IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,

v.

CURTIS J. REEVES,
Defendant.
_____ /

Case No.: CRC-1400216FAES

Division: 1 (J. Barthle)

**MOTION REQUESTING (I) A PRETRIAL IMMUNITY HEARING PURSUANT TO §776.032, FLA. STAT. (2017), (II) TO HOLD THIS PROCEEDING IN ABEYANCE PENDING RESOLUTION OF *LOVE V. STATE* (SC18-747) AND *STATE V. TYMOTHY RAY MARTIN* (SC18-789), AND (III) FOR OTHER RELIEF**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through undersigned counsels, and requests an order granting him a de novo pre-trial immunity hearing pursuant to section 776.032(1)-(4), Fla. Stat. (2017) (enacted by Chapter 2017-72), that this proceeding be held in abeyance pending the Florida Supreme Court's resolution of *Tashara Love v. State* (No. SC18-747)[1] and *State v. Tymothy Ray Martin* (No. SC18-789)[2], that the trial scheduled to begin on February 25, 2019 be stricken from the calendar, and for such other relief as just and appropriate, and as grounds in support states as follows:

**INTRODUCTION**

The governing legal authority unambiguously **mandates** that this Court, pursuant to the Second District Court of Appeal's ruling in *Tymothy Ray Martin v. State*, grant to Mr. Reeves a (i)

1 The Third District Court of Appeal held that Chapter 2017-72 does not apply retroactively. *Love v. State*, __ So. 3d __, 2018 WL 2169980, 43 Fla. L. Weekly D1065 (Fla. 3d DCA May 11, 2018). The Third District certified conflict with the Second District's decision in *Martin v. State*. *Love*, at *3. The Supreme Court accepted jurisdiction of *Love v. State* on June 26, 2018.
2 __ So. 3d __, 2018 WL 2074171, 43 Fla. L. Weekly D1016 (Fla. 2d DCA May 4, 2018).

de novo (ii) pre-trial immunity hearing wherein (iii) section 776.032(4), Fla. Stat. (2017) is applied. As explained below, the *Martin* decision is binding precedent on each and every trial court within the Second District. Unless and until the Florida Supreme Court or the Second District sitting *en banc* reverses or amends the legal rule in *Martin*, the law directs, requires and demands that the binding precedent be neutrally and properly applied to this case.

This Court therefore erred on May 29, 2018 when it denied Defendant's request for a *de novo pretrial* immunity hearing that complies with section 776.032(1)-(4), Fla. Stat. (2017).

Similarly, this Court erred in scheduling a trial without first affording Mr. Reeves a *de novo* pretrial immunity hearing pursuant to section 776.032(4). Given the Second District's ruling in *Martin*, Mr. Reeves has a clear legal right to a *de novo* **pretrial** immunity hearing during which the State bears "the burden of disproving, by clear and convincing evidence, a facially sufficient claim of self-defense immunity in a criminal prosecution." *Martin*, at *1.

Notwithstanding all of this, there are compelling reasons for this Court to refrain from scheduling a *de novo* pretrial immunity hearing and to hold this proceeding in abeyance pending the Florida Supreme Court's ruling in *Love v. State* (No. SC18-747) and *State v. Martin* (No. SC18-789). It is virtually certain that the Supreme Court will not issue a ruling in *Love* prior to February 25, 2019. It is also highly probable that should this Court schedule a de novo pretrial immunity hearing for February 25, 2019, the Supreme Court may not issue a ruling in *Love* until *after* said hearing is completed, a ruling has been issued, and the parties have commenced appellate litigation over the matter. Given that an immunity hearing pursuant to section 776.032(4), Fla. Stat. (2016) can easily require three full-weeks or more of courtroom litigation, the ever present interest in preserving the resources of the judiciary and the parties warrants holding this case in abeyance pending a conclusive ruling in *Love* and *Martin*. *See, e.g. Hamilton*

*v. State*, 945 So. 2d 1121, 1123 (Fla. 2006), *quoting In re McDonald*, 489 U.S. 184, 109 S. Ct. 993 (1989) ("A part of the Court's responsibility is to see that [judicial] resources are allocated in a way that promotes the interests of justice"); *Williams v. State*, 22 So. 3d 688, 690 (Fla. 5th DCA 2009) (same).

It also warrants noting that a trial court's ruling in a pretrial immunity hearing pursuant to Chapter 776 is appealable (via a prohibition proceeding) to a district court.

Given the above, this Motion therefore requests that:

(1) this Court rule and direct that Mr. Reeves is entitled to a de novo pretrial immunity hearing pursuant to section 776.032(4) under the binding Second District ruling of *Martin v. State*;

(2) the February 25, 2019 trial date be stricken from the Court's calendar, and that no other trial date be set pending the Florida Supreme Court's conclusive resolution of *State v. Tymothy Ray Martin* (No. SC18-789) and *Tashara Love v. State* (No. SC18-747);

(3) this Court refrain from scheduling a de novo pretrial immunity hearing pending the Florida Supreme Court's conclusive resolution of *State v. Tymothy Ray Martin* (No. SC18-789) and *Tashara Love v. State* (No. SC18-747);

(4) or, in the alternative to the relief requested in (3), this Court cancel the jury trial and schedule a de novo pretrial immunity hearing on February 25, 2019.

