IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
FELONY DIVISION 1

STATE OF FLORIDA,

vs. **Case No.: 2020-CF-3014**

ASHLEY CHRISTINA BENEFIELD,

Defendant.
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ORDER DENYING DEFENDANT'S MOTION TO DISMISS
(Stand Your Ground Immunity)

THIS MATTER came before the court for hearing on July 6 and 7, 2023, on the defendant's Motion to Dismiss, Request for Declaration of Immunity, and Incorporated Memorandum of Law filed February 1, 2023 (Motion or Defendant's Motion). Assistant State Attorneys Suzanne O'Donnell and Rebecca Freel represented the State of Florida. Neil Taylor represented the defendant. All attorneys, parties, and witnesses appeared in person before the court.

Having reviewed the Defendant's Motion, received evidence, heard the argument of counsel, and considered the applicable Florida Statutes and relevant case law, and otherwise being duly advised in the premises, the court finds that the State has proven by clear and convincing evidence that the defendant is not entitled to court-ordered immunity from prosecution pursuant to F.S. 776.032(1) and denies the Defendant's Motion to Dismiss and Request for Declaration of Immunity.

Florida's Stand Your Ground Law

Chapter 2005-27, Laws of Florida, became effective October 1, 2005, and made substantive and procedural changes to Chapter 776, which codifies Florida's statutory law of self-defense. The 2005 modifications and additions to Chapter 776 were colloquially summarized as Florida's Stand Your Ground (SYG) law.

In response to initial conflicts among Florida courts regarding certain aspects of the new provisions in Chapter 776, the Florida Legislature enacted several statutory clarifications.[1] In recent years, between statutory amendments and significant litigation, resulting in numerous

[1] *See* Chapters 2014-195 and 2017-72, Laws of Florida. *See also* Jefferson v. State, 264 So.3d 1019, 1024-26 (Fla. 2nd DCA 2018) (Judge Badalamenti offers "A Brief History of Florida's Stand Your Ground Law" and discusses "The Newly Added Text of Section 776.032(4).").

appellate opinions, the substantive portions of Florida's SYG law have been well explored, and the procedures to follow when litigating a pretrial claim of immunity have been established.

The Procedural Aspects of Florida's SYG Law

To seek court-ordered immunity from criminal prosecution for the use or threatened use of deadly force, a criminal defendant must raise "a prima facie claim of self-defense immunity . . . at a pretrial immunity hearing." *See* Florida Statute 776.032(4). Once the defendant makes this prima facie showing, the burden shifts to the State to prove "by clear and convincing evidence" that the defendant is not entitled to immunity. Id.

There is no requirement that a SYG motion be sworn to or verified, Casanova v. State, 335 So.3d 1231, 1232 (Fla. 3rd DCA 2019), and the person claiming immunity has no burden to "prove" a prima facie case. *See* Jefferson v. State, 264 So.3d 1019, 1026-27 (Fla. 2nd DCA 2018) (use of the word "claim" in F.S. 776.032(4) "demonstrates (the legislature's) intent that the party seeking immunity from criminal prosecution must merely assert it, not prove it; it is something yet to be proven, *a mere assertion of a statement without evidence to back up its veracity*.") (emphasis added). Thus, instead of calling witnesses or presenting evidence to prove her prima facie claim, the defendant must "simply allege a facially sufficient prima facie claim of justifiable use of force under chapter 776 in a motion to dismiss filed under rule 3.190(b) and present argument in support of that motion at a pretrial immunity hearing." *See* Jefferson v. State, 264 So.3d at 1028-29. The "trial judge must then determine, at first glance, if all elements required to demonstrate the particular self-defense statute are present." Id. at 1027.

Prima facie is defined as that which is "[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted; *based on what seems to be true on first examination, even though it may be later proved to be untrue*." *See* Jefferson v. State, 264 So.3d at 1027 (citing Black's Law Dictionary (10th ed. 2014)) (emphasis added).

As noted above, once the defendant raises a prima facie claim of self-defense immunity from prosecution, the burden of proof shifts to the State. Thus, while the defendant need only plead a prima facie claim of self-defense in her motion, the State is required to present evidence at a SYG hearing[2] and that evidence must prove clearly and convincingly that the defendant is not entitled to immunity.[3] *See* F.S. 776.032(4).

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[2] "Evidence" includes testimony, documents, and other tangible things that are relevant to prove or disprove a material fact and that are admissible for the court to lawfully consider.

