>> THE NEXT CASE ON OUR DOCKET IS DENNIS VS. THE STATE OF FLORIDA.
>> GOOD MORNING MR. CHIEF JUSTICE.
>> YOU MIGHT WAIT JUST A MINUTE.
>> THE COURT IS NOW PROCEEDING WITH THE NEXT CASE.
THANK YOU.
>> MAY IT PLEASE THE COURT, MY NAME IS BARBARA WOLF, I REPRESENT TERRANCE DENNIS.
WE ENACTED FLORIDA STATUTE 776032, THE STAND YOUR GROUND LAW.
TO CLARIFY, I THOUGHT THAT THE ACTUAL STATUTE SAID THERE WAS NO DUTY TO RETREAT WOULD BE FOUND IN 776.013 OR ANOTHER --
>> YES, ACTUALLY THAT'S CORRECT.
I WAS LOOKING.
>> AND WE'RE NOT, TODAY, HERE TO DISCUSS THE -- ANYTHING ABOUT THE MERITS OF THAT LAW OR ANY ATTACK ON THAT LAW, CORRECT?
>> OKAY, SO CONTINUE.
>> 776032 IS INTENDED TO CONVEY TRUE IMMUNITY NOT JUST A DEFENSE.
THIS IS EVIDENCED IN THE LANGUAGE OF THE PREAMBLE TO

THE SENATE BILL WHICH SAYS
WHERE AS THE LEGISLATURE
FINDS IT IS PROPER FOR LAW
ABIDING PEOPLE TO PROTECT
THEMSELVES, THEY'RE FAMILIES
AND OTHERS FROM INTRUDERS
AND ATTACKERS WITHOUT FEAR
OF CIVIL PROSECUTION IN FARE
OF ACTING IN DEFENSE FOR
THEMSELVES AND OTHERS.
THE ISSUE FOR THE COURT THIS
MORNING IS HOW SHOULD THIS
STATUTE BE IMPLEMENTED BY
THE TRIAL COURT?

>> I CAN ASK YOU A
QUESTION MAKE SURE I HAVE
CLEAR IN MY MIND.
AT WHAT POINT IN THESE
PROCEEDINGS DID MR. DENNIS
MOVE TO DISMISS ON THE
GROUND OF THIS STATUTE.
>> PRIOR TO TRIAL.
>> OKAY.
WHICH IT BEFORE OR AFTER
ARRAIGNMENT?
>> IT WAS AFTER ARRAIGNMENT.
IT WAS SOME
MONTHS AFTER HE WAS CHARGING
BUT BEFORE TRIAL.
>> DID THAT COME PLY WITH
THE TIME LIMITATION IN RULE
3.190C.
THERE'S CERTAIN EXCEPTIONS
TO THAT, BUT THEY DON'T SEEM
TO COVER THIS.

>> IT APPEARS FROM THE
RECORD THAT IT WAS AFTER
THAT TIME, BUT THERE WAS NO
OBJECTION TO THE RECORD IN
HIM PROCEEDING, IT'S NOT AN
ISSUE.
IF WE --
THE CONFLICT IS FAIRLY CLEAR
FOR HOW THE DISTRICT COURTS
HAVE DEALT WITH THIS
PARTICULAR ISSUE.
ARE YOU HERE TODAY
ADVOCATING FOR A PRETRIAL
HEARING WHERE THE DEFENDANT
WOULD HAVE TO PUT ON
EVIDENCE TO SHOW BY THE
PREPONDERANCE OF EVIDENCE
THAT THERE WAS A
JUSTIFIABLE USE OF FORCE?
>> YES.
>> MY PROBLEM WITH THAT, AND
OTHER COURTS ADOPTED THIS,
IS IT COMES FROM A COLORADO
CASE WHERE IS THAT IDEA OF A
STANDARD OF PREPONDERANCE,
OF THE DEFENDANT'S BURDEN,
AND THEN, THE IDEA THAT THEN
IT WOULD GO TO --
IF YOU LOST ON THAT YOU GO

TO TRIAL AND YOU REASSERT
IMMUNITY, AND THERE'S
ANOTHER TRIAL ON THAT.
WHERE DOES THAT COME FROM?
AND IF YOU COULD, OTHER THAN
THE COLORADO CASE --

>> RIGHT.
>> BECAUSE THE LEGISLATURE HAS INTENDED THIS TO BE TRUE IMMUNITY.
THIS IS AN IMPORTANT SUBSTANTIVE RIGHT THAT THE LEGISLATURE WANTS THE PEOPLE OF FLORIDA TO HAVE.
AND BECAUSE IT'S A SUBSTANTIVE ISSUE OF LAW, WHETHER OR NOT THE FORCE USED WAS JUSTIFIED, IT DESERVES A STANDARD OF PROOF THAT WOULD EXAMINE THE EVIDENCE.
>> IF THIS WAS, THIS APPLIES FOR CIVIL IMMUNITY AS WELL AS CRIMINAL IMMUNITY.
LET'S TAKE A CIVIL CASE.
SAY THAT THE VICTIM IS NOW SUING THE DEFENDANT IN A CIVIL ACTION.
AND THEY --
THE DEFENDANT ASSERTS IMMUNITY.
IS THAT THE SAME IDEA AS A PRETRIAL HEARING IN A CIVIL CASE WHERE THE DEFENDANT WOULD ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE BEFORE THE TRIAL BEGAN, THAT THEY USED FORCE THAT IT WOULD BE A PRE-TRIAL COURT RULING RATHER THAN A JURY DETERMINATION?
>> IN A CIVIL CASE, THE PER

IN A CIVIL CASE.
EACH SIDE IS ENTITLED
CONSTITUTIONALLY TO A JURY
TRIAL.
>> BUT WE'RE REALLY JUST
TALKING ABOUT THE PROCEDURE,
AS FAR AS I'M UNDERSTANDING
THIS.

THE PROCEDURE, AND THE
PROCEDURE IS NO DIFFERENT.
I MEAN, AS FAR AS THE WAY
THE LANGUAGE OF THE STATUTE
GOES.
THIS DEALS WITH BOTH
CRIMINAL AND CIVIL ACTION
AND DOESN'T MAKE A
DISTINCTION BETWEEN HOW
THOSE TWO CASES WOULD BE
DEATH WITH.
>> THE STATUTE DOES PROTECT
FROM CRIMINAL PROSECUTION
AND CIVIL, THAT'S CORRECT.
>> GOING BACK TO JUST THE
MECHANICS OF HOW YOU BRING
THIS TO COURT.
STIPICALLY, IT SEEMS TO ME,
THAT THE TYPICAL C4 MOTION
TO DISMISS IS NOT WELL
SUITED FOR THIS KIND OF
THING, BECAUSE IT'S THE
EQUIVALENT OF THE CIVIL
JUDGMENT.
>> THAT'S CORRECT.
>> THERE'S NO TESTIMONY.
SO IT SEEMS LIKE THE C4

