

2015 WL 9703443 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Eleventh Judicial Circuit
Miami-dade County

STATE of Florida, Plaintiff,
v.
Teddy GODFREY, Defendant.

No. F13-26412.
December 24, 2015.

Order Finding Immunity Pursuant to [Section 776.032, Florida Statutes](#), and Dismissing Information

Miguel M. de la O, Judge.

*1 SECTION 15

THIS CAUSE came before the Court on Defendant, Teddy Godfrey's ("Godfrey"), Motion to Dismiss Pursuant to [Florida Statutes section 776.032 \(2013\)](#) (colloquially known as the "Stand Your Ground" law) ("Motion").

The Florida Legislature enacted Stand Your Ground in 2005. Stand Your Ground significantly modified the common law right of self-defense by abolishing the well-established duty to retreat¹ before using deadly force, and bestowing immunity from prosecution on a defendant who acts in lawful self-defense.

While Florida law has long recognized that a defendant may argue as an affirmative defense at trial that his or her use of force was legally justified, [section 776.032](#) contemplates that a defendant who establishes entitlement to the statutory immunity will not be subjected to trial. [Section 776.032\(1\)](#) expressly grants defendants a substantive right to not be arrested, detained, charged, or prosecuted as a result of the use of legally justified force.

Dennis v. State, 51 So. 3d 456, 462 (Fla. 2010).

The Court held an evidentiary hearing (the "Hearing") on December 4, 2015, and heard closing argument by counsel on December 16, 2015, to determine if Godfrey could establish by a preponderance of the evidence that he is entitled to immunity from prosecution. See *Bretherick v. State*, 2015 WL 4112414, *7 (Fla., July 9, 2015) ("We now agree with all of the district courts and hold that the defendant bears the burden of proof, by a preponderance of the evidence, to demonstrate entitlement to Stand Your Ground immunity at the pretrial evidentiary hearing."); *State v. Vino*, 100 So. 3d 716, 717 (Fla. 3d DCA 2012) ("[w]hen a defendant invokes the statutory immunity, the trial court must hold a pre-trial evidentiary hearing to determine if the preponderance of the evidence warrants immunity"). The parties introduced the testimony of five witnesses and a number of exhibits: Jamie Bethel ("Bethel"), Godfrey, Jeffrey Givens ("J. Givens"), Det. Jessica Alvarez ("Det. Alvarez"), and Dr. Mark Shuman ("Dr. Shuman").

Having heard the testimony of the witnesses, and reviewed the exhibits introduced, the Motion is granted.

I. THE HEARING.

A. THE WITNESSES.

1. JAMIE BETHEL.

Bethel is a criminalist with the Miami-Dade Police Department. Bethel performed DNA analysis in this case under police number PD131109413656. The State and the Defense stipulated that Bethel is an expert in DNA analysis. Bethel performed DNA analysis on a number of items provided to the MDPD crime lab.

Item #3 was a black and silver gun. Bethel swabbed the gun at two different areas. Item 3A is the general swabbing of the gun. Item 3B is the front site of the gun (the area on top of the gun above the end of the barrel). Bethel obtained a male DNA profile from Item 3B that matched the DNA profile from Item 15 (*i.e.* Stewart's oral swab). Bethel found no DNA on any other part of the gun.

*2 Bethel was also given standards for Givens. Bethel found Givens' DNA on the tip of the screwdriver. Givens was also a minor contributor on fingernail scrapings (Item #16) belonging to Givens. Godfrey was a major contributor to Item 16. The handle of the screwdriver also had Godfrey as the major contributor, but DNA analysis shows other people also handled it.

2. TEDDY GODFREY.

Godfrey has two prior felony convictions. He went to school with Givens. He has known the Givens brothers for over 30 years. Godfrey knows Jeff Givens ("J. Givens") (nicknamed "Bodine") better. Givens' nickname was Sunshine. Godfrey worked construction part-time with Givens. Godfrey also worked at the Lady Luck social club after-hours.

