, 17 So.3d 804 (Fla. 1st DCA 2009) (holding that the trial court's denial based on disputed issues of material fact was unlawful and contrary to Peterson because a motion to dismiss based on "Stand Your Ground" immunity cannot be denied because of the existence of disputed issues of material fact.)" Id.

In this cause, the Petitioner has been denied a hearing *pre*trial (emphasis added) by setting the hearing to occur during trial after the jury has been sworn, and the State's evidence has been presented. The effect of the lower court's order is a denial of the pretrial hearing as the trial will have already begun by the time it is heard.

If not precluded from commingling the hearing on immunity with the jury trial, Petitioner will be denied a hearing prior to trial in violation of his due process, and other constitutional rights, in violation of Fla. Stat. 776.032 (1) (2009).

CONCLUSION

For the foregoing reasons, this Court should issue a writ that directs Honorable Judge Charles Arnold, Fourth Judicial Circuit Court in and for Duval County, Florida, to either (1) prohibit the combination of trial with the immunity-based evidentiary hearing, and/or (2) mandate a separate evidentiary hearing to occur prior to trial to address the "Stand Your Ground" immunity motion.

Respectfully submitted this 27th Day of July, 2010.

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons via United States Postal Service Mail and electronic mail this 27th day of July, 2010.

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Honorable Judge Charles Arnold
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.100(*l*), Florida Rules of Appellate Procedure.

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Attorney Affidavit

May those concerned hereby be advised that I have been appointed as counsel for the defendant/petitioner for purposes of trial court and pretrial/interlocutory appellate issues in the above-referenced matter as my client is unable to afford counsel. He has been previously adjudicated insolvent and has made no promises to pay me for attorney services, nor is he able to do so.

Respectfully submitted this 27th day of July, 2010.

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APPENDIX VOLUME 1 OF 1

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