MOTION IS NOT APPLICABLE.
BUT I THINK JUDGE GROSS AT
THE 4TH DCA.
MENTIONED --
THERE MAY BE ANOTHER SECTION
OF THE RULE THAT MAY ALLOW
FOR AN EVIDENTIARY HEARING
WHICH IS WHAT YOU NEED.
IT MENTION IT'D SHALL BE
MADE ONLY BY MOTION TO
DISMISS.
MR. GROSS MENTIONS AS AN
EXAMPLE IN THE HOLD DAYS,
THEY'RE NOT ALOUDS ANY MORE.
WHAT THE STATE WOULD TELL
SOMEONE, YOU'RE NOT GOING TO
BE PROSECUTED FOR THIS IF
YOU TESTIFY, AND LATER ON
THE PERSON IS PROSECUTED AND
HE WOULD WANT TO COME IN AND
BRING IN TESTIMONY THAT HE
WAS GIVEN IMMUNITY.
AND THOSE TYPE OF

EVIDENTIARY HEARINGS WERE
DUE TO 3.19B, SO IT APPEARS
TO ME THERE IS A PROVISION
IN THE RULE THAT WOULD ALLOW
FOR AN EVIDENTIARY HEARING
TO DETERMINE WHETHER OR NOT
THIS SHOULD BE A DEFENSE
THAT PROCOLLUDES
PROSECUTION.
AND I THINK THAT'S THE HEART
OF THE MATTER IS HOW DO BUT
PROCEED WITH THIS AND HANDLE

IT AT THE TRIAL LEVEL.
.
THE QUESTION TO YOU, BUT I
TAKE IT THAT'S THE VEHICLE
YOU'RE GOING TO PURSUE.
>> YES, JUDGE GROSS DOES
APINE THAT THE RULES FOR
THIS PROCEDURE.
WHETHER OR NOT THERE'S A
RULE IN PLACE OR NOT, THIS
IS WHAT THE LEGISLATURE
WANTS FOR THE STATE OF
FLORIDA.
>> I UNDERSTAND
SUBSTANTIVELY, YES.
HOW DO YOU BRING THIS TO
COURT PRIOR TO TRIAL.
WHAT YOU'RE SAYING IS THIS
IS NOT A DEFENSE.
>> THIS IS NOT AN
AFFIRMATIVE DEFENSE.
AND THE STATUTE IS CLEAR
IT'S NOT TRUE IMMUNITY.
NOT SOMETHING TO BE RAISED
AT TRIAL.
>> BUT THERE ARE FACTUAL
MATTERS ON HOW THE PERSON
USED DEADLY FORCE AS TO
WHETHER OR NOT THE I
IMMONEYTY SHOULD APPLY.
>> THE PROCEDURE IN PETERSEN
FROM THE FIRST DEA,
FASHIONED A PROCEDURE THAT
WOULD ALLOW THE TRIAL COURT
TO HAVE AN EVIDENTIARY
HEARING PRIOR TO THE TRIAL,

IN WHICH THE BURDEN WOULD BE
ON THE DEFENDANT TO PROVE BY

A PREPONDERANCE OF THE
EVIDENCE THAT HE WAS
ENTITLED TO IMMUNITY.
>> AND ONCE THAT HEARING
TAKES PLACE, AND THE TRIAL
JUDGE MAKES A DETERMINATION,
FOR EXAMPLE, THAT THE
DEFENDANT IS NOT ENTITLED TO
IMMUNITY.
WHAT IS THE NEXT STEP?
>> IF THE MOTION IS DENIED,
THE DEFENDANT WOULD PROCEED
TO TRIAL WHERE HE WOULD HAVE
THE ABILITY TO RAISE THE
AFFIRMATIVE.
>> WHY THE WOULDN'T THE
DEFENDANT PROCEED TO THE
DISTRICT COURT SAYING I'M
IMMUNE, THERE'S AN ERROR
HERE, AND SEEK REVIEW OF
THAT IF IN THE CIRCUMSTANCES
WHERE THERE'S NOT BEEN AN
EVIDENTIARY HEARING.
LIKE IN THIS CASE.
>> THAT'S CORRECT, JUSTICE
KENNEDY.
IF IT WERE DENIED, THE
CORRECT PROCEDURE WOULD BE
TO APPEAL THAT TO A DISTRICT
COURT THROUGH A WRIT.
>> ONCE HE HAS HAD HIS
EVIDENTIARY HEARING HE CAN
APPEAL THAT, AND IF HE

DOESN'T AND HE GOES TO
TRIAL, WERE YOU SAYING --
ABOUT TO SAY THAT HE CAN
RAISE THAT AS AN AFFIRMATIVE
DEFENSE?
>> HE CAN RAISE HIS
JUSTIFIED USE OF FORCE AS A
DEFENSE AT TRIAL.
AND THERE'S NO AUTHORITY
THAT I'M AWARE OF THAT WOULD
PROCOLLUDE HIM FROM ALSO NOT
FILING A WRIT, NOT APPEALING
THROUGH A WRIT, BUT FOR
WAITING AND DOING IT THROUGH
DIRECT APPEAL.
>> WHAT I'M WONDERING, IS
YOU WOULD AGREE THOUGH,

SINCE --
IS THERE DOES THE STATE THEN
HAVE AN OBLIGATION TO PROVE
BEYOND A REASONABLE DOUBT
THAT THE FORCE USED WAS NOT
LAWFUL?
AT TRIAL?
>> YES.
LET'S JUST ASSUME THE
SCENARIO, YOU SAY IT STILL
GETS RAISED.
I THOUGHT THE STATE AGREED
THAT THE STATUTE DOES CHANGE
SOMETHING.
BECAUSE IT CHANGES THEIR
BURDEN AT TRIAL THAT YOU
DON'T, EVEN IF IT'S NOT
RAISED AS AN AFFIRMATIVE

DEFENSE THAT THEY HAVE TO
PROVE BEYOND A REASONABLE
DOUBT THIS IS NOT A
JUSTIFIABLE USE OF FORCE.
>> THAT'S CORRECT.
THAT WOULD BE THE STANDARD
FOR THE STATE TO PROVE ANY
CRIME.
>> THAT'S NOT WHAT EXISTED
BEFORE THE STAND YOUR GROUND
STATUTE WENT INTO EFFECT.
DIDN'T THE DEFENDANT HAD TO
RAISE SELF-DEFENSE.
>> WE'RE TRYING TO FIGURE
OUT WHAT BURDENS AT TRIAL
WOULD BE AFTER THE STATUTE
IS PASSED AND THERE'S BEEN A
DETERMINATION THAT THE
DEFENDANT IS NOT IMMUNE FROM
PROSECUTION.
>> I'M NOT SURE I UNDERSTAND
YOUR QUESTION, BUT I BELIEVE
THE BIRDIE FOR THE STATE HAS
NOT CHANGED.
THE BURDEN FOR THE STATE IS
ALWAYS TO PROVE BEYOND A
REASONABLE DOUBT THAT A
CRIME HAS TAKEN PLACE AND TO
PROVE THE ELEMENTS OF THE
CRIME.
>> SO THE AFFIRMATIVE
DEFENSE RAISED IS SELF