[3] The burden of clear and convincing evidence, an intermediate burden of proof, is defined in Florida Standard Civil Jury Instruction 411.3 as "evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction without hesitation about the matter in issue." The Florida Supreme Court has further explained that clear and convincing evidence "requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the

After the State has presented its case, the defendant has the opportunity to present evidence in rebuttal. At that point, however, the defendant may not just rely on the factual averments in her unsworn or unverified motion.[4] Rather, the defendant would need to introduce evidence into the record.[5] The defendant can testify, but unlike a Motion to Suppress, a SYG motion for immunity is a creature of statutory construction and does not implicate constitutional rights. Thus, the defendant is not faced with the choice of testifying or foregoing important constitutional claims, and her testimony at the SYG hearing can be used as substantive evidence in future proceedings. *See* Cruz v. State, 189 So.3d 822, 827-828 (Fla. 4th DCA 2015) (citations omitted).

The Substantive Aspects of Florida's SYG Law[6]

F.S. 776.032(1)- Immunity from criminal prosecution for justifiable use of force
If Ashley Benefield used force as permitted in Florida Statutes 776.012, 776.013, or 776.031, she is justified in such conduct and is immune from criminal prosecution for the use of such force.

F.S. 776.012(2)- Use of force in defense of person
Ashley Benefield would be justified in using deadly force against Doug Benefield if she reasonably believed that using such force was necessary to prevent imminent death or great bodily harm to herself or to prevent the imminent commission of a forcible felony. If Ashley Benefield used deadly force in accordance with this subsection, she did not have a duty to retreat and had the right to stand her ground if she was not engaged in criminal activity and was in a place where she had the right to be.

F.S. 776.013(1)(b)- Home protection; use of deadly force
If Ashley Benefield was in a dwelling or residence in which she had the right to be, she had no duty to retreat and had the right to stand her ground and use deadly force if she reasonably believed that using such force was necessary to prevent imminent death or great bodily harm to herself or to prevent the imminent commission of a forcible felony.

F.S. 776.031(2)- Use of force in defense of property
Ashley Benefield would be justified in using deadly force in the defense of property only if she reasonably believed that such conduct was necessary to prevent the imminent commission of a

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allegations sought to be established." South Florida Water Management Dist. V. RLI Live Oak, LLC, 139 So.3d 869, 872 (Fla. 2014) (citations omitted).

[4] This finding is discussed in more detail under "The Defendant's Motion," *supra*.

[5] The court does not imply that the defendant should or is required to testify or present evidence at a SYG hearing, and the court does not consider this defendant's decision not to testify or present evidence in reaching its ultimate conclusion. The burden of proof rests squarely on the State's shoulders. *See* Jefferson, 264 So.3d at 1027 ("[T]here is no evidentiary burden upon the person seeking Stand Your Ground Immunity.").

[6] The applicable Florida Statutes from Chapter 776 are rewritten here using the parties' names instead of the generic descriptors, and those portions of the respective statutes that have no legal or factual relevance to this case have been removed.

forcible felony. If Ashley Benefield used force in accordance with this subsection, she did not have a duty to retreat and had the right to stand her ground if she was not engaged in criminal activity and was in a place where she had the right to be.

F.S. 776.08- Forcible felony
"Forcible felony" means murder, manslaughter, sexual battery, burglary, kidnapping, aggravated assault, aggravated battery, aggravated stalking, and any other felony which involves the use or threat of physical force or violence against any individual.[7]

F.S. 776.041- Use or threatened use of force by aggressor
(1) The justification described in the preceding sections of this chapter is not available to Ashley Benefield if she was attempting to commit, committing, or escaping after the commission of a forcible felony.
(2) The justification described in the preceding sections of this chapter is not available to Ashley Benefield if she initially provoked the use or threatened use of force by Doug Benefield against herself, unless

(a) the force or threat of force by Doug Benefield was so great that Ashley Benefield reasonably believed that she was in imminent danger of death or great bodily harm and that she had exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to Doug Benefield, or

(b) in good faith, Ashley Benefield withdrew from physical contact with Doug Benefield and indicated clearly to Doug Benefield that she desired to withdraw and terminate the use or threatened use of force, but Doug Benefield continued or resumed his use or threatened use of force.

In addition to the statutorily established elements above, the Second DCA has explained that when a court considers the evidence,

> "an objective standard applies. . . (and) [t]he trial court must determine whether, based on the circumstances as they appeared to the defendant, 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. . . . The appearance of danger must have been 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 that force."