Godfrey had a few conflicts with Givens over the years. In 1991-92, Godfrey worked the door and played music as a DJ at a club called Tit-for-Tat. J. Givens worked there also. One night, Givens was kicked out and wanted to get back into the club. While trying to get back in, Givens sucker punched Godfrey and knocked out some teeth. Givens and Godfrey didn't speak for about a year thereafter. At the time, Givens had been drinking dark liquor.

Givens and Godfrey had another fight in 2010 at the Lady Luck. Givens was working the door, while Godfrey was bar manager and bartender. The general manager told Godfrey not to serve Givens any more. There was a limit of 3 drinks per night to employees, and Givens was over the limit. Givens, nevertheless, grabbed a bottle and Godfrey took the bottle away. When Givens tried to hit Godfrey in the head, Godfrey punched him. When Givens is high or drinking he is a different, more aggressive person.

After the Lady Luck closed on May 23, 2012, the owner asked Godfrey to live there and be security for the premises. In 2013, Godfrey was living at the Club with Givens for about 3-4 months. Later, J. Givens broke his ankle and came to live at the Club also. All three would get high together. Godfrey and Givens would snort cocaine, and all three drank alcohol.

All three men slept in different parts of the closed club. There was no electricity after June 2013, and, therefore, no light or air conditioning. At first, the men would steal electricity from a nearby business. But on night of the incident, they were not stealing electricity. Givens had brought a generator to the club, but he would lock it up and J. Givens and Godfrey could not use it unless Givens was present. When Givens not present, J. Givens and Godfrey would open the front and back door to get a cross draft. The back door had to be propped to keep it open. J. Givens had no keys to the club. Godfrey had key to everything. Givens only had a key to the front door.

The incident occurred on a Friday. Godfrey and Givens went to the wake of a lady from church around 7 or 8 pm. The construction boss came by and paid Godfrey and Givens at the wake.

Givens purchased a baggie of cocaine with part of his wages. Givens started getting high on cocaine and drinking liquor. Givens started talking trash as he usually did when under the influence. At some point, Givens went off on his own and J. Givens and Godfrey went back to Lady Luck's. It was about 80 degrees. They arrived at Lady Luck's around 3 AM. Godfrey had no idea where Givens was located. Godfrey opened front and back doors to let fresh air into the club.

J. Givens and Godfrey went to sleep with the back door propped open. Godfrey awoke when the back door slammed shut and Godfrey was in pitch darkness. Godfrey heard J. Givens move to the back door to prop it back open. This happened a number of times. At one point, Godfrey got up and put a shovel to prop open the back door because Givens had thrown the stick the men usually used to prop open the door into the parking lot. Givens came back and started yelling at Godfrey, got a gun from his bed and threatened to shoot Godfrey and put Godfrey next to his "dead daddy." Godfrey went back to bed, not really afraid at this point.

*3 Givens started slamming things and talking trash. Godfrey went back to sleep until the back door again slammed shut. Godfrey got back up. The shovel was gone, so Godfrey used pool stick to prop door open this time. As he was doing this, Givens came from behind his truck and slapped Godfrey with the gun on the left side of his jaw, drawing blood. Givens mocked Godfrey for now having a scar on his face.

Godfrey says that at this point Givens pulled the trigger but the gun jammed. Godfrey claims he could see the bullet through the barrel when it jammed. Godfrey ran to the front of the Club, went inside, and saw his face in a mirror. Then he went to confront Givens. Godfrey saw Givens in the alley about 30 feet away. Godfrey couldn't see exactly what Givens was doing but thought he was doing something with the gun, possibly hiding it.

Givens started to come back and Godfrey threw a rock at him, but doesn't know if he hit him. Godfrey ran to the back door. Did not know where J. Givens was at this time. Godfrey then saw Givens coming at him with the shovel over his head. Godfrey picked up a brick and threw it at Givens, but missed. Givens then hit Godfrey with the shovel about 7-8 times along left side from elbow, down his back to his knees. Godfrey took the shovel away, and then Givens hit him on the head on the crown of the head with a brick and Godfrey went down. Givens hit Godfrey 4 to 5 times with the brick on his head. Godfrey was on the ground and Givens was on top of him hitting him with the brick.