DEFENSE, WHEN IS THE
STANDARD OF TRIAL THAT THE
DEFENDANT WOULD HAVE TO

PROVE THAT DEFENSE?
WHAT'S THE BURDEN AT TRIAL
FOR THE DEFENDANT?
>> THE DEFENDANT CAN RAISE,
AS A DEFENDANT AT TRIAL,
THAT THE FORCE HE USED WAS
JUSTIFIED.
>> AND WHAT'S --
WHAT IS THE JURY INSTRUCTED
AS TO WHAT THE DEFENDANT'S
BURDEN IN THAT REGARD IS.
IS IT DIFFERENT THAN THE
PRETRIAL BURDEN OF THE
PREPONDERANCE OF EVIDENCE?
>> AT TRIAL I DON'T BELIEVE
THE DEFENDANT HAS A BURDEN.
I THINK HE IS ENTITLED TO
RAISE THE DEFENSE THAT THE
FORCE HE USED WAS JUSTIFIED.
>> LET'S ASSUME WE AGREE
WITH THE FOURTH DISTRICT
THAT THIS IS ONLY SOMETHING
RAISED THROUGH A C4 MOTION,
OR LET'S SAY THAT WE AGREE
WITH THE KENTUCKY SUPREME
COURT THAT SAYS THIS SHOULD
BE A MEANING TO THE WORD
PROBABLY CAUSE, WHICH IS
WHAT THE LAW ENFORCEMENT
OFFICER HAS TO USE.
THAT IS THE PRETRIAL
PROBABLE CAUSE.
AND NOW IT'S AT TRIAL
WITHOUT AN EVIDENTIARY
CONTESTING OF THE FACTS.
WHAT IS, THEN, IN ORDER TO

TO BE ABLE TO HAVE
PROSECUTION HOW WOULD THE
JURY BE INSTRUCTED.
>> ONCE IT GOES TO TRIAL,
THE DEFENDANT HAS LOST THE
RIGHT ONCE IT GOES TO TRIAL.
THE JURY WILL NOT BE
INSTRUCTED ON IMMUNITY.
SO IT WOULD BE, THAT'S WHY
YOU'RE SAYING SOMETHING HAS
TO HAPPEN PRETRIAL.

>> IT HAS TO HAPPEN
PRE-TRIAL, OR THE PRILEDGE
TO BE IMMUNE FROM
PROSECUTIONS IS LOST.
>> WHAT ABOUT IN THE CIVIL
CONTEXT, NOW?
ARE YOU SAYING IT WOULD BE
DIFFERENT THAT THEY ARE
SUPPOSED TO BE IMMUNE FROM A
CIVIL ACTION, BUT BECAUSE
WE, ALL THE TIME, ALLOW
QUALIFIED OR OTHER
IMMUNITIES TO BE RAISED BY
TRIAL JURIES, THAT IT WOULD
HAVE NO MEANING IN A CIVIL
CASE?
>> WELL, ONCE IMMUNITY IS
GRANTED UNDER 776032.
IF THE CASE STARTS OUT AS A
CIVIL ACTION NOT INVOLVING A
CRIMINAL CHARGE IN 776032.
>> DO YOU HIT IT CRIMINAL
CASE WOULD BE BINDING ON THE
VICTIM WHO WAS TRYING TO

SUE IN A CIVIL ACTION?
>> THAT APPEARS TO BE MY READING OF THE STATUTE, YES. THAT IF THE PERSON IN THE GENERAL CASE IS FOUND TO BE IMMUNE FROM PROSECUTION, THEN HE CANNOT BE TAKEN ON A CIVIL --
FOR A CIVIL LAWSUIT EITHER.
>> THERE'S LANGUAGE IN THE STATUTE THAT TALKS ABOUT THE PERSON WHO USED THE DEADLY FORCE BEING ENTITLED TO REIMBURSEMENT FOR FEES AND EXES --
EXPENSES AND ALL THOSE THINGS.
TO ME IT SEEM THERE'S IS CONTEMPLATION A PERSONAL WOULD BE CRIMINALLY PROSECUTED OR HAVE A CIVIL TRIAL, AND THAT FINISH WOULD STILL BE BEFORE THE COURT, AND IF THE PERPETRATOR WENT ON THAT ISSUE, HE GETS BACK HIS FEES AND COSTS AND THOSE

TYPES OF THINGS.
SO I'M NOT SURE I TOTALLY BUY YOUR ARGUMENT THERE.
WHAT IS THE PURPOSE OF THAT STATUTE THAT TALKS ABOUT BEING REIMBURSED FOR FEES AND COSTS?
>> I'M NOT SURE I CAN ADDRESS THAT.

LET'S SEE.
THE COURT SHALL AWARD
REASONABLE ATTORNEY FEES,
COST, COMPENSATION FOR LOSS
OF INCOME AND ALL EXPENSES
INCURRED BY THE DEFENDANT IN
THE SENSE THAT ANY CIVIL
ACTION BROUGHT BY A
PLAINTIFF IN THE COURT FINDS
THE DEFENDANT IS IMMUNE FROM
PROSECUTION AS PROVIDED IN
SUBSECTION ONE.
IS THAT ONLY ON CIRCUMSTANCE
THERE'S WAS NO CRIMINAL
ACTION AT ALL?
>> YES, THAT WOULD APPEAR TO
BE, CORRECT, JUSTICE.
>> IF I UNDERSTAND YOUR
ARGUMENT AT THIS POINT ON
THE CIVIL ACTIONS.
THE STATUTE, 776032, SAY
THAT'S A PERSON WITH THE USE
OF FORCE, HAS PERMITTED IS
JUSTIFIED IN USING SUCH
FORCE AND IS IMMUNE FROM
CRIMINAL PROSECUTION AND
SUCH ACTION FOR THE USE OF
CRIMINAL FORCE.
YOUR POSITION WHAT WE'RE
TRYING TO GET AT.
IS IT YOUR POSITION THAT IF
A PERSON IS PROSECUTED FOR
THIS, THIS FORCE, AND WE
HAVE THIS HEARING, AND A
TRIAL COURT FINDS THAT HE
WAS IMMUNE, DOES THAT

IMMUNITY GRANTED IN CRIMINAL
COURT CARRY OVER TO A CIVIL
POSITION AND THERE NEED NOT
BE A SEPARATE EVIDENTIARY
HEARING ON THE CIVIL SIDE OF