This Motion further requests such other and further relief as just and appropriate.

## PROCEDURAL BACKGROUND

The charges in this case originate from an incident on January 13, 2014. In November 2015 Defendant filed a motion requesting, among other things, immunity from prosecution based on

sections 776.032, 776.012, and 776.013. A pretrial immunity hearing pursuant to the pre-June 2017 version of section 776.032 was held in February and March of 2017.

That the February 2017 immunity hearing required 10 days of courtroom litigation, the testimony of numerous lay, law enforcement, and expert witnesses, and the admission of a significant number of exhibits reflects the complexity of this case. The hearing testimony for example, included that of: two board certified pathologists whose testimony concerned, among other things, the physical positioning of the complainant (and alleged aggressor) at the time of the event, analysis of the wound and stippling patterns, human anatomy, the elderly's susceptibility to bone fractures and injury, and how great bodily harm and death can be caused by physical blows; a board certified radiologist, whose testimony regarded the aging-related degenerative process, the symptomology of degenerative changes, and the frailties in Petitioner's body at the time of the incident; a shooting incident reconstruction and human factors expert, who testified to, among other things, his efforts to reconstruct the incident, the specific timing of various events immediately preceding the shooting incident, and the nature and effects of perceptual distortion in high stress events; a forensic video expert who gave testimony concerning the camera surveillance system in the movie theater and who had created a number of enhanced videos that were moved into evidence; a use of force expert who testified concerning whether the use of force in this case was consistent with law enforcement policies and protocols (Mr. Reeves is a retired law enforcement officer); and an expert in aging studies who testified concerning the research establishing that the elderly are acutely aware of their vulnerability to physical harm (Petitioner was 71 years of age at the time of the event).

This Court, by written order dated March 10, 2017, denied Defendant's motion requesting immunity. In that aforementioned order, this Court held, among other things, that Defendant failed

to sustain his burden of proof. Defendant pursued appellate review of that order with the Second District Court of Appeal, which the appeals court denied on May 8, 2018.

On May 4, 2018, however, the Second District issued its opinion in *Martin v. State* wherein it held that the 2017 amendment to 776.032 (i.e. Chapter 2017-72) applies retroactively. The *Martin* ruling (described extensively below) found that even an individual who had already been convicted by a jury had a right to a de novo pretrial immunity hearing pursuant to section 776.032(4), Fla. Stat. (2017).

On May 29, 2018, this Court held a status conference attended by counsel for the State (represented by ASA Glenn Martin) and Defendant (represented by Dino Michaels, Esq.). During that court appearance, counsel for Mr. Reeves contended that *Martin v. State* afforded Defendant a de novo pretrial immunity hearing.

The State, however, argued that *Martin v. State* allowed the Court to first schedule a trial, and if Defendant was convicted, then allow him an immunity hearing after the fact. The prosecutor stated:

> ASA Martin: Judge, the State has also reviewed the *Martin* case out of the Second DCA which came out May 4th and the *Love* case that came out on May 11th out of the Third DCA.
>
> The Court might also recall – and I didn't bring that case out – there's a case out of the Third DCA that indicated that the shifting of the burden was not procedural. So, you know, there's that mix, also.
>
> Let me just go through the analysis for the Court. The Second DCA came out first with their ruling. And in that particular case, an individual had their immunity hearing, lost, went on to trial and that's what was in the type at the time when the case went down. The Second DCA sent it back. And what's unique about it is they did not vacate the trial.
>
> […]
>
> They said, go back and have an immunity hearing and we trust the Judge will look

> at it and see if State [sic] meets their burden. And if the State meets the burden, then sentence the person in trial.
>
> Now, they didn't talk about harmless error or anything, but they kind of set up a procedure. The Third DCA came out and said, no, it's not retroactive, you can go forth.
>
> So here's the scenario. And it's kind of a win/win as far as setting the trial. If you go by the Second DCA logic, you set the trial, you get it over with. And if the Florida Supreme Court comes back and says it's retroactive, the trial's done. And if he's not guilty, well, then it's over. But the trial is done, you have the immunity hearing for whatever you have to do, and then you sentence the person for the – whatever the conviction is[3].
>
> Under the Third DCA logic, it's not retroactive. You have the trial and it's over with. On either case, the trial is done. And so what we're looking at is whether or not we can go ahead and get that done and what are the ramifications. We have an immunity hearing where, if you follow the Second DCA logic, is that the trial is not – excuse me, is not vacated and you sentence the person at the conclusion.
>
> Let's get it done. This is four years now in the making. So the State would like a trial date. The State is aware of the consequences based on our reading of the case law.

*Tr. of May 29, 2018 Status*, at *6-9.

Mr. Glenn Martin further claimed to this Court that *Martin v. State* is not binding on the trial court. The prosecutor representing the State of Florida contended:

> Mr. Martin: **Judge, the problem with that is *Martin* isn't the law of the land.**[4] It's been certified. The Court – we are not bound by *Martin*; we are not bound by *Love*. So for [the Defense] to say, well, and threaten you with, well, I'll just file an immunity hearing, they have no grounds to do it.

*Tr. of May 29, 2018 Status*, at 10-11 (emphasis added). The State failed to cite to any legal authority that states *Martin v. State* is not binding on the trial court due to the Second District's certification of a question for the Supreme Court to exercise its discretionary review powers.

