

IN THE IOWA DISTRICT COURT IN AND FOR MONTGOMERY COUNTY

STATE OF IOWA
Plaintiff,

v.

KEVIN DUANE STALEY,
Defendant.

CRIMINAL NO: FECR010683

ORDER

NOW ON THIS DATE this matter comes before the Court on the Defendant's Pretrial Motion entitled: Motion to Enforce Immunity. The Court has been advised that the State resists the Defendant's Motion to Enforce Immunity and in support has submitted for the Court the Depositions of all of the State's witnesses with no objection from the Defendant. Additionally, the Court has reviewed the Minutes of Testimony and the Police Reports at the request of both parties. The Court hereby finds as follows:

FACTS

On October 11, 2017 at approximately 4:15 am, Montgomery County Communications received a 911 call reporting a male suffering from a gunshot. The medical personnel arrived to find a deceased male later identified as Devin Davis.

Alex Wiechman and the Kevin Duane Staley are on neighborhood surveillance video proceeding down an alley near 206 E. Grimes street at 3:29am. Alex Wiechman states that the two meet for an exchange of illegal substances and the two proceed on their way separately.¹ Alex Wiechman later states during depositions that his encounter with Staley is solely for the purposes of luring him to this location for Davis and Robert Wiechman² so they can attack the Defendant.

After Alex Wiechman leaves, Davis and Robert Wiechman attack Staley wearing hoodies and bandanas to cover their faces. Robert Wiechman states they waited in the alley to ambush Staley due to Davis' prior hatred toward Staley. Davis screamed "Mother [REDACTED] and attacked

¹ Staley denies any illegal substance involvement and neither party was found to be in possession of illegal substances and neither were charged with any illegal substance violation.

² Robert Wiechman and Alex Wiechman are related.

Staley knocking him to the ground. Staley simultaneously retrieved a licensed³ and registered firearm from his waist and shot at Davis one time. The bullet entered the center of Davis' chest.

Robert Wiechman and Davis fled the alleyway and with the assistance of Robert Wiechman, Davis made it to the front of the house located at 206 E. Grimes where he collapsed and was later pronounced dead. A knife was later found near the body of Davis.

The Defendant ran to his mother's residence where he was found sleeping at 12:45pm the same day. The gun was also found at the residence.

IOWA CODE SECTION 704

On April 13, 2017, Governor Branstad signed into law amendments of Iowa Code Section 704 which provide similar protections referred commonly as Stand Your Ground laws. The effective date is presumed to be July 1, 2017 as the act did not provide a specific date.

The relevant provisions of the law to this matter include the following:

Iowa Code 704.13

“A person who is justified in using reasonable force against an aggressor in defense of oneself, another person, or property pursuant to 704.4 is immune from criminal or civil liability for all damages incurred by the aggressor pursuant to the application of reasonable force.”

The newly enacted Section 704 provides several new facets of the previous section that include eliminating the provision that required an alternative course of action. Additionally, the law provides that the individual using reasonable force is granted IMMUNITY from criminal liability for damages to the initial aggressor. This immunity is not an affirmative defense, but an immunity from prosecution.

The Court is aware that this area of law is new in the State of Iowa, but has been widely used in other jurisdictions for years. Florida's controversial law was enacted in 2005 - more than a decade ago. Their caselaw and statutes have evolved to procedures that have not been addressed in the State of Iowa. According to the National Conference of State Legislatures, there are currently Twenty-four other states with similar provisions to the newly enacted Iowa laws. For

³ Staley at the time of the shooting has a verified Concealed Carry Permit though the State of Iowa.

those reasons, the Court turns to other jurisdictions to provide guidance in the procedural aspects of this determination.

The first question is whether Immunity should be determined by the Court or by a jury. Florida determined in Peterson v. State, 983 So.2d 27, 29 (Fla. Dist. Ct. App. 2008) that the correct procedure was pretrial determination done by an evidentiary hearing with a showing of the preponderance of the evidence. The Courts had no procedural outlines in their new code sections and the Court found that the procedures came from their prior holdings and the criminal procedure that was currently in place.

The Florida Courts have long held that this matter is a pretrial determination and not for a jury to determine. Florida and a sprinkling of other states have what are referred to as “mini-trials” that are held prior to a matter going to the jury.

The Florida Courts went on to hold in Velasquez v. State, 9 So. 3d 22 (Fla. Dist. Ct. App. 2009) that the factual basis must either be agreed upon or the State would need to file a Traverse. In this instance, the facts are not in dispute.

The grant of Immunity pretrial is utilized in numerous forms. Many of the protections offered by our statutes provide immunity in certain situations. That Immunity should protect those persons the right from having to go to trial to determine their immunity. The United States Supreme Court held that Immunity is “...an entitlement not to stand trial or face the other burdens of litigation.” Mitchell v. Forsyth, 472 US 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).

As such, the Court is prepared to determine Immunity in this instance prior to trial and aligning with the majority of states already having caselaw on this subject.

BURDEN OF PROOF

The vast majority of the states that have enacted these laws are silent as to the burden of proof. Who bears the burden? What is the standard?

The Defense argues that the burden should mirror to the other states with similar provisions and points the Court to several cases from other jurisdictions. In South Carolina, the Court has consistently held that a pretrial evidentiary hearing is required. State v. Duncan, 392

S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In Alabama, the Legislators have written the burden into their Stand Your Ground legislation. In Florida, the Legislature has recently stepped in and provided the Court with a law that requires the State to carry the pretrial burden in the evidentiary hearings. This newly enacted statute has already had a tremendous amount of controversy including a Miami Circuit Judge's opinion that the shifted burden is a violation of the Constitution's separation of powers. See Generally: UNPUBLISHED State v. Rutherford, No. F16-12827, Circuit Court of the 11th Judicial District.

