

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT, IN AND FOR
HILLSBOROUGH COUNTY, STATE OF FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA,
Plaintiff,

Case No. 11-CF-000212
Division F

v.

DAVID MANN,
Defendant.

**DEFENDANT'S AMENDED
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**

On May 19th, 2011 Defendant filed a Motion to Dismiss the Information charging him with Aggravated Battery with a Deadly Weapon, a second-degree felony. Defendant's Motion was filed pursuant to Rules 3.190(b), 3.190(c)(3), and 3.190(c)(4), Fla. R. Crim. P. and is grounded on the fact the evidence does not make out a prima facie case of aggravated battery and, even if it does, Defendant is immune from prosecution under the State's "Stand Your Ground" statute. This matter is set for hearing on June 8, 2011 at 1:30 p.m. before the Honorable Kimberly Fernandez.

On January 5, 2011, David Mann arrived home to find the alleged victim, Charles Ladika, sitting in Mr. Mann's living room. Mann had not given Ladika permission to be in his home and was unaware that his wife, Kathy Mann, did allow Ladika to enter and remain on the property.

Mann did not want Ladika on his property and requested Ladika to leave. Instead of complying with this request, Ladika confronted Mann and began verbally assaulting Mann and poking him in his chest. Ladika was intoxicated and not acting rationally.

It is also important to note that Mann and Ladika have been in fights prior to January 5, 2011 and that Mann is aware Ladika normally carries a knife in his back pocket. As the confrontation between Mann and Ladika is escalating, Ladika begins to bring his hand out from behind his back. Mann reasonably believes that Ladika is bringing the knife out from behind his back and, therefore, Mann struck Ladika with his fist and proceeded to take Ladika to the floor. Mann only took this action out of fear from his personal safety. At no point in time did Mann ever possess a weapon of any kind nor did he threaten Ladika with a weapon of any kind. Any actions that Mann may have taken did not exceed the amount of force necessary to alleviate the threat from Ladika.

Prior to their fall to the floor, a beer bottle had been broken and its remains were still on the floor. Ladika came into contact with a broken piece of glass upon hitting the ground and sustained a minor laceration on his arm. After the fight, Mann and Ladika reconciled with Mann even assisting Ladika in cleaning himself up after the fight. Ladika indicated to the officers that arrived on the scene that he did

not wish to prosecute and subsequently signed a Declination of Prosecution. No weapon was found by the officers at the scene despite the allegation that Mann used a knife when he allegedly battered Ladika.

With the exception of whether there was a knife used by Mann, the facts as stated above are not in dispute and there are no other material facts. It is Mann's position that an aggravated battery never occurred and that if one did, he is immunized from prosecution by Florida law.

Florida Statute 776.032 immunizes Mann from prosecution by the State of Florida. It states, in relevant part, "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..." The Legislature permits the use of force when and to the extent necessary that the person reasonably believes that such conduct is necessary to defend oneself against another's imminent use of unlawful force, Fla. Stat. 776.012, when a one is attacked in any place he has a right to be and that person can stand their ground and meet force with force, Fla. Stat. 776.013(3), and in defense of others, Fla. Stat. 776.031 (not applicable in this case).

The issue of immunity must be decided after affording Mann an evidentiary hearing. Peterson v. State, 983 So.2d 27 (Fla. 1st DCA 2008); *affirmed* Dennis v. State, case No. SC09-941 (Fla. 2010). While a hearing must be held, the burden is on Mann to prove by a preponderance of the evidence that he is entitled to statutory immunity. Horn v. State, 17 So.3d 836 (Fla. 2nd DCA 2009).

Mann's preemptive attack on Ladika was a justifiable use of self-defense. A reasonably prudent person in Defendant's situation, i.e., an encounter with a person who will not willingly leave the residence and that person has been violent towards Defendant in the past and has been known to carry a weapon, would have believed that danger was imminent and that there was a real necessity for using force. In such a situation, the use of force is justified. K.L.T. v. State, 561 So.2d 338, 340 (Fla. 5th DCA 1990).

K.L.T. was adjudicated delinquent on the charge of manslaughter, which was originally second-degree murder. The victim in K.L.T., Erica Young, came to K.L.T.'s residence with the stated purpose to cause harm to K.L.T. Young eventually grabbed a knife from K.L.T.'s kitchen and K.L.T. ran from the house with a friend, obtained a gun from a nearby vehicle, and returned to the porch of the house and shot Young.