THE COURTHOUSE?
>> YES, IT APPEARS THE
INTENT OF THE LEGISLATURE
WAS TO PROTECT PEOPLE PLACED
IN A POSITION OF HAVING TO
USE JUSTIFIED FORCE TO
PROTECT THEMSELVES OR THEIR
LOVED ONES, AND THAT THE --
>> AM I CORRECT IN
UNDERSTANDING THAT THE
IMPLICATIONS OF THIS STATUTE
FOR CIVIL CASES IS NOT
SOMETHING THAT'S AN
IN THIS CASE TODAY.
>> IN MY PREPARATION I HAVE
NOT FOCUSED ON THE CIVIL
SIDE.
>> I APPRECIATE THAT
EXACCEPT THAT THERE WAS A
LINE IN SUBSECTION THREE FOR
THE FACT THERE HAD TO BE A
COURT FINDING, AND TO ME IT
SOUNDS LIKE THAT COURT
FINDING HAS TO DO WITH A
CIVIL ACTION NOT A CRIMINAL
ACTION.
SO TO THE EXTENT THAT THIS
WHOLE STATUTE IS BEING READ
TOGETHER, I DON'T ACCEPT THE
FACT THAT THE IDEA THAT IT

SAYS COURT FINDING MEANS
THAT THERE'S GOT TO BE A
COURT FINDING IN THE
CRIMINAL ACTION.
IT LOOKED TO ME LIKE THIS
WAS A COURT FINDING FOR THE
CIVIL ACTION.
THAT THERE WOULD BE A
SEPARATE FINDING BY THE
CIVIL COURT.
>> YOU'RE NOW DOWN TO ABOUT
A MINUTE AND A HALF.
>> I'D LIKE TO --
SO YOU CAN COULDN'T, BUT IF
YOU WANT TO RESERVE FROM
REBUTTAL, IT'S DEPLATING.
>> I'LL RESERVE THE
REMAINDER FOR REBUTTAL.
>> GOOD MORNING, MELNY DALE
SURBER ON BEHALF OF THE

STATE.
I WOULD LIKE TO BEGIN THAT
THE ASSERTION THAT FLORIDA
STATUTE OFFERS ANY IMMUNITY
IS A AND THAT'S BEEN SPORTED
BY WHAT COUNSEL SAID.
WE HAVE A PRETRIAL
DETERMINATION, AND THERE
WILL BE A SEPARATE
DETERMINATION AT TRIAL WHICH
IS AN AFFIRMATIVE DEFENSE.
THERE'S NOTHING ELSE THAT
CAN BE AT TRIAL.
>> I DON'T UNDERSTAND HOW
YOU RECONCILE THAT WITH THE

NOTION THAT SOMEONE IS
IMMUNE FROM CRIMINAL
PROSECUTION.
ARE YOU SAYING THAT
REGARDLESS OF WHAT IS
DETERMINED --
ASSUMING THERE IS A
PRE-TRIAL DETERMINATION BY
THE COURT, AND THE COURT
DETERMINES THAT THE PERSON
HAS A GOOD DEFENSE, WHAT
HAPPENS THEN?
>> I'M TALKING ABOUT IF
THERE'S A PRE-TRIAL THERE'S
A DETERMINATION OF IMMUNITY.
IF IT IS DENIED WHEN THE
DEFENDANT GOES TO TRIAL, IT
WOULD IN FACT BE AN
AFFIRMATIVE DEFENSE.
THAT'S ALWAYS BEEN THERE.
WHICH IS MY POINT.
>> THE DEFENSE HAS ALWAYS
BEEN THERE.
I MEAN, THE STATUTE CLEARLY
SAYS, YOU KNOW, YOU ARE
IMMUNE FROM CRIMINAL
PROSECUTION.
THAT'S WHAT LEGISLATION SAID
IN CLEAR LANGUAGE.
I MEAN HOW DO YOU DETERMINE
IMMUNITY IF THEY WANTED IT
TO BE AN AFFIRMATIVE DEFENSE
THEY WOULD HAVE SAID SO.
BUT IMMUNITY MEANS YOU CAN'T
BE PROSECUTED FOR IT.

THAT'S MY UNDERSTANDING.
SO WHY SHOULD SOMEONE BE
PROSECUTED FOR AN ACT THAT
HE OR SHE IS IMMUNE FROM?
>> WHICH IN TURN WOULD
EXPLAIN THIS CASE, PRETRIAL,
THE DEFENDANT HAS TO FILE
SOME SORT OF MOTION, AND
ANSWERING THIS QUESTION I
WANT TO GO BACK TO.
IT WAS FILED 7 MONTHS AFTER
ARRAIGNMENT IN IT CASE.
>> 7 MONTHS AFTER
ARRAIGNMENT.
IT WAS IN SEPTEMBER OF 06,
THIS WERE TWO MOTIONS TO
DISMISS, BOTH FILED AS C
MOTIONS ONE WAS A C4, ONE
WAS A C3, NOT FILED AS B
MOTIONS.
IN THIS CASE BEFORE YOU CAN
GO TO TRIAL, THERE IS A
HEARING HELD REVIEWING STATE
MANDATEST, THE TRAVERSE, A
BEARING EVIDENCE, AND THE
MATERIAL LIFE DISPUTED FACTS
ARE DECIDED THAT THERE'S A
DISPUTE AND HE'S NOT IMMUNE
FROM PROSECUTION.
ONCE TRIAL COMES WITHOUT THE
EXTRAORDINARY WRIT FILES,
IT'S ESSENTIALLY WAIVED THE
PRE-TRIAL IMMUNITY.
THERE'S NO OTHER WAY TO
PROCEED TO GO THROUGH TRIAL
BUSINESS AS USUAL HIGH

PRESSURE >> THIS CASE MAY
HAVE SOME ISSUES THAT ARE
DIFFERENT FROM OTHER CASES,
BUT IT IS UNDENIABLE.
THAT WHETHER WE AGREE WITH
IT OR NOT, THAT THE
LEGISLATURE HAS SAID THAT
THERE IS NO GOING TO BE
IMMUNITY FROM CRIMINAL
PROSECUTION AND CIVIL ACTION
FOR JUSTIFIABLE USE OF
FORCE.
SO WE'RE HERE TODAY TO SEE
HOW THE COURT SHOULD BE

GIVING EFFECT TO WHAT IS NOW
A SUBSTANTIVE RIGHT OF
IMMUNITY.
IMMUNITY FROM PROSECUTION.
AND EVEN THOUGH, YOU KNOW AS
I SAID, I MIGHT AGREE THAT
THERE SHOULD BE A DIFFERENT
WAY TO HANDLE IT, IT SEEMS
THERE'S GOT TO BE A
MEANINGFUL, IF IT'S RAISED
APPROPRIATELY, PRETRIAL
DETERMINATION.
AND YOUR --
THE WAY THE FOURTH DISTRICT
HAS HANDLED IT BECAUSE THEY
SAY NO OTHER MOTION OR
WHATEVER, IT WOULD NOT BE,
IT WOULD BE IF THERE'S A
MATERIAL ISSUE OF FACT, THEN
YOU GO AHEAD WITH IT, AND
THAT DOESN'T SEEM TO ME TO

GIVE EFFECT TO THE
SUBSTANTIVE RIGHT OF
IMMUNITY.
SO IF YOU CAN RESPOND TO
THAT THAT WE'RE NOT HERE,
SAYING WHETHER THIS IS RIGHT
OR WRONG, WE'RE TRYING TO
FIGURE OUT HOW TO BEST GIVE
EFFECT TO THAT RIGHT.
>> I WOULD POINT TO YOUR
HONOR'S COMMENTS SUMMARY
ARGUMENT IN A CASE.
IN A CIVIL CASE, A MOTION
FOR SUMMARY JUDGMENT WOULD
BE FILED.
THAT HAS BEEN THE CASE WITH
RESPECT TO IMMUNITIES AND
CIVIL ACTIONS FOR MANY YEARS
COMPARING IT TO THE CIVIL
IMMUNITY PROVIDED TO A LAW
ENFORCEMENT OFFICER.
THE SUMMARY JUDGMENT TO
RAISE THE MATERIAL DISPUTED
FACT.
THERE IS NO DIFFERENCE IN A
CRIMINAL CASE.
THE STATUTE WAS WRITTEN FOR
THE IMMUNITY FOR CIVIL AND
CRIMINAL.