The Court is not prepared to require the State to carry the burden of proof in this matter. It is clear in reviewing the vast majority of caselaw on the subject, the Defendant carries the burden and that burden is a preponderance of the evidence. Bretherick v. State, 170 So.3d 766, 779 (Fla. 2015); Bunn v. State, 667 S.E.2d 605, 608 (Ga. 2008); State v. Guenther, 740 P.2d at 981; see also Harrison v. State, 2015 WL 9263815 (Ala. Crim. App., Dec. 18, 2015).

There are The Defense argues that the pretrial determination must be made pursuant to Iowa Rules of Criminal Procedure 2.11(2). The Rules of Criminal Procedure place the majority of pretrial burdens on the Defendant or the moving party. In this instance, the moving party is the Defendant and short of legislative mandate, this Court places the burden on the Defendant.

Additionally, the Defense that any determinations that can be made by the Court pretrial must be made.

PRETRIAL DETERMINATION

The procedural determination of Immunity now turns to when does the Court determine Immunity? If the Court determines Immunity prior to trial, does the Court hear testimony? If the Court hears testimony, is that testimony admissible at trial? The Court finds that a pretrial evidentiary hearing is appropriate and that testimony should be introduced and anything provided at that evidentiary hearing is admissible during trial should the Court find that Immunity is not warranted.

Pretrial determination of these matters should be done upon motion of the Defendant. The Defendant in this matter has filed a Motion to Enforce Immunity. In turning to other states, the Court finds that Florida has not clarified the pretrial procedure despite having this law on the books for more than a decade. The procedures have been flowing through caselaw.

In Florida, their procedures require that a motion be filed and that if denied, a Writ of Prohibition be filed as the appropriate method of obtaining a pretrial hearing. Little v. State, 111 So.3d 214, 216 (Fla.2d DCA 2013). Additionally, the Alabama courts have held and the legislature followed, that a pretrial determination shall be used if Immunity is in question. Alabama Criminal Code 13A-3-23.

The Florida caselaw is widely cited in other jurisdictions attempting to wade their way through the procedural waters. The case of State v. Bretherick, 170 So.3d 766, 779 (Fla. 2015) is often cited. In that case, the Florida Supreme Court states: "We conclude that placing the burden of proof on the defendant to establish entitlement to Stand Your Ground immunity by a preponderance of the evidence at the pretrial evidentiary hearing, rather than on the state to prove beyond a reasonable doubt that the defendant's use of force was not justified, is consistent with this court's precedent and gives effect to the legislative intent."

ANALYSIS

The Defendant in this matter was attacked in an alley. He was ambushed by two men wearing hoodies and bandanas on their faces. He was struck and went to the ground. The Defendant did not provide testimony to the pretrial determination - as the parties agree that depositions of the State's witnesses would be introduced and reviewed by the Court.

Iowa Code Section 704.1 states:

1. "Reasonable force" means that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.
2. A person may be wrong in the estimation of the danger or the force necessary to repel the danger as long as there is a reasonable basis for the belief of the person and the person acts reasonably in the response to that belief.
3. A person who is not engaged in illegal activity has no duty to retreat from any place where the person is lawfully present before using force as specified in this chapter.

Staley found himself in a dark alley with two masked men screaming and running toward him. The perceived threat became real when he was struck by Davis. The parties did not retreat

upon striking Staley, but continued to be a threat. A reasonable person being attacked in a dark alley by masked men would believe their life to be in jeopardy. The Court finds that Staley had reason to believe risk to his life and/or injury.

Next, did Staley meet the requirement of 704.1(3) wherein he was lawfully present and not engaged in illegal activity. This causes the Court to determine the space in time between the alleged illegal activity and the shooting. The minutes of testimony state that the Defendant was engaged in an illegal transaction involving drugs. The deposition of Alex Wiechman states that he met with the Defendant to exchange meth for hydrocodone. The officer's statement suggests that Staley denies that transaction.

The Court finds that any reference to this transaction would not likely not be admissible at trial and does not in any way hinder the implications of the Immunity provision. The Defendant was not charged with this transaction. The Defendant was not found in possession of any illegal substance. A search warrant was issued and conducted on this residence where Staley was staying with no indication of illegal substances. Additionally, assuming this transaction did occur, that transaction was completed and Alex Wiechman had gone to another house prior to Staley being attacked in the alley.

The Court must now determine whether this defense is available pursuant to Iowa Code Section 704.6:

704.6 When defense not available.

The defense of justification is not available to the following:

1. One who is participating in a forcible felony, or riot, or a duel.
2. One who initially provokes the use of force against oneself, with the intent to use such force as an excuse to inflict injury on the assailant.
3. One who initially provokes the use of force against oneself by one's unlawful acts, unless:
 - a. Such force is grossly disproportionate to the provocation, and is so great that the person reasonably believes that the person is in imminent danger of death or serious injury or

b. The person withdraws from physical contact with the other and indicates clearly to the other that the person desires to terminate the conflict but the other continues or resumes the use of force.

The Court finds that none of these apply to the facts provided in this matter. Staley was not the aggressor and he was merely walking down the alley when accosted.

Which leads to the final determination: Is Immunity appropriate as applied to these facts?

The Court finds that the Defendant, Kevin Duane Staley, should be granted Immunity.

IT IS THEREFORE ORDERED that the Defendant, Kevin Duane Staley, be granted Immunity. The Defendant is ordered to be released forthwith.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
FECR010683 STATE OF IOWA VS STALEY KEVIN DUANE

So Ordered

A handwritten signature in black ink, appearing to read "James S. Heckerman", written over a horizontal line.

**James S. Heckerman, District Court Judge,
Fourth Judicial District of Iowa**