The Fifth District Court of Appeal reversed her conviction because a reasonably prudent person in K.L.T.'s position would have believed that danger was imminent and that there was a real necessity for the taking of life. K.L.T. had no duty to retreat from her home nor did she have an obligation to wait for Young to begin to attack her again. "In view of Erica Young's known violent propensity and in view of her actual previous attacks on Appellant, only one conclusion is possible. (K.L.T.'s) action was the reasonable response of a frightened fourteen year old girl." Id. at 340.

The facts in this case are tame compared to K.L.T. Mann did not kill anyone and it is disputed whether he even used a weapon at all. Ladika's only injury was the result of falling upon some broken

beer bottle glass. Mann did not use a weapon and certainly did not cause any permanent injury with or without the use of a weapon.

However, the themes of the instant case and K.L.T. are similar. Both cases are about people responding appropriately, albeit aggressively, to very real threats. Because of his prior fights with Ladika and his knowledge that Ladika usually carries a knife in his back pocket, Mann would have been justified in using much greater force than to simply preempt an attack by striking and tackling Ladika. His action in striking Ladika once with his hands then taking Ladika to the ground proves that Mann acted reasonably and that he showed great restraint in not causing any more injury than necessary to Ladika to protect himself. Only one conclusion is possible, Mann's action was the reasonable response of a threatened man.

The law requires an overt act expressing an intention to immediately execute a threat so that the person threatened has a reasonable belief that he will lose life or suffer serious bodily injury if he does not strike out against his adversary. Smiley v. State, 395 So.2d 235 (Fla. 1st DCA 1981) (self-defense instruction not warranted on attempted homicide charge where victim was shot in his sleep and defense put for some evidence of an abusive relationship). This suggests that there must be some sort of proportionality between the threat and the response. In Smiley, some evidence of an abusive relationship did not justify attempted murder. However, in Chavers v. State, 901 So.2d 409 (Fla. 1st DCA 2005), the trial court should have instructed the jury on self-defense where Chavers fired a gun into the tire of a truck after strange vehicles arrived at his residence late at night, there was movement by unknown persons, and Chavers thought a vehicle theft was occurring. While the court did not rule on whether this was self-defense as a matter of law, it does lead to the conclusion that such a response is a reasonable reaction to a perceived threat.

In this case, there are overt *acts* expressing an intention to harm Mann. Not only was Ladika verbally threatening Mann, but he was technically battering him by poking Mann in the chest. Mann did not respond to this threat but the moment that Ladika appeared to be reaching for a weapon, Mann responded appropriately by striking out against Ladika. Admittedly, Mann did not know whether Ladika was in fact reaching for the knife he is known to carry. Because of this, had Mann used such force that killed or caused great bodily injury to Ladika, it might not be justifiable because it would have been an overreaction. However, Mann's reaction was appropriate in that he simply prevented harm to himself while causing minimal harm to Ladika.

Similarly to Chavers, it does not matter whether the threat was real or perceived. It only matters whether the perception was reasonable and the response was a reasonable response to that perceived threat. Mann believed he was about to be attacked with a knife by a person known to carry a knife in his back pocket. Mann took action to ensure his well-being and the altercation ended when the threat had

passed. One can read into Ladika's desire not to prosecute that he believes Mann's actions were reasonable and not excessive or unwarranted.

The use of force used by Mann is even more reasonable given that the altercation took place in his home. In such a situation, a man is not obligated to retreat, "but may stand his ground and use such force as a may appear to him as a cautious and prudent man to be necessary to save his life or to save himself from great bodily harm. Danford v. State, 43 So.593 (Fla. 1907). It would be a perversion of the law to require Mann to leave his home when confronted by a person unwilling to leave his home without force.

This is true even if the attacker is an invitee, such as the instant case. Hedges v. State, 172 So.2d 824, 827 (Fla. 1965). This principal was also applied as to a co-occupant of the residence in Weiland v. State, 732 So.2d 1044 (Fla. 1999). The bottom line is that Mann was justified in using deadly force and did not have a duty to retreat so long as he reasonably believed that such force was necessary to prevent imminent death or great bodily harm to himself. Fla. Stat. 776.012(1).

WHEREFORE, Defendant respectfully requests this Court to dismiss the Information filed against Defendant because Defendant is immune from prosecution as his action was a justifiable use of force in self-defense.

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was furnished via U.S. mail to the Office of the State Attorney, 419 N. Pierce St., Tampa, FL 33602 on this 3rd day of June, 2011.

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