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3 This is a demonstrably incorrect assertion. At no point in the *Martin* decision did the Second District Court of Appeal hold that *pretrial* immunity hearings pursuant to Section 776.032 are to be held *after* trial. *See infra*, at 7-12.

4 This is also a demonstrably incorrect assertion. *See infra*, at 12-15.

The Court acknowledged that it had read *Martin v. State*. *Id.*, at *15. Notwithstanding that assertion, the Court stated:

> The Court: Well, *Martin* [*v. State*, the Second District opinion] is very unique in the aspect as Mr. [Glenn] Martin indicated. Have the Second determine that he's entitled to a new immunity hearing and vacate the conviction, the sentence – or the conviction, sure, I wouldn't be setting this – I wouldn't be thinking about setting this for trial.
>
> But – and that's – when I first started reading the case, that's what I anticipated was going to happen at the end, that the conviction would be vacated and, you know, they'd be back at square one, but that's not the ruling. The ruling was to redo the immunity hearing and if the Court determines that he's not entitled to that, that he is to be prosecuted, then the trial's done as Mr. Martin said. It kind of is that way.
>
> Plus, with all the – the uncertainty between the jurisdictions more in favor of setting it for trial than not, with everything that I've got before me with this case, it's time to set it for trial. I'm going to go ahead and set it. It's going to be out a ways, but I really don't see any other option. It's time. It needs to be on the trial calendar.

*Id.*, at *9-10. The Court therefore agreed with Mr. Glenn Martin that there was no legal defect in allowing Mr. Reeves to be subjected to a trial, and if convicted, to grant him a de novo immunity hearing pursuant to section 776.032(4) *after* the fact.

The Court also expressly agreed with the prosecutor in stating that *Martin v. State* is "not final" because the Second District "certified it" and that therefore "we're clear for takeoff in my humble opinion" – meaning, a trial date could be set. *Tr. of May 29, 2018 Status*, at 16. Consistent with this belief, the Court opined that there was no legal authority preventing it from scheduling this case for trial:

> The Court: Well, the Second denied your [petition for a] writ [of prohibition] . And there's – what else is barring me? What procedurally – what would you suggest? Just wait a couple more years for the Supremes to rule in this?
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> [...]
>
> Well, it's probably going to be every bit of 12 months, so let's say a year. I'm guessing on that, but I've got a pretty solid basis for that. It takes the Supremes a lot

> of time to thoughtfully go through everything before them, so I'm not seeing it happen.

*Id.*, at * 11-12.

The above-quoted portion of the transcript also establishes that the Court expressly acknowledged that it did not believe it would receive any further ruling from the Supreme Court on the retroactivity of Chapter 2017-72 prior to the scheduled February 2019 trial. *Id.*, at *10.

Moreover, during the May 29, 2018 status, the Court repeatedly reiterated that it needed to set this case for trial. It clearly expressed that "I can't just sit by on this case or any other and just wait." *Id.* at *13. The Court further noted that:

> The Court: You know, we're faced with this situation – was it last year or the year before with the death penalty issues. I had multiple death penalty cases pending in the pipeline and, you know, the same thing there. I can't just sit and wait. And that took probably 10 or 11 months from the first hint that there was going to be a change to, you know, when changes were made. So I can't afford that kind of time to just sit on a case.

Id., at *14.

Given the Court's erroneous legal conclusions and corresponding decision to set this case for a trial, undersigned counsels were constrained and required to file this Motion.

## I. THE SECOND DISTRICT HELD IN *MARTIN V. STATE* THAT CHAPTER 2017-72 APPLIES RETROACTIVELY TO "PENDING" CASES

On May 3, 2018, the Second District issued its ruling in *Martin v. State*, wherein the appellate court held that Chapter 2017-72 applies retroactively. *Martin*, at *4. The Second District specifically ruled that "the 2017 amendment to section 776.032, the Stand Your Ground law, is procedural in nature and, therefore, retroactive in application." *Martin*, at *4. Given the retroactive application of the 2017 amendment, the Second District held that "[Chapter 2017-72] applies to pending cases." *Id.*

Section 776.032(4), enacted pursuant to Chapter 2017-72, § 1, at 898-99, Laws of Fla. (2017), holds that:

> 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 [under sections 776.012, 776.013, and/or 776.031].

(emphasis added). It was this latter provision that the Second District held applied retroactively. *Martin*, at *4.

In *Martin v. State*, both the alleged incident giving rise to the criminal charges as well as the defendant's pretrial immunity hearing occurred *before* the 2017 amendment went into effect. *Martin*, at *1. The defendant in *Martin* thereafter was convicted at a jury trial and filed an appeal with the Second District Court of Appeal. *Id.* It was while that appeal was pending that the Florida Legislature passed Chapter 2017-72, which in turn amended section 776.032 (on June 9, 2017) by placing on the State "the burden of disproving, by clear and convincing evidence, a facially sufficient claim of self-defense immunity in a criminal prosecution." *Id.* The Second District held that Chapter 2017-72 "is retroactive in its application, that it applies to [Mr. Martin's] case, and that he is entitled to a new immunity hearing."