Godfrey had a screwdriver that he had picked up from inside the Club earlier. Godfrey did not use it until after Givens was hitting him with the brick. During the battle, Givens bit Godfrey's hand. At one point, Godfrey heard J. Givens saying, "are you going to kill each other?" At that point, Godfrey and Givens stopped fighting and Givens walked away still alive. Godfrey did not see him or J. Givens thereafter.

Godfrey was trying to keep from blacking out from the blows he received to the head from the brick. He went to a water hose and washed off, and removed his bloody clothes. Godfrey went back to bed with a terrible headache. He was awoken by the police, who took him to rescue squad and then to police station. They wrapped his head with bandages placed him in a holding room for 10-15 hours. Godfrey spoke to a Detective for hours. At one point, a court reporter came into the room and took a statement from him. Godfrey cannot read or write. He never read the transcript of his statement.

Godfrey had a headache and body aches all day, but was not offered medical care. Pictures show injuries to his left cheek (consistent with being struck by a gun), to his body (consistent with being struck by a shovel), to his finger (consistent with being bitten), and to his head (consistent with being hit by a brick).

Godfrey weighed about 290 at the time of the incident, and weighs about 190 now. He's 6 ft tall.

3. JEFFREY GIVENS.

J. Givens is Givens' brother. J. Givens works in construction. He has been friends with Godfrey for over 40 years.

On November 9, 2013, J. Givens was living at the Lady Luck. He had hurt his ankle severely and could not pay his rent. He decided to live with his brother and Godfrey. There was no bad blood between the three men. There were occasional disputes, but all verbal.

The night before incident, all three went to a wake. They were paid that day. When J. Givens got back to the Club, Godfrey was there but Givens was not. Givens came in around a quarter to 7. Both Godfrey and J. Givens were still awake. After some talking, they all went inside to go to sleep.

*4 An argument started when J. Givens went to open the back door to get a breeze. After he did so, Givens closed it. J. Givens opened it again and the brothers exchanged some words. J. Givens went to the front of the club to sleep because he did not want to have a confrontation with Givens. Godfrey then went to open the door and Givens and Godfrey got into an argument. Givens heard the mention of dead family members. After J. Givens went to the front and sat with feet outside of the club, he could not hear what was being said in the club.

J. Givens was gone about 7-8 minutes and then got up to get another beer. He did not hear anything. If he had, he would have intervened. A few minutes later he got up and walked to the back. When he reached the back, he saw Godfrey straddling Givens holding a screwdriver over his head about to plunge it down into Givens' chest. J. Givens yelled for him to stop. J. Givens heard Givens say "You ain't got to do this man." Godfrey stopped and both Givens and Godfrey got up. Both were covered in blood. J. Givens ran to the gas station and called to 911.

4. DET. JESSICA ALVAREZ.

Det. Alvarez is a homicide detective with Miami-Dade Police Department. On November 9, 2013, she responded to the Lady Luck. Givens was no longer there. Godfrey was still at the scene. She had J. Givens transported to station so someone could speak to him. She returned to the station to interview Godfrey. She had Godfrey initial the Miranda form. Godfrey never requested a lawyer. The pre-interview commenced five and a half hours before the formal statement.

Godfrey did not mention that Givens tried to shoot him or that the gun jammed, or that Givens bit his finger, or the number of times Givens hit him with the shovel, although Godfrey did mention Givens hitting him with the shovel.

An unloaded gun was located at the scene.

5. DR. MARK SHUMAN.

The parties stipulated to the Court relying on the deposition testimony of Dr. Shuman, the associate medical examiner who assisted in performing Givens' autopsy. Of particular relevance to the Motion, Dr. Shuman testified that he could not determine whether Givens was stabbed while he was on top of his assailant or when his assailant was on top of Givens, or even whether the assailant was to Givens' side. Deposition of Dr. Mark Shuman ("Shuman Depo.") at 16-18; 23; and 50.