THERE IS NOTHING DIFFERENT
TO APPLY HERE.
THESE CASES HAVE BEEN LONG
DECIDED THAT SUMMARY
JUDGMENT IS THE PROPER
MOTION, AND THAT SHOULD

REMAIN THE PROPER WAY TO
ADDRESS THIS CLAIM.
>> I SAW AT SOME POINT IN
THIS BRIEF YOU THOUGHT THE
WAY THE KENTUCKY SUPREME
COURT HANDLED THIS WOULD BE
THE WAY TO GO.
IS THAT CORRECT?
>> THAT ISN'T A C4, ISN'T
THERE MORE THE STATE WOULD
HAVE TO PUT ON IN A PROBABLE
CAUSE DETERMINATION THAN
JUST --
OR ARE YOU SAYING IT'S THE
SAME AS A C4?
>> I'M SAYING IT'S THE SAME
AS A C4.
THE STATE HAS TO PRESENT A
CASE.
THAT CAN BE DONE BY SHOWING
THIS CURRENT FACT IN AT HYMN
OF THE MOTIONS BEING FACT.
, IF ANY, ON THOSE FACTS
THEY HAVE A CASE, AND IT WAS
UNLAWFUL, THAN THE MOTION IS
DENIED AS A MATERIAL
DISPUTE, AND IT SHOULD
PROCEED TO TRIAL.
THAT ANSWERS YOUR HONOR'S
QUESTION.
I WOULD SUGGEST THAT
KENTUCKY IS EXACTLY THE SAME
IS HOW OUR COURTS ARE
ALREADY DIRECTED TO PROCEED.
NOTHING HAS CHANGED EXCEPT
THAT THE DOCK RATE HAS BEEN

COD FIED AND EXPANDED TO
HAVE A PRETRIAL
DETERMINATION MADE.
SUMMER JUDGMENT HAS BEEN THE
MOTION FILED TO DETERMINE A
PRETRIAL IMMUNITY.
THIS COURT HAS SAID A C4
MOTION IS IDENTICAL TO THAT

MOTION.
THEREFORE WE SHOULD COULDN'T
WITH CURRENT RULES OF
PROCEDURE AND PRUDE BUSINESS
AS USUAL ON OUR CRIMINAL
CASES.
>> THE SO LET ME --
YOUR POSITION IS THAT YOU
HAVE A MOTION FILES
PRE-TRIAL TO DISMISS BASED
ON 776.032, CORRECT?
AND THAT WE HAVE A HEARING
ON THAT.
AND THAT THE COURT DECIDE
THAT THE DEFENDANT HAS NOT
DEMONSTRATED THAT HE OR SHE
IS ENTITLED TO IMMUNITY, THE
NEXT STEP IS TO GO TO TRIAL,
AND AT THAT TRIAL, THE ISSUE
CAN STILL BE RAISED IN THE
FORM OF SELF DEFENSE
AFFIRMATIVE DEFENSE,
CORRECT?
>> YES.
>> AND IF THE DEFENDANT IS
PREVAILED ON HIS
SELF-DEFENSE MOTION, ON HIS

AFFIRMATIVE DEFENSE, IS HE
GOING TO BE ENTITLED TO
RECOUPMENT OF FEES OR
SOMETHING?
>> NO, THAT'S THE CIVIL.
THAT IS TOTALLY RELATED TO
CIVIL CASE.
IT JUST SEEMS TO ME THAT
WE'RE GOING TO HAVE A
HEARING ON IMMUNITY, AND
THEN WE'RE GOING TO, IF HE
LOSES ON THAT, HE'S GOING TO
RAISE THE SELF-DEFENSE,
WHICH WE KNOW HAS ALWAYS
BEEN THERE, AND HOW DO YOU
PREVAIL --
I'M JUST NOT SURE.
>> SUBSECTION THREE, YEA,
SUBSECTION THREE
SPECIFICALLY REFERS TO
EXPENSES INCURED WITH
FIGHTING A CIVIL ACTION.
THAT DOESN'T RELATE TO THE

CRIMINAL TRIAL.
THAT IS SOLELY THE EXPENSES
IN A SELF ACTION.
THAT DOESN'T HAVE A BARING
ON THE DETERMINATION WE'RE
HAVING HERE.
>> DOESN'T IT HELP YOUR
CASE.
THE COURTS SAID IT HAD TO BE
A COURT FINDING, ASSUMING
THAT WAS A COURT FINDING,
AND A CRIMINAL ACTION WHERE

SUBSECTION THREE ONLY REFERS
TO A CIVIL ACTION.
>> I AGREE WITH THAT WERE
YOUR HONOR.
>> PREVIOUSLY, BUT IN THE
PROCESS THAT YOU THINK IT
SHOULD FOLLOW, FILE A MOTION
TO DISMIS, LOSE IT, YOU GO
TO TRIAL.
IF THAT'S THE PROCESS, HOW
HAS THIS CHANGED ANYTHING?
THAT'S HOW IT'S ALWAYS BEEN?
I MEAN, IT CHANGES.
>> I WOULD DISAGREE, THE
STATUTE QUALIFIES A
PRE-TRIAL IMMUNITY.
THE CASE TALKED ABOUT C4 NOT
BEING THE PROPER WAY TO DEAL
WITH THE SELF-DEFENSE ISSUE
>> BUT YOU'RE SAYING THAT
THERE IS NO, THERE CAN NEVER
BE A PRE-TRIAL DETERMINATION
THAT A PERSON IS IMMUNE.
IF THERE CAN NEVER BE ONE,
THE ONLY THING LEFT IS A
AFFIRMATIVE DEFENSE.
>> I'M SAYING IT CAN BE
BASED ON THE FACTS DEDUCED
IN A C4 MOTION AND ANY
HEARING THAT TAKES PLACE
WITH RESPECT TO THAT MOTION.
>> BUT YOU CAN'T HAVE A
HEARING ON A C4 MOTION.
NOT ON EVIDENTIARY HERING IN
THE SENSE THAT THE DEFENSE
IS ARGUING.

