

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC17-1978

STATE OF FLORIDA,

Petitioner,

vs.

PETER PERAZA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

The Petitioner Adopts the Respondent's preliminary statement.

STATEMENT OF THE CASE AND FACTS

The Respondent generally agrees with the Petitioner's statement of the case and facts. However, on page 2 of the Petitioner's brief, the Petitioner cited to Art. V, § 3(b)(3), Fla. Const.. The Respondent believes that the Petitioner intended to cite Article V, § 3(b)(4) as cited in the "Argument" section on page five of the Petitioner's brief.

SUMMARY OF THE ARGUMENT

This Court should not accept jurisdiction. The Opinion of the Fourth District Court of Appeal in State v. Peraza, 226 So.3d 937 (Fla. 4th DCA)does not conflict with the decision of the Second District Court of Appeal in State v. Caamano, 105 So. 3d 18 (Fla. 2d DCA 2012). Moreover, given the factual findings made by the Fourth District Court of Appeals, the outcome of Deputy Peraza's case as it applies to him should remain undisturbed regardless of whether this Court accepts jurisdiction.

ARGUMENT

THIS COURT SHOULD NOT ACCEPT JURISDICTION
BECAUSE THE DECISION OF THE FOURTH DISTRICT
COURT OF APPEAL IN STATE V. PERAZA, 226
So.3d 937 (Fla. 4th DCA) DOES NOT CONFLICT
WITH THE DECISION OF THE SECOND DISTRICT
COURT OF APPEAL IN State v. Caamano, 105 So.
3d 18 (Fla. 2d DCA 2012).

This Court does not have clear authority to accept discretionary review pursuant to Rule 9.030 (a)(2)(A) (iv), Fla. R. App. P., and Article V, § 3(b)(4) of the Constitution of the State of Florida because the instant decision does not conflict with the decision of the Second District Court of the Second District Court of Appeal in State v. Caamano, 105 So. 3d 18 (Fla. 2d DCA 2012).

Contrary to the Petitioner's argument, the Fourth District Court of Appeal's expressly found that Deputy Peraza was not making an arrest. The Fourth District found that Deputy Peraza was investigating a disturbance. However, the Fourth DCA did hypothesize that one could argue based on the commands given by officers to "stop" and "drop the weapon" the encounter could be construed as an attempt to make an arrest. The Fourth DCA went on to hold that even if Peraza was making an arrest, it disagreed with the Second DCA holding in Caamano that a law

enforcement officer, who while making a lawful arrest, uses deadly force because he or she reasonably believes it is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony, is not limited to invoking a defense under section 776.05(1), but is also permitted to seek immunity from criminal prosecution under sections 776.012(1) and 776.032(1).

The Petitioner contends that 776.05(1) controls because it is a "specific statute" over a "general statute" as 776.05(1) applies to a law enforcement officer as opposed to a "person". The Petitioner also contends that to allow a law enforcement officer to utilize 776.032(1) and 776.012(1) would abrogate legislative intent and render 776.05(1) meaningless. However, 776.032(1) and 776.012(1) convey a completely different defense than that of 776.05(1). 776.032(1) and 776.012(1) confer an absolute immunity thereby barring prosecution in its entirety. Dennis v. State, 51 So.3d 456, 462 (Fla. 2010). 776.05(1) is an affirmative defense to be utilized after prosecution has commenced while the Defendant is at trial, conferred by qualified immunity by virtue of a defendant being in the unique

position of carrying out his or her duties as a law enforcement officer. (Id.)

For purposes of argument, assume that the facts were the same in Peraza with one change: an individual is carrying a gun in an area populated by civilians. Deputies, with their weapons drawn, shout "stop", "drop your weapon", and "you're under arrest!" The individual fails to drop his weapon, turns, and points his weapon at Deputies. The Deputies open fire, killing the man. Should deputies then be subjected to charges being filed and go to trial with no opportunity to argue a defense under 776.032(1) and 776.012(1) because the argument could be made they were in the process of effectuating an arrest? The level of danger that Deputies and civilians in the area face is still be the same. The same factual scenario can be taken a step further. Assume the same facts as above, except the individual does drop the weapon and appears to comply. Deputies approach the individual and said individual then reacts, and is able to grab a deputy's gun. A deputy then shoots and kills the individual. Should that Deputy not be permitted to utilize a defense of absolute immunity under the "Stand your Ground" law?

The Petitioner further contends that the legislature intended to "limit" the immunity available to officers acting

with violence in their official capacity when it enacted 776.05(1). However, Upon review of 776.05(1), that statute actually *expands* an officer's ability to utilize force to make an arrest by the language: "**any force** reasonably believed necessary to defend from **bodily harm.**" In contrast to the language of 776.012 which only allows the use of deadly force if he or she reasonably believes that such use of force is necessary to prevent **imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.**

Lastly, these statutes coexist. A defendant who is a law enforcement officer can assert absolute immunity under 776.012(1) and 776.032(1), have his or her motion to dismiss denied, then proceed to trial and assert an affirmative defense under 776.05(1). It cannot be said that this course of action would render 776.05(1) a nullity. This case should not be looked at through the lens of a Popple v. State, 626 So.2d 185 (Fla.1993) analysis. This case needs to be examined through the practical realities of policing. To follow the Petitioner's argument would allow an average citizen to assert immunity whereas a law enforcement officer who took an oath to uphold the law, to serve and protect, and whose duty entails running toward

danger rather than from it, would not be able to avail him or herself of such a defense. Because there is no conflict, this Court should not accept jurisdiction in this matter. Should this Court accept jurisdiction, the holding as it pertains to Deputy Peraza should remain undisturbed as the Fourth DCA held, and it is undisputed fact, that Deputy Peraza was not in the course of making an arrest and was thereby permitted to avail himself of immunity under 776.012(1) and 776.032(1).

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests that this Court deny discretionary review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing "Respondent's Brief on Jurisdiction: has been furnished electronically to Melanie Dale Surber on January 9, 2018 to CrimAppWPB@myfloridalegal.com.

/s/ Eric T. Schwartzreich
Eric T. Schwartzreich

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12-point Courier New Type.

/s/ Eric T. Schwartzreich
Eric T. Schwartzreich