

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

CASE NO: 05-2012-CF-068519-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

v.

WILLIAM ELLIOT CALVIN,

Defendant.

ORDER FINDING IMMUNITY PURSUANT TO SECTION 776.032, FLORIDA  
STATUTES, AND DISMISSING INFORMATION

THIS CAUSE came before the Court on May 7, 2015, for a pre-trial evidentiary hearing on the Defendant's Demand for Determination on Issue of Defendant's Immunity under 776.032, Florida Statutes (Stand Your Ground), filed herein on February 19, 2014. The Defendant claims immunity from prosecution under section 776.032, Florida Statutes (2012), commonly known as Florida's "Stand Your Ground" law.

Section 776.032(1), Florida Statutes (2012) grants immunity to persons using force as permitted in sections 776.012, 776.013, or 776.031. The purpose of the pre-trial evidentiary hearing was to determine whether the factual predicates for immunity from prosecution under section 776.032, Florida Statutes, were established by a preponderance of the evidence by the defense. At the hearing, the Court heard testimony from defense witnesses: Jessica Babinsack, Charles Calvin, Brianna Washington, and the Defendant. The Court

also heard testimony from Johnathan Sizemore and Crystal Early Sizemore called as State witnesses. Based on the testimony heard, evidence presented, authorities cited, and argument of counsel, the Court makes the following findings of fact and conclusions of law:

a. The Defendant is charged in the above-styled case with one count of felony aggravated battery against Johnathan Sizemore allegedly committed on November 13, 2012.

b. In November 2012, the Defendant's brother, Charlie Calvin, and Jessica Babinsack were renting a room from Corey Andrews at a residence located at 85 NW Irwin Avenue in West Melbourne, Brevard County, Florida. Charlie Calvin and Jessica Babinsack both had paid their rent money for November 2012. During that time period, Mr. Andrews was apparently also allowing several other individuals to visit or stay at the residence as well.

c. On November 13, 2012, a verbal dispute arose between Jessica Babinsack and Sarah Sager, another individual staying at the residence, which escalated to a physical fight between the pair, ultimately resulting in Sarah Sager and/or Corey Andrews informing Charlie Calvin and Jessica Babinsack to immediately leave the residence they had rented without being formally evicted or being given proper legal notice.

When Jessica Babinsack and Charlie Calvin attempted to move their belongings out of the residence later that day, Charlie was physically attacked by Johnathan Sizemore and his brother, Brad Sizemore. Charlie Calvin was repeatedly punched in the face, kicked, and beaten up. As a result, Jessica

Babinsack and Charlie Calvin just left the remainder of their belongings at the residence.

Charlie Calvin thereafter met with his brother, the Defendant, at a coffee shop that was close to Charlie's residence. After the attack on him, Charlie did not feel safe returning to his own residence to retrieve the remainder of his belongings. Charlie solicited his brother's assistance to go over to Charlie's residence to retrieve the remainder of his belongings, since the Defendant was on friendly terms with Corey Andrews, Charlie's landlord. The Defendant then walked from the coffee shop over to Charlie's residence.

The Defendant testified that the front door to the residence was unlocked as usual and he walked in as he normally would by simply tapping on the door and then entering. The Defendant testified that after he walked through the front door, Johnathan Sizemore immediately attacked him by a punch to the face. The Defendant testified that he was then repeatedly punched and kicked by both Johnathan Sizemore and another man. The Defendant testified that because he worked as a sous chef for a living, he always carried a knife on him for work purposes. As the attack continued, the Defendant testified that he withdrew his knife from his pocket and used it to defend himself and to effectuate an escape.

After slashing Johnathan Sizemore with the knife, the Defendant was able to free himself. The Defendant then ran outside the residence yelling to a female friend, Brianna Washington, "Let's go." Ms. Washington saw four people (Crystal Early, Johnathan Sizemore, Brad Sizemore, and Sarah Sager) running and chasing the Defendant as he fled on foot. Once inside the car, the Defendant

threw the knife on the floor of the vehicle. Brianna Washington described the Defendant's mood at the time as frightened, distressed, and confused.