In ruling that Chapter 2017-72 applies retroactively, the Second District correctly determined that a legislative amendment to the burden of proof in pretrial self-defense immunity hearings is procedural (and not substantive) in nature. *Martin*, at *2. In finding that the 2017 amendment was procedural in nature, the Second District noted that "[d]iscerning the precise contours between [substantive and procedural laws] can occasionally pose a challenge" – "[b]ut [Chapter 2017-72] **does not** appear to be one of those occasions." (emphasis added). Rather, the Second District found that this 2017 amendment was clearly and unambiguously procedural and

must be applied retroactively[5] because:

> Subsection (4) [of section 776.032] now ascribes to the State what had, under common law precedent, been the defendant's burden of proof. That is not a substantive change. Neither the substantive rights of a successful claim of immunity nor the necessary elements of proof to establish a claim of immunity were altered by the June 9, 2017 amendment.

*Martin*, at *2. (citations omitted). The Second District further determined that the amendment was immediately applicable to Mr. Martin's case because his appeal was pending on June 9, 2017, which is when Chapter 2017-72 went into effect. *Id.*, at *3.

In light of the above, Mr. Tymothy Martin – whose alleged crime and first pretrial immunity hearing both occurred prior to June 9, 2017 – was granted a second "Stand Your Ground" hearing in accordance with section 776.032(4) after he had been convicted by a jury.

## II. THE SECOND DISTRICT FURTHER HELD IN *MARTIN V. STATE* THAT DEFENDANTS WHOSE CASES ARE PENDING ARE TO BE GRANTED A PRETRIAL IMMUNITY HEARING PURSUANT TO SECTION 776.032(4) WHEREIN THE PROSECUTION SHOULDERS THE BURDEN OF PROOF FOLLOWING THE DEFENSE'S ESTABLSHMENT OF A PRIMA FACIE CASE

The Second District also held that Mr. Martin was to be granted a new pretrial immunity hearing wherein the new burden of proof was to be applied - despite the fact that he had already

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5 The Second District cited to binding case law holding that burden of proof requirements are procedural in nature and are to be applied retroactively: "*Shaps v. Provident Life & Acc. Ins. Co.*, 826 So.2d 250, 254 (Fla. 2002) ("[G]enerally in Florida the burden of proof is a procedural issue."); *Walker & LaBerge, Inc. v. Halligan*, 344 So.2d 239, 243 (Fla. 1977) ("Burden of proof requirements are procedural in nature.... [and] could be abrogated retroactively because 'no one has a vested right in any given mode of procedure.' " (citations omitted) (*quoting Ex parte Collett*, 337 U.S. 55, 71, 69 S.Ct. 944, 93 L.Ed. 1207 (1949))); *Kenz v. Miami–Dade County*, 116 So.3d 461, 464 (Fla. 3d DCA 2013) ("Indeed, under Florida case law, issues relating to a party's burden of proof are generally procedural matters."); *see also Ziccardi v. Strother*, 570 So.2d 1319, 1321 (Fla. 2d DCA 1990) (determining that reenactment of civil RICO statute, which altered the burden of proof and removed punitive damages as an element of compensation, could be applied retroactively; "[u]nder these circumstances, we do not agree ... that modification of the burden of proof in this statute amounted to a substantive change in the law")". *Martin*, at *2.

received a Stand Your Ground hearing and had already been convicted following a jury trial. *Id.* In so ruling, the Second District recognized the fact that Mr. Martin had been deprived of the benefit of a **pretrial** immunity hearing where the State must "marshal the evidence to prove by clear and convincing evidence that immunity does not apply." *Martin*, at *3.

The Second District understood that "[w]here the burden of proof lies on a given issue is, of course, rarely without consequence and frequently must be dispositive to the outcome of the litigation or application." *Id.* (citation omitted). This is because the burden of proof "carries a profound influence over the tenor, tone, and tactics in a legal proceeding." *Id.*

The Second District saw, for example, that at Mr. Martin's original pretrial immunity hearing (when he carried the burden of proof), "he [had] waived his Fifth Amendment right to remain silent" and "testified in his own defense." *Martin*, at *3. Meanwhile, the State had no burden of production or persuasion and simply argued Mr. Martin failed to sustain *his* burden. *Id.*

Given the retroactive application of Chapter 2017-72, however, Mr. Martin was in a markedly different stance. Under the 2017 amendment, the State now had the burden of establishing by clear and convincing evidence that Mr. Martin was not justified in using force. Accordingly, Mr. Martin could alter the "tone, tenor, and tactics" he would employ in such a hearing wherein the prosecution carries the burden of proof. In light of all of this, the Second District concluded that the initial determination of whether statutory immunity should be granted – where the defendant carried the burden of proof – failed to satisfy the requirements of the amended version of section 776.032. *Martin*, at *3. The Second District determined that the method to remedy Mr. Martin's deprivation of a proper immunity determination was to grant him another Stand Your Ground hearing that complies with section 776.032(4). *Id.*

In granting Mr. Martin this relief, the Second District recognized that section 776.032 is an immunity statute, and not a mere affirmative defense to be presented at a jury trial. *Martin*, at *3. The Supreme Court, for example, had held in *Dennis v. State* that "the plain language of section 776.032 grants defendants a substantive right to assert immunity from prosecution and to avoid being subjected to a trial." 51 So.3d 456, 462 (Fla. 2010) (emphasis added); *Martin*, at *3. This is because "section 776.032 contemplates that a defendant who establishes entitlement to the statutory immunity will not be subjected to trial." *Id.* at 462 (emphasis added).