Although the State argues that Dr. Shuman testified that a number of Givens' wounds were delivered in a "downward path," this does not mean the assailant delivered the wounds while sitting on, or hovering over, Givens. This is obvious for two reasons. First, Dr. Shuman, on no less than five occasions, repeated that he could *not* testify as to the relative positions of Givens and his assailant based on the wounds. *Id.* Second, Dr. Shuman explained that what he meant by downward is that the wounds went from the direction of head to toe (as opposed to upward from toe to head, or from front to back or back to front). Shuman Depo. at 52 ("North meaning the top of their head.").

In addition, Dr. Shuman found that Givens' blood alcohol content was .155 based on blood from his chest, and .179 based on his ocular fluid. Shuman Depo. at 35; and 48-49. Givens also tested positive for cocaine (*id.* at 38), which was consumed around the same time as the alcohol. *Id.* at 42.

B. THE EXHIBITS

Godfrey introduced a number of pictures as exhibits, including pictures of Givens' gun (Exhibit F), and of injuries to Godfrey's skull (Exhibit I), left elbow (Exhibit C), back (Exhibit D), knees (Exhibits B, K, M and L), left cheek (Exhibit J), and middle left finger (Exhibit A).

II. FINDINGS OF FACT.

*5 The DNA evidence establishes that, consistent with Godfrey's testimony, the tip of the gun touched Godfrey. It also establishes, although not definitively, that the screwdriver was touched by someone other than Godfrey, which would support Godfrey's testimony that he and Givens struggled over the screwdriver. Finally, the DNA evidence underneath Givens' fingernails is consistent with a fierce hand-to-hand battle, but sheds no light on who was the aggressor.

The exhibits introduced into evidence show that Godfrey received a serious beating. The only testimony before this Court is that the beating was administered by Givens. The Court, after carefully watching Godfrey testify at the hearing, finds his story credible, in particular because it is entirely consistent with the physical evidence.

The State, by contrast, relies on omissions and inconsistencies between Godfrey's sworn statement and his testimony at the hearing. The State urges this Court to read Godfrey's statement to Det. Alvarez as a comprehensive, contiguous, and chronological recounting of the Godfrey-Givens battle. It is none of those things. It is disjointed and frequently interrupted by leaps forwards and backwards in time. It is also a cautionary tale about the care which must be taken when questioning someone of limited intellectual and/or verbal skills.

Godfrey is literal to a fault in his statement. Asked, for example, what he did with the screwdriver, Godfrey answers: "I tried to stab him." Godfrey Statement at 26. This answer is literally true, but so devoid of context as to be meaningless. When he testified at the Hearing, Godfrey admitted he used the screwdriver to stab Givens, but he did so while Givens was cracking his skull with a brick, *after* Givens pistol whipped *and* beat him with a shovel.

Perhaps the biggest point of contention is whether Givens ever pointed his gun at Godfrey and pulled the trigger causing the gun to misfire. The only "evidence" of this occurring is Godfrey's testimony at the Hearing. The State rightly points out that it is difficult to imagine Godfrey not mentioning this critical event during his sworn statement to Det. Alvarez, or at least during her nine hour pre-interview of him. In response, Godfrey correctly notes that –in light of all the other violence Givens directed at him – Godfrey is entitled to immunity even if Givens never pointed the gun at him. The issue this Court must wrestle with is how much weight to give Godfrey's statements, both during the Hearing and to Det. Alvarez on the date of the incident, if he made up the claim that Givens pointed the gun at him and pulled the trigger.

Ultimately, because the standard of proof is preponderance of the evidence, rather than beyond a reasonable doubt, the Court gives Godfrey's statements enough weight that, even though the Court leaves room for the possibility that his testimony is not perfectly accurate or truthful, the Motion must be granted.

III. CONCLUSIONS OF LAW.

To be eligible for immunity under Stand Your Ground, Godfrey must show by a preponderance of the evidence that he used force as permitted in [Florida Statutes sections 776.012, 776.013, and/or 776.031](#).

A “preponderance” of the evidence is defined as “the greater weight of the evidence,” *Black's Law Dictionary* 1201 (7th ed.1999), or evidence that “more likely than not” tends to prove a certain proposition.