Huckelby v. State, 313 So.3d 861, 866 (Fla. 2nd DCA 2021) (citing Garcia v. State, 286 So.3d 348, 351-52 (Fla. 2d DCA 2019) (quoting Garrett v. State, 148 So.3d 466, 468 (Fla. 1st DCA 2014))).

[7] From the list of forcible felonies in F.S. 776.08, the court removed the following crimes that had no legal or factual support in the evidence presented at the SYG hearing: treason; carjacking; home invasion robbery; robbery; arson; aircraft piracy; and unlawful throwing, placing, or discharging a destructive device or bomb.

The Defendant's Motion

In an effort to use the available hearing time efficiently, the court directed the parties to meet and confer on the legal sufficiency of the Defendant's Motion and whether it raised a prima facie claim of immunity so as to shift the burden of proof to the State. The parties entered into a written stipulation that the Defendant's Motion raised a prima facie claim of self-defense, and the court ratified the parties' agreement via a Stipulated Order filed June 16, 2023.

In her Motion and throughout the hearing, the defendant, through her attorney, set forth the reasons why she believed it was reasonable and necessary for her to use deadly force against the victim. These reasons generally fell into three categories, including: Events that occurred prior to September 27, 2020; General temperament, habits, and physical shape and training of Mr. Benefield; and Events on September 27, 2020.[8]

At the hearing, after the State rested, the defendant did not testify and called no witnesses. Instead, the defendant relied on the allegations in her Motion and the attachments thereto as the evidence to support her claim of immunity.[9] She argued that her unverified and unsworn Motion to Dismiss was substantive evidence that the court can and should consider in making the decision whether to grant or deny immunity. In support, she cited Casanova v. State, 335 So.3d 1231, 1232 (Fla. 3rd DCA 2021), and Penalver v. State, 338 So.3d 990 (Fla. 3rd DCA 2022).

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[8] The defendant's allegations against the victim are summarized here by the court from the Defendant's Motion and the arguments of defense counsel during the hearing. For the reasons explained in this Order, the court does not make any findings as to these claims or events. However, they are recited for purposes of the record. Events that occurred prior to September 27, 2020: Doug intentionally fired a handgun into the ceiling of their kitchen in South Carolina to intimidate her; He threw a loaded gun at her; He punched their dog in the face hard enough to render the canine unconscious; He unlawfully placed a tracker on her car; Ashley frequently observed Doug tailing her car; He punched numerous holes in the wall of their home; His previous marriage had a history of domestic violence; Ashley suspected that Doug poisoned his first wife and poisoned or attempted to poison Ashley and their child while in utero; and He was caught by a neighbor, at night, standing in Ashley's backyard and peering into her windows. General Temperament, habits, and physical shape and training of Mr. Benefield: Doug regularly carried a loaded, concealed firearm; He was in substantially better, physical shape and physically stronger than she was; He had training in martial arts, hand-to-hand combat, and judo which she did not have; He was moody, unpredictable, and vacillated between calm and rage; and He was controlling, verbally threatening, intimidating, and psychologically abusive. Events on September 27, 2020: Doug deliberately "rammed," "slammed," or "body checked" Ashley on two occasions while they were moving and then struck her in the side with a box as they passed each other in a hallway causing her to lose her balance and suffer scratches to her body; He became a trespasser in her residence when she expressly revoked her consent for him to be there and instructed him to leave, and he subsequently committed a battery upon her by grabbing her wrist; and He committed one or more forcible felonies in her residence by remaining in her home after she expressly revoked her consent for him to be there, grabbed her by the wrist to stop her from leaving the home, used his body to physically block her egress, ground his knuckle into her temple, and approached her in an aggressive, threatening manner while she was in her bedroom.

[9] The defendant's Motion to Dismiss and attachments are filed in the court file. They were not marked for identification purposes or moved into evidence.

After reviewing the cases cited by the defendant, Casanova and Penalver, the court finds that they are not instructive on the point being considered, as both involve whether an unsworn and unverified Motion to Dismiss, containing sufficient factual allegations, can establish a prima facie claim of self-defense immunity. That is not an issue here, because the parties entered into a written stipulation and the court signed an order finding that the Defendant's Motion was sufficiently pled.