UNDER THE RULES, THE JUDGE
CAN TAKE ANY EVIDENCE >> THE

STATE FILES, AND IT REQUIRES
THE JUDGE DENY IT'S.
>> IF THE FACTS MATERIAL
FACTS ARE IN DISPUTE.
THE REASONABLENESS OF THE
DEFENDANT'S ACTIONS.
GRANTEDED THERE CAN BE LOTS
OF DISPUTED FACTS, BUT
MATERIALLY DISPUTED FACTS IS
A TERM OF OUR RECOGNIZED BY
THIS COURT IN LONGSTANDING
CASE LAW.
THERE IS A REMEDY PRETRIAL,
IT'S NOT SIMPLY SOME OF THE
FACTS ARE IN DISPUTE.
THE MATERIAL ATY HAVE TO BE
--
I THINK IT'S AN IMPORTANT
DISTINCTION TO RECOGNIZE
THERE IS A PRETRIAL REMEDY.
NANNY THIS CASE I WOULD
ARGUE THE ISSUE HAS BEEN
WAIVED, HE'S WAIVED.
>> I'D LIKE TO KNOW HOW YOU
WAIVE SOMETHING BY NOT
TAKING AN EXTRAORDINARY
WRIT.
THERE'S NO PROVISION IN THE
RULE FOR AN APPEAL FROM
THAT.
>> I WOULD ARGUE IS LOOKING
AT THE PROCEDURE OF THE
CASE, NOW WE'VE GONE THROUGH

AN ENTIRE TRIAL.
>> THAT DOESN'T MAKE ANY DIFFERENCE.
IT'S A PRE-TRIAL MOTION, IT'S BEEN DENIED, YOU DON'T LOSE YOUR RIGHT TO SEEK REVIEW OF THAT.
>> I WOULD THINK UNDER THESE CIRCUMSTANCES AND THE RULE AND THE STATUTE, THE PLAIN MEANING IS HE CAN RAISE THE PRE-TRIAL IMMUNITY, BUT IT'S NONSENSICAL TO SAY THAT I CONTINUE TO HOLD THE RIGHT, YOU'RE BACKING THE STATE INTO A CORNER AND GIVING THEM NO RIGHT TO APPEAL ANY

RULING AGAINST THEM.
>> I DON'T SEE ANY LEGAL THEORY THAT YOU CAN MAKE A LEGITIMATE ARGUMENT THAT THE DEFENDANT WAIVES ALL REMEDIES BECAUSE THEY DON'T SEEK AN EXTRAORDINARY WRIT WITH REGARD TO THE PRETRIAL RULING, I DON'T SEE ANYWHERE IN THE LAWS.
IN THIS CASE, THE CASE PROCEEDED TOE TRIAL, THE DEFENDANT FILED A MOTION.
>> HOW DO YOU CHALLENGE A RULING THAT'S NEVER BEEN REVIEWED.
>> I WOULD SAY IT'S NOT A RULING THAT HAS NOT BEEN

REVIEWED NOW HE HAS ARGUED
FOR SELF DEFENSE AND A
MOTION FOR NEW TRIAL BASED
ON THE SELF-DEFENSE
ARGUMENT.
IT WOULDN'T LOSE THE RIGHT
TO APPEAL THIS FAMILIAR
DEFENSE AS I WOULD CALL IT.
>> WELL IT'S TWO DIFFERENT
THINGS, IMMUNITY GOES TO
SUBJECT MATTER JURIS DIX.
>> CORRECT?
>> CORRECT.
>> IT HAS NOTHING TO DO WITH
JURISDICTION.
>> I WOULD AGREE WITH THAT
BUT UNDER THIS STATUTE THE
LEGISLATURE CALLED IT IMMUNE
FROM PROSECUTION, THEY MADE
IT A CONTINUUM, IT'S REALLY
A PRE-TRIAL DEFENSE THAT YOU
CAN'T PROSECUTE ME.
>> YOU SAY IT'S A MISNOMER,
BUT THAT'S THE WORD THAT THE
LEGISLATURE USED.
>> I RECOGNIZE THAT, BUT IN
PRACTICE, YOU CAN RAISE THE
IMMUNITY PRETRIAL, YOU CAN'T
PROSECUTE ME.
AT THE TRIAL THE DEFENDANT
ARGUE IT'S WAS SELF DEFENSE.
IT IS ONE IN THE SAME, BUT

HOW YOU DESCRIBE IT, AND THE
PLAIN READ E.G. IS IMMUNITY,
YOU CAN'T PROSECUTE ME.

IT CAN BE RAISED IT STARTS
AT ARREST AND CONTINUES AS
THEY DEFINE CRIMINAL
PROSECUTION INCLUDING
PRE-CRIMINAL PROSECUTION.
>> GOING BACK TO THE FOURTH
DISTRICTS OPINION IN
VIRGINIA --
IT SEEMED THEY WERE
STRUGGLING WITH THERE WAS A
PROCEDURE IN THE CURRENT
RULES THAT WOULD ALLOW A
FACTUAL DETERMINATION TO BE
MADE.
AND IF THAT'S ALL THEY WERE
SAYING, THEN IT SEEMS TO ME
WE CAN EITHER THROUGH WHAT
JUSTICE SAID, YOU CAN FILE
THIS THROUGH A RULE,
WHATEVER WE SAY, BECAUSE
WE'RE TALKING ABOUT
PROCEDURE.
BUT YOUR ARGUMENT TODAY IS
NOT THAT THE RULES ARE WHAT
ARE HAMSTRINGING US, BUT
WHAT --
HOW WE TRADITIONALLY DEAL
WITH IMMUNITIES, IS THAT
YOUR --
PART OF WHAT YOUR POSITION
IS?
PAUSE YOU WOULD AGREE IF
IT'S JUST THE FINISH, YOU
CAN'T DO THIS BECAUSE THE
RULE ISN'T IN PLACE TO DO
IT, ALL WE HAVE TO DO IS

AMEND THE RULE.
>> I UNDERSTAND.
>> SO LET'S GO BACK TO THE IDEA WHY IT IS THAT THE CONCEPT OF IMMUNITY FROM PROSECUTION SHOULD BE DEALT WITH AKIN TO A SUMMARY JUDGMENT PROCEDURE.
VS., A JUDGE MAKING A FACTUAL DETERMINATION.
HOW DO WE, THE LEGISLATIVE

INTENT, MAKE THAT DECISION?
>> I WOULD AGAIN SUGGEST WE LOOK DIRECTLY AT THE PLAIN LANGUAGE OF THE STATUTE.
A PERSON WHO USES FORCE, AS PERMITTED UNDER THE RULES IS IMMUNE FROM PROSECUTION AND CIVIL ACTION.
THERE'S NO CHANGE IN HOW TO PROCEED, NOW YOU CAN RAISE IT IN A CRIMINAL CASE, AND AT CIVIL CASES HAVE SHOWN US IT IS RAISED IN A MOTION FOR SUMMARY JUDGMENT.
THERE SHOULD BE NO CHANGE, IT'S JUST ADDING ANOTHER LAYER TO WHAT CAN BE RAISED PRETRIAL.
>> MAYBE WE SHOULD BE CHANGING THE WAY IT'S DONE CIVILLY IF SOMEONE IS TRULY IMMUNE FROM SOMETHING, THEN THEY HAVE A RIGHT NOT TO HAVE TO BE SUBJECTED TO A