Consistent with the *Dennis* holding, the Second District in *Little v. State* similarly recognized that "[t]he Stand Your Ground law ... grants criminal immunity to persons using force as permitted in sections 776.012, 776.013, or 776.031." 111 So.3d 214, 217–18 (Fla. 2d DCA 2013). Likewise, the First District held in *Rosario v. State* that "Florida's Stand Your Ground law is intended to establish a true immunity from charges and does not exist as merely an affirmative defense."165 So.3d 852, 854 (Fla. 1st DCA 2015).

Thus, the Second District concluded that section 776.032 establishes a true immunity, which meant that Mr. Martin "was entitled to an immunity hearing – which, now that the statute has been amended, means one where the State bears the burden of proof – before a jury could have been empaneled to decide whether Mr. Martin was justified in his use of force." *Martin*, at *3 (emphasis added).

## III. THE SECOND DISTRICT REITERATED IN *MARTIN V. STATE* THAT SECTION 776.032 AFFORDS DEFENDANTS A RIGHT TO AN IMMUNITY HEARING BEFORE TRIAL

In the course of holding that Mr. Martin was entitled to a new Stand Your Ground hearing due to the retroactive application of the 2017 amendment, the Second District reiterated that

section 776.032 affords defendants **a pretrial right** to an immunity hearing. The statute itself – cited in the *Martin* opinion - clearly and undeniably states that:

> 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 [under sections 776.012, 776.013, or 776.031].

*Martin*, at *1, *citing* §776.032(4) (emphasis added). In multiple portions of the *Martin* decision, the Second District also cited to the Supreme Court's ruling in *Dennis v. State*. In *Dennis*, the Supreme Court held that "section 776.032 contemplates that a defendant who establishes entitlement to the statutory immunity **will not be subjected to trial**." *Martin*, at *3, *citing Dennis*, at 462 (emphasis added). The *Martin* Court additionally noted that the Supreme Court "in *Dennis v. State*… held that immunity under section 776.032 should be determined at a **pretrial evidentiary hearing**." *Martin*, at *1, n.1 (emphasis added).

Given the plain language of section 776.032(4), the clear language of the Florida Supreme Court ruling of *Dennis v. State* that the statute affords defendants a right to a *pretrial immunity hearing*, and the unambiguous holding of *Martin v. State*, the rule in the Second District Court of Appeal is that a defendant who raises a claim of justifiable use of force is entitled do so in a pretrial immunity hearing.

Mr. Glenn Martin and the Court therefore misapprehended the holding of *Martin v. State*. Nowhere within the *Martin* opinion did the Second District say or hold that it is acceptable for a trial court to deny a defendant a **pretrial** immunity hearing pursuant to section 776.032(4).

Given the above, the Court's conclusion that *Martin v. State* authorizes a trial court to conduct a pretrial immunity hearing under section 776.032 after a trial is completed was erroneous. Hearings pursuant to section 776.032 are to be held *prior* to trial.[6]

## IV. *MARTIN V. STATE* IS BINDING ON ALL OF THE TRIAL COURTS WITHIN THE SECOND DISTRICT

Under long-standing precedent and the doctrine of stare decisis, the ruling in *Martin v. State* became binding on all of the trial courts within the Second District the moment the opinion was issued on May 4, 2018. As the Supreme Court acknowledged, "[t]he decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by [the Florida Supreme Court]." *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) (citation omitted). The Supreme Court further made clear that "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." *Pardo*, at 666-67 (citation omitted).

The Second District has had the occasion to remind trial courts that a district court's ruling on a court within its jurisdiction is binding unless and until overruled by the Florida Supreme Court or by the district court itself. In *Wood v. Fraser*, for example, the Second District reversed a trial court that had independently determined a ruling of the district court had been overturned by the Florida Supreme Court. *Wood*, 677 So. 2d 15, 18-19 (Fla. 2d DCA 1996). The Second District admonished the trial court and reiterated that "until such time as the [S]upreme [C]ourt overrules the [prior Second District ruling], or we recede from it en banc, or the Florida Legislature clearly expresses its disapproval [of the prior Second District ruling] by a subsequent statutory enactment, trial courts in this district are firmly bound by its holding." *Wood*, at 18-19 (emphasis added). In

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6 That a hearing was directed to be held for the defendant in *Martin v. State* after he was convicted was solely the product of the fact that the law changed after Tymothy Martin had filed and initiated his appeal.

*Wood*, the Second District, clearly displeased with the trial court's failure to comply with binding case law, further stated:

> In closing, we take this opportunity to remind trial courts again that they do not create precedent. Although they are free to express their disagreement with decisions of higher courts, trial courts are not free to disregard them in the adjudicatory process. **We emphasize, therefore, in accord with the doctrine of stare decisis, that once a point of law has been decided by a judicial decision, it should be adhered to by courts of lesser jurisdiction, until overruled by another case, because it establishes a precedent to guide the courts in resolving future similar cases. Any deviation from this fundamental tenet of jurisprudence can only result in an erosion of the rule of law, thereby causing uncertainty and unpredictability in the resolution of judicial disputes, as well as a needless expenditure of litigant and judicial resources**.