The question is whether this same unsworn, unverified Motion to Dismiss can be considered by the court as substantive evidence during the SYG hearing. The defendant argues that it can, and the State argues that it cannot. This issue came up briefly on the first day of the hearing and again during closing argument, and neither party provided the court with a case on point.

The court finds that the answer is provided in Edwards v. State, 351 So.3d 1142 (Fla. 1st DCA 2022). In Edwards, the defendant appealed the denial of his SYG motion. The majority opinion suggested that the defendant did not present sufficient facts in his motion to raise a prima facie claim, noting that conclusory allegations of self-defense are "not enough," but the court did not rule on the sufficiency of his pleading, because the State did not "challenge whether Edwards raised a prima facie claim of self-defense immunity at the pretrial hearing." Id. at 1149 (citation omitted).

Important to the issue at hand in Mrs. Benefield's case, the majority in Edwards found that "the unsworn allegations in Edwards' motion lack evidentiary value." Id. In support of this finding, the majority cited to MTGLQ Invs., L.P. v. Merrill, 312 So.3d 986, 993) (Fla. 1st DCA 2021) ("unsworn representations of counsel about factual matters are not competent evidence absent a stipulation."). The opinion in MTSLQ Investors, in turn, cites to Shaffer v. Deutsche Bank Nat'l Tr., 235 So.3d 943, 946 (Fla. 2d DCA 2017) (Villanti, C.J., concurring specially) (documents not authenticated or entered into evidence are "not properly before the court and cannot constitute evidence") (citations omitted), and Chase Home Loans LLC v. Sosa, 104 So.3d 1240, 1241 (Fla. 3d DCA 2012) ("[U]nsworn representations of counsel about factual matters do not have any evidentiary weight in the absence of a stipulation.").

More recently, in Roberts v. State, -- So.3d --, 6D23-1028, 2023 WL 3262633, 48 Fla. L. Weekly D940 (Fla. 6th DCA May 5, 2023),[10] Florida's newest appellate court answered a similar question in the negative when it found that the State's unsworn motion and its unsigned, unsworn attachments were not evidence that could be used to establish the legal bases for the issuance of a subpoena for the defendant's medical records as part of a DUI investigation. The Roberts court found that the trial court departed from the essential requirements of law when it granted the State's motion to issue the subpoena, because

[10] Westlaw warns that the Roberts "opinion has not been released for publication in the permanent law reports (and) [u]ntil released, it is subject to revision or withdrawal." However, the logic and reasoning of the 6th DCA is persuasive.

"[t]o obtain a subpoena for medical records, the State must present argument and evidence. . . . At the hearing on the Motion, the State presented no evidence. We reject the State's contention that making argument at the hearing that referred to the Motion and the Attachments satisfied its obligation to present evidence."

Having considered the issue presented, heard the argument of counsel, and reviewed the case law, the court finds and concludes that a criminal defendant's unsworn and unverified Motion to Dismiss, filed pursuant to Rule 3.190(b), that sufficiently sets forth a prima facie claim for immunity pursuant to the applicable Florida Statutes in Chapter 776 and therefore shifts the burden to the State to overcome the immunity claim with clear and convincing evidence, is not substantive evidence that the court can consider when making factual findings or drawing legal conclusions.

Based on this finding, the court accepts the Defendant's Motion as sufficiently pled to open the courthouse doors for a SYG hearing and shift the burden to the State, but the court does not consider any of the facts alleged in the Defendant's Motion or its attachments, unless those facts were admitted into evidence by some other means.

THE STATE'S CASE

The State called a total of eight (8) witnesses. Even when the court takes into consideration the defendant's impeachment of several witnesses, the court finds each witness credible and their testimony reliable.

Tommie Benefield

Although first cousins, Tommie Benefield was closer to Doug than he was to his own brother. From their time as naval aviators through careers in the private sector, they kept in close contact and spoke monthly, if not weekly, depending on what was going on in their lives.

Growing up, Doug was an all-star wrestler in high school, but Tommie Benefield did not know Doug to be trained in martial arts or judo. In the time leading up to the homicide, Tommie Benefield estimated that Doug was 5' 9" or 5' 10" and weighed approximately 160 to 170 pounds. While Doug suffered injuries in the past, including a significant back injury in the Navy that led to surgery in 2017, he found relief in recent years from a medical device provided by Tommie Benefield. Toward the end of his life, Doug was doing cross-fit and, as Tommie Benefield described it, was in very good shape.