Gross v. Lyons, 763 So. 2d 276, 280 (Fla. 2000). “The legislature’s enactment of section 776.032 placed the burden of weighing the evidence in ‘Stand Your Ground’ cases squarely upon the trial judge’s shoulders.” *State v. Gallo*, 76 So. 3d 407, 409 (Fla. 2d DCA 2011).

*6 To determine whether the immunity afforded by section 776.032 attaches, this Court must “determine whether, based on circumstances as they appeared to the defendant when he or she acted, a reasonable and prudent person situated in the same circumstances and knowing what the defendant knew would have used the same force as did the defendant.” *Mobley v. State*, 132 So. 3d 1160, 1164-65 (citing *Toledo v. State*, 452 So. 2d 661, 663 (Fla. 3d DCA 1984)); see *Viera v. State*, 163 So. 3d 602, 605 (Fla. 3d DCA 2015) (trial court must apply “an objective standard to the totality of the circumstances.”); *Montanez v. State*, 24 So. 3d 799, 803 (Fla. 2d DCA 2010) (section 776.032 calls for an “objective reasonable person standard by which claims of justifiable use of deadly force are measured”).

The State, to its credit, readily admitted at the Hearing that it has no evidence of the events which transpired between Givens and Godfrey on November 9, 2013. It must rely, almost exclusively, on the testimony of Godfrey to defeat the Motion.

Where the burden of proof is preponderance of the evidence, the party bearing the burden loses if the evidence is equipoise. See *Fitzpatrick v. City of Miami Beach*, 328 So. 2d 578, 579 (Fla. 3d DCA 1976) (“As a general rule, the comparative degree of proof by which a case must be established ... in a judicial proceeding ... is a preponderance of the evidence. It is not satisfied by proof creating an equipoise”). Because there are no witnesses to the fatal confrontation between Givens and Godfrey, the State of necessity seeks to undermine Godfrey’s credibility in a desperate attempt to reach equipoise and thus defeat the Motion. However, where, as here, the moving party comes forward with evidence, it is very difficult for the opposing party to prevail by solely relying on the equivalent of the schoolyard taunt “liar, liar, pants on fire.”

Although the State scores some points, the Court concludes that the gaps and inconsistencies in Godfrey’s testimony are more likely due to exaggeration, minimization, pride, ego, and degraded memory, than fabrication, and credits Godfrey’s testimony as generally believable. More importantly, Godfrey’s testimony is *entirely consistent with the physical evidence*. It is this consistency that carries the day for the defense based on a preponderance of the evidence standard, even if the Court does not credit Godfrey’s testimony about Givens aiming the gun at him and pulling the trigger.²

Once this Court credits Godfrey’s testimony, the ruling on the Motion is governed, and foretold, by *Mobley v. State*. In *Mobley*, the defendant shot two men outside a Chili’s restaurant. One of the men had punched Mobley’s friend in the eye moments before the shooting. When that man turned on Mobley, Mobley was able to ward him off; but as Mobley did so, a friend of the first assailant came running up to join the fray. Mobley testified that the second man appeared to reach under his shirt. Not knowing if the man had a weapon, Mobley pulled out a firearm and fatally shot both men. *Id.* at 1163-64. The trial court denied Mobley’s motion to dismiss. The Third DCA reversed, on a petition for writ of prohibition, finding that Mobley was entitled to immunity from prosecution on these facts. *Id.* at 1166.

*7 The parallels between *Mobley* and the instant case are striking, and the differences only serve to strengthen Godfrey’s claim to statutory immunity. First, Mobley armed himself (with a gun he kept in his car) *after* his party and the two decedents exchanged angry words, and *after* Mobley had exited the restaurant and said he was going home. *Id.* at 1163. Mobley could have easily driven off after exiting Chili’s instead of retrieving a gun and returning to the restaurant.

Second, Mobley, like Godfrey, was far larger than his attackers. *Id.* at 1170 (Salter, J., dissenting).