*Wood*, at 19 (citations and internal quotations omitted) (emphasis added).

Moreover, a district court's certification of a question constitutes a recommendation to the higher court that a case be reviewed. As the Supreme Court noted in *Hoffman v. Jones*, 280 So. 2d 431, 434 (Fla. 1973), the district courts of appeal are not powerless to seek change, but rather: "they are free to certify questions of great public interest to the [Supreme Court] for consideration, and even to state their reasons for advocating change."

The fact that a district court can and may submit a recommendation to the Supreme Court does not mean trial courts can flagrantly ignore the opinions of appellate courts. Rather, the legal rule that applies on this Court is that:

> until such time as the [S]upreme [C]ourt overrules [a prior Second District ruling], or [the Second District] recede[s] from it en banc, or the Florida Legislature clearly expresses its disapproval [of a prior Second District ruling] by a subsequent statutory enactment, trial courts in this district are firmly bound by [the ruling's] holding."

*Wood*, at 18-19 (emphasis added). Clearly, a district court's ruling becomes binding on a trial court when it is issued irrespective of whether said district court has recommended that the Florida Supreme Court exercise its discretionary review powers over a certified question.

Additionally, a district court's ruling becomes binding on the trial courts when it is issued, and not after the time when rehearing has expired or when the mandate is issued. *Pitzer v. Bretey*, 95 So. 3d 1005, 1006 (Fla. 2d DCA 2012). For example, although all opinions of the Second District carry a banner that reads: "NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED," said banner does not mean an issued opinion lacks precedential force. Rather, in *Pitzer* the Second District made clear that the banner communicates to litigants, attorneys, and trial courts that "adjustments in the opinion might still be undertaken" and "reliance on the opinion before it achieved finality might be ill-advised." 95 So. 3d at 1006. In other words, an opinion becomes binding on a trial court within the jurisdiction of the district court when it is issued, but said opinion can still be amended by said district court during the time for rehearing.

Furthermore, a decision of an appellate court is binding on the trial courts within a judicial district even if a stay of proceedings has been issued.[7] As one district court described, a stay pending review in a criminal appeal is "preventative in nature" and "has the effect of suspending proceedings in the lower court in relation to the order appealed from but, unlike reversal, does not annul or cancel the order." *Loeb v. State*, 387 So. 2d 433, 435-36 (Fla. 3d DCA 1980), *citing Powell v. Florida Land & Improvement Co.*, 41 Fla. 494, 26 So. 700 (1899). The *Powell* case, notably, is nearly 120 years old and remains the law of this State. *Powell*, at 496.

Accordingly, it is readily apparent that Mr. Glenn Martin and the Court erred in concluding that *Martin v. State* is not binding on the trial courts within the Second District. On the contrary, the applicable legal authority both from the Second District and the Florida Supreme Court

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7 The Florida Supreme Court issued an order on June 18, 2018 stating that the "proceedings in this Court in [*State v. Martin*] are hereby stayed pending disposition of *Tashara Love v. State* of Florida, Case No. SC18-747, which is pending in this Court."

requires and mandates that *Martin v. State* be dutifully followed and applied by trial courts in Pasco County.

The analysis above, which was prepared in the weeks following the May 29, 2018 court appearance, was fully confirmed and validated by the Second District Court of Appeal on July 18, 2018. On July 18, 2018, the Second District issued its ruling in *Catalano v. State*, __ So. 3d __ (Fla. 2d DCA July 18, 2018) wherein it relied upon *Martin v. State*, retroactively applied section 776.032(4), and granted the defendant a de novo pretrial immunity hearing.

Mr. Catalano, whose alleged crime occurred in May 2014, was granted a pretrial immunity hearing in 2015 during which the circuit court applied the pre-June 2017 version of section 776.032. After a March 2015 hearing, the circuit court denied Mr. Catalano pretrial immunity in July 2015. Catalano was convicted following a June 2016 trial and appealed his case to the Second District. Thus, the alleged crime, the filing of the motion requesting pretrial immunity, the pretrial immunity hearing itself, and the jury trial all occurred before the June 2017 amendment went into effect.

As in *Martin*, the Second District reversed Catalano's conviction and imposed a remand for "the trial court to conduct a new 'Stand Your Ground' hearing" on behalf of the defendant - "for the reasons explained in *Martin*." (emphasis added). Notably, the Second District unambiguously and affirmatively applied the holding of *Martin* to Mr. Catalano's case. The opinion features no suggestion at all, as Mr. Glenn Martin claimed, that *Martin* is not final and is not the "law of the land." *Tr. of May 29, 2018 Status*, at 10-11.

The *Catalano* ruling leaves absolutely no doubt that *Martin v. State* is indeed "the law of the land" within the Second District. The *Catalano* ruling also makes thoroughly clear that this Court is mandated and obligated to grant Mr. Reeves a de novo pretrial immunity hearing pursuant

to section 776.032(4), Fla. Stat. (2017).