Tommie Benefield first met Ashley on April 14, 2017, when he had a layover in Charleston, South Carolina. Doug and Ashley, 54 years old and 24 years old at the time, respectively, lived in Charleston with Doug's teenage daughter from his first marriage. Tommie Benefield spent approximately four (4) hours with the couple and learned Ashley's life story and the story of their relationship, including the fact that they had known each other for 13 days before they were married.

He also heard about Ashley being a former ballet dancer and how the couple founded the American National Ballet (ANB) in Charleston on February 27, 2017. While Tommie Benefield did not know Doug to be interested in the ballet, he could see that Doug was proud of his wife, "starstruck" as Tommie Benefield described it, and supportive of her desire to create a ballet company. He also learned that Doug had personally done a lot of the work to get the ballet up and running, from forming the LLC to building the website.

According to Tommie Benefield, Doug was not just investing his time to get the ANB up and running. He was also investing his money and raising money from donors and investors, including his business partners. To help with the fundraising efforts, Tommie Benefield agreed to attend an informal launch planned for August 12, 2017, and bring his business partners.

Tommie Benefield later learned that, during this time, Doug had a vasectomy reversal and that Ashley became pregnant three months later. Because of her morning sickness and Doug's travel schedule, the couple decided that it would be better for Ashley to live with her mother in Manatee County, Florida, and Doug moved her down on August 27, 2017. Tommie Benefield spoke with Doug by telephone on his way to Florida and on his way back home to South Carolina.

The ANB officially launched to the public on September 18, 2017, and had its opening performance on December 7, 2017. By the end of December, 2017, the ANB was defunct. Tommie Benefield's testimony did not delve into the details of ANB's collapse, but he testified that on the public launch date of the ANB, September 18, 2017, Ashley and her mother went to the couple's South Carolina home, retrieved her belongings, and went back to Florida.

While there was no testimony from Tommie Benefield as to when Doug moved to Florida, it was his understanding that both Doug and Ashely were on an apartment lease together, but he did not know if they ever lived together in that apartment.

In addition to describing Doug as being starstruck with Ashley, Tommie Benefield shared his observations that Doug was "completely in love," "completely supportive," and "visibly, physically you could tell by the way he treated her, took care of her."

On cross-examination,[11] Tommie Benefield addressed several of the allegations raised in the Defendant's Motion. As for discharging a gun inside a residence, it was Tommie Benefield's

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[11] During Tommie Benefield's cross-examination and later during the hearing, defense counsel cited F.S. 90.806 as support to admit various out-of-court statements made by Doug Benefield. Defense counsel argued that once a hearsay statement is allowed into evidence, any other statement made by the hearsay declarant is admissible to attack the credibility of the declarant. While an otherwise inadmissible hearsay statement may be admissible, *inter alia*, as a prior inconsistent statement, to impeach the credibility of the declarant, or under the doctrine of completeness, the court does not find that the admission of a hearsay statement allows the opposing party to admit every out-of-court statement made by the hearsay declarant. In this case, there may be hearsay statements made by Doug Benefield that could be admissible as impeachment or to otherwise attack his credibility. However, during the hearing, the defense referred generally to Doug's hearsay statements contained in appendices to the

understanding that the discharge was inadvertent. Tommie Benefield provided no time frame as to when this inadvertent discharge occurred. As for Doug throwing a gun at Ashley and placing a tracker on her vehicle, Tommie Benefield did not remember those specific events being shared with him. As for the allegation that Doug was standing in a neighbor's yard and peering into Ashely's window at night, Tommie Benefield did not remember hearing that from Doug, and he would have recalled such a story if he had heard it. As for striking the family dog, Tommie Benefield testified that both Doug and Ashely told him that Doug was wearing shorts and sitting on a chair when the family dog, which Tommie Benefield described as a big dog with big nails, jumped on Doug's lap. The dog's nails cut into Doug's leg, and Doug reacted by pushing the dog off of him. Doug told Tommie Benefield that the dog's nails hurt, he was frustrated, and the force of the push was more than he wanted to do to the dog. However, Doug did not say he punched the dog or knocked the dog unconscious. As for punching walls, Doug told Tommie Benefield that he punched a hole in the wall one time out of frustration. As for domestic violence against Doug's first wife, Tommie Benefield stated that he was not aware of any such allegations.

Tommie Benefield knew both Doug and Ashley had concealed weapon permits and that Doug regularly carried a loaded firearm.