PROSECUTION OR A CIVIL
ACTION.
WHY ISN'T IT BETTER IN A
CRIMINAL CASE THAT THAT
IMMUNITY SHOULD BE LITIGATED
PRE-TRIAL?
AND I KNOW THAT THE
DEFENDANT'S AT LEAST IN ONE
CASE IN THE 5TH DISTRICT
SAID WHERE DO WE COME UP
WITH THE PREPONDERANCE OF
THE EVIDENCE, THE STATE
SHOULD HAVE TO BARE THE
BURDEN OF SHOWING THEIR NOT
IMMUNE.
THAT'S WHY I ASKED ABOUT
WHERE THAT STANDARD CAME
FROM.
I FEEL LIKE WE'RE JUST
TAKING THIS OUT OF THIN AIR
WHEN WE'RE COMING UP WITH
PREPONDERANCE OF THE
EVIDENCE VS. NO IT'S
DIFFICULT WITH A SUMMARY
JUDGMENT.
IF IT'S A TRUE IMMUNITY,

THERE ISN'T A MEANINGFUL
PRETRIAL.
>> I DISAGREE.
THIS TYPE OF IMMUNITY NOT TO
GO TO TRIAL HAS BEEN DEALT
WITH AND IT IS A MEANINGFUL
LITIGATION DETERMINING IF
THE MATERIAL FACTS ARE IN
DISPUTE.

THE PREPONDERANCE OF
EVIDENCE --
I WOULD AGREE.
THERE'S NO PLACE IN OUR LAWS
THAT THAT STANDARD WILL BE
PROVED A MOTION TO SUPPRESS
AND THE EXAMPLES GIVEN ARE
OPPOSITE.
THOSE ARE EVIDENTIARY, NOT
THE WHOLE CRIMINAL CASE.
THIS IS ESSENTIALLY GIVING A
JUDGE PRETRIAL UNDER THE
DEFENDANT'S SCENARIO, THE
ABILITY TO ACQUIT PRETRIAL
WHEN THIS HAS A LONGSTANDING
HISTORY, OF WE PREFER TO
HAVE A JURY TRIAL IF THERE'S
A MATERIAL DISPUTE IN THE
FACTS.
>> WHAT I HEAR YOU ARGUING
IS A PRETRIAL DECISION.
IT'S NOT THE DEFENDANT'S
BURDEN, IT'S THE STATE'S
BURDEN, ANDS IF NOT
PREPONDERANCE, IT WILL BE ON
BEYOND A REASONABLE DOUBT.
ARE YOU SAYING WE HAVE AN
EVIDENTIARY HEARING TO PROVE
THIS DEFENSE, CALL IT
IMMUNITY OR AFFIRMATIVE
DEFENSE HAD WHATEVER YOU
WANT TO CALL IT, THE RIGHT
TO PROVE BEYOND A REASONABLE
DOUBT.
>> NO, I'M ABSOLUTELY NOT
ARGUING THAT.

OUR POSITION IS A PRETRIAL
C4 MOTION IS PROPER, AND IS
A GOOD RULE THAT HAS BEEN
FASHIONED BY THIS COURSE TO
USE.

READING IN THE RULES.
THERE ARE TIME LIMITS AND
DIFFERENT THINGS THAT
INVOLVE WHETHER IT'S A C4,
IT'S SUITED TO DECIDE IF THE
STATE HAS A CASE TO MOVE
FORWARD.
WE NEED TO USE OUR RULES TO
DECIDE PRETRIAL WHETHER OR
NOT THE IMMUNITY DEFENSE
APPLIED TO THIS DEFENDANT.
IF IT'S JUST PRY MA FASCIA,
IT ELIMINATES THE PURPOSE.
>> IT'S TO GIVE THE
DEFENDANT A CHANCE TO ARGUE
TO THE COURT, I ACTED IN
SELF DEFENSE, PARTICULARLY
IN THIS CASE, THE GRUESOME
FACTS OF THIS CASE TAKE IT
TO AFTER DIFFERENT LEVEL
THAN THE GENERAL CASES WE
MAY BE TALKING ABOUT.
THE MATERIALITY IS A
DECISION FOR THE JUDGE TO
MAKE.
AND IF THE DEFENDANT IS
TRULY IMMUNE, THEN FROM THE
FACE OF THE FACT THERE'S
WILL BE NO CASE FOR THE
STATE TO PROVE AND GO TO

TRIAL.
THAT'S WHY C4 IS THE PERFECT
MOTION TO FILE.
>> YOU SAID IT'S NOT --
IT'S NOT A MOTION TO
SUPPRESS.
BUT A MOTION TO SUPPRESS,
THE BURDEN IS ON THE STATE
TO PROVE THERE WAS
PROBABLY CAUSE FOR THE
SEARCH, CORRECT?
>> THERE IS AN EVIDENTIARY
HEARING.
>> AGAIN I WOULD DISTINGUISH
A MOTION TO SUPPRESS.
WE'RE NOT DEALING WITH THAT
THE STATE.
YOU'RE DEALING WITH SOLELY
EXCLOUDING EVIDENCE.
THAT DOESN'T PREVENT THE

STATE FROM GOING TO TRIAL.
HERE THE STATE WOULD BE
PREVENTED FROM PRESENTING
ALL THE EVIDENCE THAT WOULD
HAVE BEEN FOUND TO PROVE
THIS WAS UNLAWFUL.
>> IT WOULD BE SWITCHING IT
TO A JUDGE MAKING THAT
DETERMINATION PRETRIAL, AND
THEY'RE NOT --
THE DEFENDANT IS NOT ARGUING
THAT WITH THEIR RIGHT TO A
JURY TRIAL, AND THE STATE
WOULDN'T MAKE THAT ARGUMENT
EITHER.

I MEAN ISN'T THAT, IN A WAY,
IT SEEMS LIKE AN EFFICIENT
WAY TO HANDLE IT IN CASES
WHERE THERE IS NO QUESTION
BUT THAT THERE WAS, YOU KNOW
THIS WAS DONE IN
SELF-DEFENSE.
>> I WOULD DISAGREE, AND
LOOK
TO THE KENTUCKY DECISION HOW
A TRIAL COULD OPEN THE DOOR
TO ABUSES OF THAT.
WE HAVE A RULE IN FLORIDA
THAT DISCUSSIONS HOW AND
WHEN TO FILE A MOTION TO
DISMISSION INFORMATION OR
INDICTMENT WHICH IS ESSENCE
IS WHAT MOTION FOR IMMUNITY
IS ASKING THEM TO DISMISS
THE CHARGEING DOCUMENT, AND
UNDER C4, THE ONLY ONE THAT
WOULD AFFLY IN THIS CASE, OF
THE DEFENDANT HAS TO SHOW
THERE NO DISPUTE IN THE
FACTS THAT HE IS IN FACT
IMMUNE BASED ON A
SELF-DEFENSE CLAIM.
HOWEVER WHEN THE MATERIAL
FACTS REGARDING THAT DEFENSE
ARE IN DISPUTE UNDER OUR
CURRENT RULES AND SUMMARY
JUDGMENT FROM CIVIL CASES,
THAT IS THE PROPER PROCEDURE
TO USE.
>> HISTORICALLY SPEAKING.