## V. THIS COURT SHOULD HOLD THIS CASE IN ABEYANCE WHILE THE SUPREME COURT COMPLETES REVIEW OF *MARTIN V. STATE* AND/OR *LOVE V. STATE*

In justifying the scheduling of a trial, this Court repeatedly referenced that it needs to schedule the trial and that it "can't just sit by on this case or any other and just wait." *Tr. of May 29, 2018 Status*, at 13. Undersigned counsels acknowledge that this Court, as with other trial courts, have a basic obligation to diligently advance their cases to completion. *See, e.g. Fla.R.Jud.Admin.* 2.250(a)(1)(A) ("Time Standards for Trial and Appellate Courts and Reporting Requirements" in trial court criminal cases).

That basic obligation, however, cannot be pursued at the expense of a defendant's constitutional rights and the rule of law. *See, e.g. Fla.R.Jud.Admin.* 2.250(a) ("[i]t is recognized that there are cases that, because of their complexity, present problems that cause reasonable delays.") Each and every defendant in this State is afforded the right to equal and neutral application of the laws and protections provided by the Constitution of the United States of America, the Constitution the State of Florida, the statutes passed by the Florida Legislature and made into laws pursuant to the procedures in the state constitution, and the decisional law of the Supreme and district courts interpreting those legal authorities.

As described above, Mr. Reeves is presently entitled to a de novo pretrial immunity hearing pursuant to section 776.032(4), Fla. Stat. (2017) under *Martin v. State. Supra*, at 13-15. This Court is obligated to yield any concerns regarding complying with the time standards contemplated by the Rules of Judicial Administration to the unavoidable fact that the law presently mandates that a de novo pretrial hearing pursuant to section 776.032 be granted to Mr. Reeves. *Martin*, at *2-4; *Dennis*, at 462.

Moreover, there are circumstances where a trial court, in order to ensure that each and every defendant is afforded the right to equal and neutral application of the laws and protections provided by the governing legal authority, must stay and/or hold in abeyance proceedings pending resolution of a legal issue by an appellate court. There are even circumstances when the State may ask for a stay of proceedings pending resolution of a dispositive legal issue by an appellate court. *See, e.g. Mitchell v. State*, 160 So. 3d 902, 906 (Fla. 2d DCA 2009) (describing how criminal cases were stayed by appellate and trial courts throughout the State of Florida pending resolution of a dispositive *Miranda* issue by the United States Supreme Court).

Here, the conducting of a de novo pretrial immunity hearing could result in an enormous waste of judicial resources, as well as the labor, money, and time of the parties. All of the time, money, resources, and energies devoted to conducting a de novo pretrial immunity hearing will be wasted if the Florida Supreme Court determines Chapter 2017-72 is not retroactive.

Consider that in order to conduct a multi-week pretrial immunity hearing: the Court must clear up multiple weeks from its calendar; numerous courthouse staff members and deputies from the Sheriff's Office must be present; dozens of witnesses will be subpoenaed, including expert witnesses; the prosecutors and defense attorneys must expend the funds of their respective clients planning for and then actually participating in a hearing; Mr. Reeves, a retired law enforcement officer, must use his limited funds on expert witnesses and other hearing-related costs; and numerous attorneys (6 participated in the February 2017 hearing) will be engaged in the courtroom rather than working on other pending matters in the courts of this judicial circuit and others. The last pretrial immunity hearing was an enormous endeavor, and a de novo hearing will likely be even more expansive given the fact that the State now carries the burden of proof.

The risk of the wasting of resources, time and energy is not merely speculative. The Florida

Supreme Court is reviewing *Love v. State*. There is also the near certainty that any such Supreme Court ruling will not be issued prior to February 25, 2019, if that is when the Court schedules the de novo pretrial immunity hearing under section 776.032. The Florida Supreme Court may side with the Third District and uphold the *Love* ruling's holding that Chapter 2017-72 is not retroactive, thereby causing all of those referenced resources to be wasted.

The proper and prudent step is to therefore refrain from scheduling a de novo pretrial immunity hearing, pending a conclusive resolution from the Florida Supreme Court concerning whether Chapter 2017-72 is retroactive.

## VI. THE FACTS AND CIRCUMSTANCES ESTABLISH THAT THIS MATTER HAS BEEN DILIGENTLY ADVANCED AND THERE HAVE BEEN NO UNWARRANTED DELAYS

On a final note, undersigned counsels point out that in light of (i) the complexity of this case, (ii) the existence of a statutory right to a pretrial immunity hearing (and (iii) a corresponding right to appellate review of a trial court's ruling on such a hearing), and (iv) the Supreme Court's pending review in *Love v. State* - there have been no unwarranted delays in this case. Moreover, when comparing this matter to other, significantly less complex active cases in Pasco County, it is clear that the attorneys have been diligently moving this proceeding forward given the options available.

First, a close review of the procedural history of this case demonstrates that to the extent possible, this case has been diligently moved forward. In the weeks following the incident, the prosecution provided to the Defense the first batch of discovery materials. Throughout the time period from 2014 through early 2017, the State continued providing additional discovery and listing additional witnesses. From 2014 through early 2017, the Defense conducted dozens of depositions of the State's numerous witnesses.

The prosecution listed over 130 witnesses. The prosecution's listed witnesses included lay witnesses, first responders, law enforcement officers, and numerous experts. The prosecution, by early 2017, had listed 13 expert witnesses whose stated expertise ranged from computer forensics, and video analysis and surveillance to pathology, DNA, ballistics, and medicine.