Stephanie Murphy

Stephanie Murphy is a family law attorney and has practiced law for over 21 years. She represented Doug in his divorce proceeding as well as for injunctions that were filed by Ashley. Throughout her career in family law, Attorney Murphy has seen aggressive and petty litigation and referred to the Benefield's situation as "extreme."

Attorney Murphy initially met with Doug on March 13, 2018, and he paid her a partial retainer the next day. At first, she was retained simply to negotiate with Ashley for Doug to be present at the birth of their child, which was due on April 8, 2018. In furtherance of this request, Attorney Murphy sent an email to Ashley on the morning of March 15, 2018, expressing Doug's interest and desire to be present for the birth but also letting Ashley know that he would not attend if she felt uncomfortable. Neither Attorney Murphy nor Doug received a reply from Ashley in response to this email.

On May 6, 2018, Attorney Murphy learned that, on or about May 1, 2018, Ashley filed for an injunction against Doug, that her request for a temporary restraining order had been denied, and that a final injunction hearing was set to occur in the next few days. Upon obtaining a copy of Ashley's petition for the injunction, Attorney Murphy and Doug learned that the day after receiving Attorney Murphy's email, Ashley checked herself into Tampa General

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Defendant's Motion and did not proffer the specific hearsay statements that would be used for impeachment. Without a specific proffer, the court was unable to make a ruling on the admissibility of any hearsay statements that the defendant wanted to use as impeachment or to attack the credibility of the declarant.

Hospital, began the process to induce labor, and delivered the parties' child on or about March 19, 2018, some 20 days early. This was how Doug learned his child's birthday and her name.

Attorney Murphy testified that the injunction made a number of allegations, including Doug poisoning Ashley and their child, in utero, with heavy metals, abusing the family dog, threatening Ashley, and discharging a gun in their home.[12]

During cross-examination regarding domestic violence injunction cases, Attorney Murphy acknowledged that males can sometimes be controlling in a relationship but that jealousy and possessiveness were some of the rarest reasons for domestic violence in the cases she has handled. She also stated that both male and female victims of domestic violence can employ a strategy of appeasement in an effort to avoid violence in a relationship.[13]

The final hearing on the petition for injunction was continued at Ashley's request, and Attorney Murphy filed several documents with the court, including a Petition for Parenting Plan Unconnected with Divorce and a Motion for Psychological Evaluation. Attorney Murphy also filed an Emergency Motion for Temporary Timesharing and Parental Responsibility, because Ashley was not allowing Doug to have any timesharing with the child.

The various cases and motions were consolidated and scheduled to be heard on July 20, 2018, and September 17, 2018, before the Honorable Diana Moreland. Prior to the hearings, Ashley filed a motion to disqualify Judge Moreland, but that motion was denied. Ashley then moved to stay the cases pending an appeal, but that motion was also denied.

At the conclusion of the hearing on July 20, 2018, the defendant was present when Judge Moreland delivered an oral ruling from the bench denying her petition for injunction.[14] Judge Moreland also entered an order granting a temporary time-sharing schedule that gave Doug an increasing amount of time with the child and eventually included weekend time-sharing, overnight time-sharing, holiday time-sharing, and travel to South Carolina to stay with Doug. Finally, Judge Moreland entered an order granting shared parental responsibility between the victim and defendant and giving Doug ultimate decision-making authority over the child's health and medical issues.

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[12] No pleadings or other documents from the injunction case or the family law case were introduced into evidence. The court's description of those documents and their contents is based solely on witness testimony and arguments of counsel.

[13] It appeared to the court that this line of cross-examination was intended to impute these behaviors to Doug Benefield, but Attorney Murphy did not provide any direct, competent, substantial evidence of such behaviors by Doug toward Ashley.

[14] Over the defendant's objection, the State was allowed to introduce an audio recording of Judge Moreland's oral ruling that denied Ashley's petition for an injunction. The court did not admit, and does not consider, Judge Moreland's statements for the truth of what she said during her ruling. The only purpose for which Judge Moreland's oral ruling was admitted was to show its effect on Ashley.

The first time Doug met his daughter was in the parking lot of the Manatee County Sheriff's Office on September 21, 2018, when she was approximately six months old. Attorney Murphy was present for this first exchange, and though they arrived separately, Attorney Murphy was sitting in Doug's truck when Ashley arrived with the child. As Doug walked toward Ashley, Attorney Murphy heard Ashley ask Doug, "Are you dating her?" Attorney Murphy responded that they were not dating. The Benefields talked for between five and 10 minutes, with Ashley never getting far away from Doug as he held their daughter. At some point, Doug told Attorney Murphy that they were leaving and that Ashley was going with them. Attorney Murphy expressed her concerns at this idea, but Doug told Attorney Murphy that he wanted the child to be comfortable and that Ashley insisted on going with them.