Both the Defendant and Johnathan Sizemore suffered injuries from the fight; however, Johnathan Sizemore's knife wounds required treatment at the hospital.

d. Johnathan Sizemore posted a picture of his stitched wounds on his facebook page along with the message that he "just got out the hospital a little bit ago got a nice cut on my side from some puss ass nigga with a knife cuz he knew he was going to get his ass whipped.... :)" (See Defendant's Exhibit #1).

e. Johnathan Sizemore's testimony that he was first attacked by the Defendant is not credible. His testimony during the hearing was inconsistent within itself, and at variance with the other evidence. For instance, he denied that his brother Brad was even present during the attack on Mr. Calvin, claiming it was instead a third party no one else identified. He was unable to consistently relate simple details. His direct examination was that he and Crystal Early, his now-wife encountered the Defendant walking on Irwin Avenue, the Defendant ran at them, attempting to jump into the vehicle. He said that this occurred a short distance from the apartment. He claimed that they were afraid, and drove on to the apartment. Despite this, he claims to have entered the apartment, leaving the door unlocked. He states that he had gone into the kitchen, then came out, observing the Defendant to be standing in the living room. Later he claimed the Defendant "barged in," but when confronted with his previous testimony that he did not see the Defendant come in, he asked to "take back that last statement" or

words to that effect. He later testified that the door was locked, and a third party was attempting to break in. Not even the Defendant's wife, who was also present, corroborated his version of events. After carefully considering the testimony of Johnathan Sizemore, including his attitude and demeanor on the stand, the Court finds his testimony not credible.

f. "Florida law confers immunity from criminal prosecution and civil liability, without the obligation to retreat, on those who use deadly force reasonably believing that the use of such force is necessary to prevent imminent death or great bodily harm to self or others or to prevent the imminent commission of a forcible felony." Mobley v. State, 132 So. 3d 1160, 1164 (Fla. 3d DCA 2014).

g. A trial court applies an objective standard in evaluating the factual circumstances presented in a Stand Your Ground motion to dismiss. Mobley v. State, 132 So. 3d 1160 (Fla. 3d DCA 2014). "That standard requires the court to determine whether, based on circumstances as they appeared to the defendant when he or she acted, a reasonable and prudent person situated in the same circumstances and knowing what the defendant knew would have used the same force as did the defendant." Viera v. State, 40 Fla. L. Weekly D835a (Fla. 3d DCA Apr. 8, 2015).

h. The only relevant inquiry is whether, given the totality of the circumstances leading up to the attack, the appearance of danger was so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of

deadly force. Mobley v. State, 132 So. 3d 1160, 1166 (Fla. 3d DCA 2014). The Court finds that the Defendant has met its burden.

i. The State rightfully concedes that the Defendant was lawfully in the residence at 85 NW Irwin Avenue on November 13, 2012. Johnathan Sizemore attacked the Defendant while he was legally present in the residence trying to retrieve his brother's belongings. The Court finds the testimony that the Defendant was attacked by multiple assailants more credible, especially given the fact that earlier that same day, Johnathan and Brad Sizemore both admitted that they physically attacked the Defendant's brother, Charlie Calvin in a similar fashion. The fact that Brad Sizemore was a participant in the attack on the Defendant is further corroborated by Brianna Washington's testimony that when the Defendant ran from the residence after the attack he was being chased by Sarah Sager, Crystal Early, Johnathan and Brad Sizemore. Moreover, the fact that Johnathan Sizemore was the aggressor and attacked the Defendant for which the Defendant had to defend himself is further supported by Johnathan Sizemore's own facebook page post as well as four of them chasing the Defendant as he fled.

j. The evidence established that the Defendant's response to the circumstances facing him at the time he decided to use deadly force against Johnathan Sizemore was a reasonable and necessary use of deadly force. A reasonably cautious person situated as the Defendant was and knowing what he knew at the time would have believed that resort to deadly force in self-defense

was necessary to prevent imminent death or great bodily harm to himself or to prevent commission of a forcible felony.

k. The Court finds that based on the evidence, the Defendant has established by a preponderance of the evidence that he is immune from prosecution and that the immunity granted by law applies to him. See e.g., Mobley v. State, 132 So. 3d 1160 (Fla. 2014) (defendant had immunity from prosecution under Stand Your Ground Law where defendant afraid for his safety and life after having observed earlier a vicious unprovoked attack on friend). Based on the evidence and the law applicable to this case, the Court finds that the Defendant is immune from prosecution pursuant to sections 776.012 and 776.032, Florida Statutes, and that the Information charging him with Aggravated Battery in the above-styled case must be dismissed.


Accordingly, it is **ORDERED AND ADJUDGED** that the Information charging William Elliot Calvin with Aggravated Battery is **DISMISSED**.

**DONE AND ORDERED** at Viera, Brevard County, Florida this 8 day of March, 2015.

  
JAMES H. EARP  
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I do certify that copies hereof have been furnished by e-mail to **James McMaster, Esq.**, Assistant State Attorney, **Office of the State Attorney**, BrevFelony@sa18.org and and **Gregory W. Eisenmenger, Esq.** and **Robert R. Berry, Esq.**, Attorneys for the Defendant, Gregeisenmenger@EBPLAW.com by U.S. Mail this \_\_\_\_\_ day of 5/8, 2015.

  
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