Additionally, for significant portions of time during the pendency of this case, the Defense was hamstrung by limitations on when depositions could be taken. For extensive periods of time the State could only provide at most two days per week (Monday and Friday) for taking depositions. Monday and Friday were days that Assistant State Attorney Manuel Garcia and Assistant State Attorney Stacey Sumner were available for depositions in all privately retained cases. The Public Defender deposition days occupied Tuesdays, Wednesdays, and Thursdays. While the Defense took many Monday and Friday deposition dates, they were not able to secure every Monday and Friday because the State Attorney's Office had reserved many of those days for privately retained attorneys in other cases. Likewise, some Mondays and Fridays could not be utilized due to undersigned counsel's law firm's obligations to their other clients' cases. Completion of the depositions was a massive scheduling and logistical endeavor.

Further, cases like this one - where a defendant invokes his pretrial right to an immunity hearing pursuant to section 776.032 - cannot be moved to trial until a ruling on a motion is made and, if pursued, appellate review is completed. As noted, *supra* at 10-12, the Florida Legislature decided that the citizens of Florida would be allowed to have a pretrial immunity hearing where a claim of justifiable use of force would be first considered by a judge. The preamble of the law creating section 776.032 makes clear that the intent of these amendments were to provide legal immunity to individuals protecting themselves or their loved ones from aggressors. "[T]he Legislature [found] that it [was] proper for law-abiding people to protect themselves, their

families, and others from intruders and attackers without fear from prosecution or civil action for acting in defense of themselves and others." *Dennis*, at 462 (quoting Ch. 2005-27, 200, Laws of Fla.) (emphasis added).

Further, the defendant and/or the State is/are authorized to pursue appellate review (through a prohibition proceeding) of a circuit court's ruling on a motion requesting immunity pursuant to section 776.032. *Little v. State*, 111 So. 3d 214, 216 n.1 (Fla. 2d DCA 2013). Pursuit of prohibition relief often results in the staying of proceedings pending a ruling from the district court. Fla.R.App.P. 9.100(h) ("In prohibition proceedings, the issuance of an order [by a district court] directing the respondent to show cause shall stay further proceedings in the lower tribunal").

This case, as with other pending Stand Your Ground cases in the First[8] and Second Districts whose underlying incident occurred before June 9, 2017, features one more factor that precludes moving the matter to trial. The Florida Supreme Court is reviewing *Love v. State* and will determine if the June 2017 amendment is to be applied retroactively. As explained, this fact overwhelmingly militates in favor of holding the matter in abeyance to, among other things, preserve judicial and the parties' resources.

Given all of the above, the record and procedural history makes clear that this case has always been properly moved forward and progressed to the extent possible.

Second, it bears noting that there are multiple other cases of significantly less apparent complexity that were initiated by the State Attorney's Office in 2013 that are still pending in Pasco

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8 The First District Court of Appeal in *Commander v. State* concurred with the Second District and determined section 776.032(4) applies to defendants whose purported acts occurred before the passage of Chapter 2017-72. 43 Fla. L. Weekly D1554a (Fla. 1st DCA July 9, 2018) [accessible at https://edca.1dca.org/DCADocs/2018/0036/180036_1282_07092018_01442225_i.pdf]

County. For example: the State contends in its prosecution of Cleave Gittens (13-CF-007976)[9] that the defendant unlawfully stabbed another individual to death in December 2013. The prosecution alleges that Matthew Tillman (13-006714-CF)[10] murdered an individual during the commission of an attempted armed home invasion robbery in October 2013. Diana Matthew (13-003951-CF)[11] is being prosecuted attempted murder for the act of shooting her husband in June of 2013.

None of these referenced cases appear to have the hallmarks of being complex criminal prosecutions like *State v. Reeves*. A search of the Second District's docket also revealed no indication that a ruling from a Stand Your Ground hearing had been pursued – which would have triggered a stay under Rule of Appellate Procedure 9.100(h) – in any of them.

In light of the above, it is evident that the complexity of this case, the pursuit of pretrial immunity in the circuit and appellate court, and now the Supreme Court's review of *Love v. State*, are the reasons why this matter remains pending.

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9 Staff Reports, *Friends mourn teen slain in Wesley Chapel*, TBO, December 15, 2013 [www.tbo.com/news/crime/teen-stabbed-in-wesley-chapel-apartment-complex-20131213/]

10 Alex Orlando, *Two men charged in Wesley Chapel man's murder*, Tampa Bay Times, October 15, 2013 [www.tampabay.com/news/publicsafety/crime/two-men-charged-in-wesley-chapel-mans-murder/2147366].

11 Alex Orlando, *Zephyrhills woman accused of shooting husband cited years of abuse*, Tampa Bay Times, June 18, 2013 [www.tampabay.com/news/publicsafety/crime/zephyrhills-woman-accused-of-shooting-husband-cited-years-of-abuse/2127175]

WHEREFORE, the Defendant, Curtis Reeves, respectfully requests that this Motion be granted, that the trial date be stricken from the calendar, the Court rule that Mr. Reeves is entitled to a de novo pretrial immunity hearing pursuant to section 776.032(4), but that this case be held in abeyance pending resolution of *State v. Martin* and *Love v. State* by the Florida Supreme Court, and for such other, further and different relief as necessary and appropriate.

Date: July 24, 2018

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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and accurate copy of this has been furnished by United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758, this 24th day of July 2018.

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