According to Attorney Murphy, what followed this initial hesitancy was approximately 11 months of peace that saw the parties enter into a joint stipulation to expand Judge Moreland's temporary time-sharing plan. Although, according to Attorney Murphy, Ashley was always present during Doug's time-sharing. The parties were also socializing together, and their photograph appeared in SRQ Magazine when they attended a ballet gala event.

Attorney Murphy pinpointed August 16, 2019, as the date that things changed and the downward spiral began. On that day, as his apartment lease was ending, Doug planned to move in with Ashley and her mother in their Florida home.[15] All of his belongings had been moved into the residence, but on moving day, August 16, 2019, Attorney Murphy testified that Ashley "ghosted" Doug.[16]

In November, 2019, Attorney Murphy filed a motion seeking permission to amend Doug's petition to request a dissolution of marriage.[17] Over the next five months, beginning in December, 2019, Ashely made several complaints against Doug with child protective services (CPS) and sought another injunction. The CPS complaints were investigated but closed without any action or charges being filed. However, CPS required both Benefields to undergo a psychological evaluation, and Dr. Brad Brodeur was tasked with completing those evaluations.

As part of the dissolution proceedings, the parties were ordered to mediation. While the court did not allow any testimony regarding the substance of any statements made during the mediation, Attorney Murphy testified that there was an agreement for Ashley to dismiss her petition for injunction in exchange for Doug's dismissal of the dissolution case and withdrawal of a second Emergency Motion for Time-Sharing and Parenting Plan. The parties also agreed to the release of Dr. Brodeur's report. The mediation occurred on September 24,

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[15] During cross-examination, Attorney Murphy agreed that Doug had his own apartment in Manatee County, and it was her understanding that Doug did not reside in the home where the homicide took place.

[16] "Ghosting" is "the practice of suddenly ending all communication and avoiding contact with another person without any apparent warning or explanation and ignoring any subsequent attempts to communicate." *See* Wikipedia, https://en.wikipedia.org/wiki/Ghosting_(behavior)

[17] A final hearing on the dissolution petition was originally set in May, 2020, but was later continued to August, 2020, and ultimately set for September 30, 2020.

2020, three days before the homicide and six days before the parties were to appear in front of Judge Moreland for their final hearing.

Attorney Murphy stated that she never saw Doug angry with Ashley. To the contrary, she described him as "very passive" and "very accepting" and that he was "always trying to look for some explanation as to her conduct." While he was "very suspicious" of her, he was never angry. He also did not blame her for things, although he often blamed a doctor who was involved with the poisoning allegation and lab results.

Amanda Conlon

Amanda Conlon is a crime scene technician with the Manatee County Sheriff's Office, a position she has held for 16 years. She was dispatched to the scene of the homicide at 7:37 p.m. and arrived at approximately 8:28 p.m.

After being briefed, she went to the next door neighbor's house with a deputy and collected the firearm used in the homicide, a .45 caliber handgun that was loaded with ammunition.[18] She then reported to the defendant's residence, took photographs and measurements, and collected evidence.[19] She noticed a U-Haul truck, a storage pod, and moving boxes, and although it was obvious that the residents were moving, there was still a couch and some furniture in the home. From the photographs and diagram of the home, it appears to the court to be a typical one story, 3Br/2Ba, split plan residence not unlike the many thousands of others that have built in Florida over the last 20 years.

The homicide took place in one of the smaller bedrooms. In considering the photographs and diagram of the residence, trajectory rods, measurements, location of spent casings, location of fired projectiles, and position of the decedent's body, it is apparent to the court that the defendant was near an exterior wall and window, facing the bedroom's door, and the victim was in the bedroom doorway, to no more than a step or two inside the bedroom, when the shots were fired. While there was a mattress leaning up against one wall and a few sundry items on the floor, there was no furniture or other obstruction between the bedroom's doorway and the exterior window on the opposite side of the room.