I MENTIONED EARLIER, WE DO
HAVE A HISTORY IN THIS STATE
OF HAVING EVIDENTIARY
HEARINGS ON DISMISSED
PRETRIALS, WE DID IT WHEN WE
USED TO HAVE THAT.
WHY CAN'T WE HAVE IT HEAR.
>> I DISAGREE IN THE SENSE
UNDER THE TRANSACTION
IMMUNITY SENSE, THOSE WERE
--
THE JUDGE WASN'T MAKING
CREDIBILITY FINDINGS, THE
JUDGES WERE DETERMINING
CONFLICTING EVIDENCE.
THERE WAS NO CREDIBILITY
FINDING BEING MADE IN THOSE
CASES.
SO THAT WOULD BE AN OPPOSITE
TO THE ARGUMENT BEING MADE
HERE.
I UNDERSTAND THAT IT WOULD
BE NICE IF WE HAD A SIMPLE
TRANSACTIONAL IMMUNITY CASE
TO COMPARE, BUT I CITE PAGE
25 WHERE I SITED THE CASE
LAW THAT'S NOT WHAT HAPPENED
IN TRANSACTIONAL CASES.
I ALSO SITED MCSWAIN.
>> YOUR TIME IS NOW EXPIRED.
I ASK THIS COURT TO AFFIRM
THE CONVICTION AND SENTENCE.
>> THANK YOU.
>> THERE ARE SOUND REASONS
WHY THE C4 MOTION IS NOT THE
PROPER VEHICLE TO IMPLEMENT

THE STATUTE.
I LOWING THE C4 MOTION TO
RENDER IMMUNITY IT
MEANINGLESS.
THEIR REQUIRED TO DENY THE
MOTION THAT THERE'S ANY
CONFLICT IN THE EVIDENCE.
ANY CASE THAT GETS FILED,
ANY CHARGES THAT ARE
BROUGHT, THERE'S ALREADY
BEEN A DETERMINATION THAT
THERE'S A CONFLICT IN THE
EVIDENCE.
THE STATES AS AN ETHICAL

DUTY NOT TO FILE CHARGES
WHERE IT IS UNCONTESTED THAT
THE DEGREE OF FORCE USED WAS
THE PROPER DEGREE OF FORCE
UNDER THE CIRCUMSTANCES.
SOT STATE IS NOT EVEN GOING
TO BE FILING CHARGES UNLESS
THERE IS SOME DISPUTE IN THE
EVIDENCE THAT THE FORCE WAS
NOT JUSTIFIED.
SO IT WAS NEVER EVEN GOING
TO GET TO THE LEVEL FOR THE
MOTION TO DISMISIF IT WAS
UNS DISPUTED.
BUT BY MAKEST THE C4 MOTION
THE VEHICLE TO DETERMINE
IMMUNITY, IT HAS TO BE
DENIED EVERY TIME.
AND, SO WHAT IS THE MOTION
THAT SHOULD BE FILED?
>> THERE SHOULD BE A MOTION

TO DISMISS BASED ON 776032
THAT WOULD ALLOW THE TRIAL
COURT TO TAKE EVIDENCE, AND
ALLOW THE DEFENDANT TO
APPROVE BY PREPONDERANCE
THAT HE'S ENTITLED TO
IMMUNITY.
>> THE DEFENDANT WOULD
TESTIFY IN SUCH A HEARING?
>> THE DEFENDANT COULD
TESTIFY AND PUT ON WHATEVER
EVIDENCE HE CHOOSES THAT
WOULD HELP HIM TO MEET THAT
BURDEN THAT THE FORCE HE
USED WAS JUSTIFIED.
>> WHERE DO YOU OBTAIN THE
BURDEN OF PROOF THAT
STANDARD, HELP ME WHERE YOU
SAY THAT COMES FROM?
>> WELL IN FLORIDA,
SUBSTANTIVE ISSUES OF LAW,
PRE-TRIAL, FOR EXAMPLE, THE
EXAMPLE HATS BEEN GIVEN
ABOUT A MOTION TO SUPPRESS.
--
SUPPRESS.
IN A VIOLATION HEARING,
PRESUMPTION IS THE STANDARD
USED TO DETERMINE IF THE

DEFENDANT VIOLATED HIS
PROBATION.
IT'S A STANDARD HIGHER THAN
PROBABLE CAUSE, LOWER THAN
PROOF BEYOND A REASONABLE
DOUBT.

AND IT SEEMS TO BE A GOOD
MIDDLE GROUND FOR PRETRIAL
DETERMINATIONS, IT DOESN'T
PUT THE BURDEN ON THE STATE
TO PROVE BEYOND A REASONABLE
DOUBT, AND IT'S NOT A MINNY
TRIAL, IT ALLOWS THE COURT
AN OPPORTUNITY TO HEAR AND
WAY EVIDENCE.
>> IT DOES SEEM TO BE ALMOST
A MINI-TRIAL.
IT SEEMS TO ME WHETHER OR
NOT THE PERSON IS ENTITLED
TO THE IMMUNITY.
>> EXCEPT THAT IN AN ACTUAL
TRIAL THE BURDEN IS GREATER.
>> SO YOU'RE SAYING IT'S NOT
AN ACTUAL TRIAL, BUT IT IS,
IT'S THE ESSENCE OF THE
CASE.
>> IT'S AN OPPORTUNITY FOR
THE DEFENDANT, AND THE
BURDEN IS ON THE DEFENDANT
AT THIS POINT TO PROVE WHY
HE IS ENTITLED TO IMMUNITY.
>> IN ANOTHER DISTRICT,
ANOTHER PUBLIC OFFENDER HAS
SAID THE BURDEN SHOULD BE ON
THE STATE.
>> AND WE'RE WILLING TO
ASSUME THAT THE BIRDIE
SHOULD BE ON THE DEFENDANT.
IT SEEMS PROPER THAT THE
DEFENDANT IS THE ONE SEEKING
THIS SPECIAL
PRIVILEGE, AND IT WOULD SEEM

DIFFICULT FOR THE STATE TO PROVE THAT HE'S NOT ENTITLED TO IT, SO THE BURDEN SHOULD BE ON HIM TO PROVE.
>> YOUR TIME HAS NOW EXPIRED, WE THANK YOU VERY MUCH.
>> THANK YOU.

>> THE COURT WILL NOW TAKE IT'S MORNING RECESS BEFORE CONSIDERING THE LAST CASE OF THE DAY.
>> PLEASE RISE.
¶ ¶