Third, the force used by Mobley's attackers was far less than the force Givens used against Godfrey. In fact, there was no evidence that Mobley's attackers actual had a deadly weapon, only a fear by Mobley that one of the attackers *might* be reaching for an unknown weapon under his shirt. Godfrey, in sharp contrast, was attacked with a gun, beaten with a shovel, bitten, and struck with a brick repeatedly, and he did not defend himself with the screwdriver until after Givens began pounding the brick into his head.

Fourth, both Mobley and Godfrey remained at the scene after defending themselves. There is no flight that might suggest a consciousness of guilt.

Godfrey proved by a preponderance of the evidence that he was defending himself when he stabbed Givens with a screwdriver. The Court rejects the State's assertion that there were two different physical confrontations. Rather, the Court finds that the hostilities between the men only temporarily abated when Godfrey broke away and ran into the Lady Luck where he armed himself with a screwdriver.³

Mobley, at 1164-65.

In *Mobley*, the Third DCA soundly rejected the notion that immunity is unavailable where prior hostilities between the defendant and the victim might make it prudent for the defendant to retreat before hostilities restart.

It may have been more prudent for Mobley and Chico to skitter to their cars and hightail it out of there when they had the chance; however, as even the State concedes and the court below recognized, Mobley and Chico had every right to be where they were, doing what they were doing and they did nothing to precipitate this violent attack. The only relevant inquiry was whether, given the totality of the circumstances leading up to the attack, the appearance of danger was so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of deadly force.

Mobley, at 1166.

Mobley and Godfrey “had every right to be where they were, doing what they were doing and they did nothing to precipitate this violent attack.” The Third DCA found that Mobley qualified for statutory immunity under Stand Your Ground, even though he never saw his assailants brandish a weapon (and they in fact had no weapon), even though Mobley's friend was struck only by a single punch, and even though Mobley shot and killed two people who never actually struck him. Godfrey is entitled to no less where Givens struck him in the face with a gun, where Godfrey was unaware whether the gun was loaded, where Givens struck Godfrey multiple times with a shovel, where Givens bit him, where Givens bashed Godfrey's head with a brick, and where Givens was under the influence of alcohol and cocaine.

*8 The Court finds that based on the evidence presented at the Hearing, Godfrey has established by a preponderance of the evidence that he is immune from prosecution pursuant to [section 776.032, Florida Statutes](#). The Information charging him with Murder in the Second Degree is dismissed.

DONE and ORDERED in Miami-Dade County, Florida this 24th day of December, 2015.

<<signature>>

Miguel M. de la O

Circuit Judge

Footnotes

- 1 “The law of self-defense requires everyone to avoid killing when possible and to retreat, if necessary, and consistent with his own safety [,] before taking life.” *Harris v. State*, 104 So. 2d 739, 743 (Fla. 2d DCA 1958). See generally *Russell v. State*, 54 So. 360, 361 (Fla. 1911); *Regina v. Smith*, (1837) 173 Eng. Rep. 441 (K.B.); and *Regina v. Bull*, (1839) 173 Eng. Rep. 723 (K.B.).
- 2 For purposes of this Motion, the Court has not credited this testimony for two reasons. First, if Givens pointed the gun at Godfrey and pulled the trigger, the Court would grant the Motion with little discussion. In such a scenario, Godfrey would have been under no obligation to assume or hope that Givens had voluntarily disarmed himself and renounced his efforts to kill Godfrey. Godfrey would have been fully within his rights to use deadly force to defend himself any time Givens again approached Godfrey during this fight. Second, the Court does harbor strong reservations about whether Givens pulled the trigger while aiming at Godfrey. Not so strong as to discredit Godfrey's testimony entirely in light of the overwhelming physical evidence corroborating it, but strong nevertheless.
- 3 It is important to parse correctly Godfrey's actions. Godfrey need not prove he was in fear of his life at the time he secured the screwdriver. The proper focus, instead, is on the objective and subjective reasonableness of Godfrey's fear and actions at the time he *used* the screwdriver.
Th[is] standard requires the court to determine whether, based on circumstances as they appeared to the defendant when he or she acted, a reasonable and prudent person situated in the same circumstances and knowing what the defendant knew would have used the same force as did the defendant.