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[18] Neither the firearm nor a photograph of the firearm used in the homicide was introduced into evidence. There was no testimony as to the manufacturer or model of the firearm, if there were any unspent rounds in the magazine, how many rounds the magazine could hold, or if there was an unfired round in the chamber. The court heard nothing about the condition of the firearm when it left the defendant's possession or was obtained by CST Conlon (i.e., slide locked back or any evident malfunctions such as a failure to feed or eject). The court received no evidence about the functionality of the firearm or any safety features.

[19] Two other firearms were collected from the defendant's residence by CST Conlon. The first, a Sig Sauer .380, was initially identified in a photograph by the State and CST Conlon as the homicide weapon, but this error was later corrected on the record. The Sig Sauer was found with a loaded magazine and a round in the chamber in an open top storage container in the kitchen pantry. The second firearm was found in a backpack in the closet of the defendant's bedroom. It was also loaded. The manufacturer, model, or caliber of the second firearm was not introduced into evidence.

On the night of the homicide, a different CST took photographs of the defendant, and CST Conlon took photographs of the defendant a few days later on October 1, 2020. The defendant argues through her questions and closing that the injuries she suffered at the hands of the victim on the night of the homicide include scratches on the right side of her abdomen and swelling immediately above her left eye.

From reviewing the Defendant's Motion, the court understands the significance and meaning of these particular areas to the defendant. However, there was no competent, substantial evidence admitted during the hearing to prove the nature, cause, and extent of these injuries. The abdominal scratches appear superficial and are consistent with what one would expect to find after engaging in several days of packing up and moving a residence. There is no bruising or other trauma to corroborate that the victim was "slamming" boxes into the defendant's side and "body checking" her with his shoulder. As for the area immediately above the defendant's left eye, the swelling in the CST photographs, taken September 27, 2020, and October 1, 2020, looks the same as that seen in the defendant's booking photograph taken November 4, 2020, over one month later. If the swelling was acute, as the result of trauma on the day of the homicide, there was no evidence admitted during the hearing to establish that fact.

Dr. Russell Vega

Dr. Russell Vega has been the chief medical examiner for the 12th District of Florida for almost 20 years. In that time, he has performed 3,500 to 4,000 autopsies of which hundreds have included gunshot wounds. He has experience and training in wound interpretation. Prior to a full recitation of Dr. Vega's education, training, experience, and knowledge, the defendant offered to stipulate to his qualifications as an expert, and the State accepted.

Depending on the nature of the case and the needs of the investigation, there are times when Dr. Vega will communicate with law enforcement officers during the evolution of a case. Otherwise, he has no contact with law enforcement officers prior to the completion of his final autopsy report.

On cross-examination, Dr. Vega agreed with defense counsel that it is possible for a person to be the aggressor in a confrontation and not have defensive wounds.

Dr. Vega performed the victim's autopsy on September 28, 2020, and completed his report on November 3, 2020. Upon gross examination of the body, Dr. Vega noted two clear gunshot wounds, one possible gunshot wound, and two other injuries, one to the back of the head and one to the back of one of the victim's thighs. Dr. Vega was not able to testify as to the order that the gunshot wounds were inflicted. The victim had no drugs or alcohol in his system.

Gunshot Wound to the Right Side of Chest

On the right side of the victim's chest, to the right of and immediately adjacent to his nipple, there was a circular gunshot perforation of the skin. There was also some additional injury to that area caused by emergency medical intervention when a chest tube was inserted into the chest cavity to relieve pressure and drain blood. There was no exit wound for this bullet, and Dr. Vega was able to trace its path across the body to its point of final rest just under the skin on the left side of the victim's back. The general path was right to left, somewhat front to back, and roughly horizontal, meaning the entrance wound and the final rest of the bullet would be around the same height above the ground if the victim was standing.

After entering the right side of the victim's chest, the bullet went through the chest wall, went through the right lung, went through the vertebral body of the spine but did not hit the spinal cord, went through the left lung, went through the chest wall on the left side, and came to rest under the skin on the left side of the victim's back. There was no deflection of the bullet as it went through the victim's body.

Dr. Vega opined that the muzzle of the firearm was to the victim's right side when this shot was taken.

Gunshot Wound to the Lower Right Leg

Dr. Vega testified that the victim had a gunshot wound to his lower right leg, and he was able to track the path of the bullet. The bullet entered the inside, back of the victim's right leg (more inside part of the calf), traveled at an upward angle, and exited on the outside of his right leg, near the knee. As the bullet traversed the leg, it struck bone, and Dr. Vega located a bullet fragment inside the victim's leg. The entrance wound was oval, as opposed to circular, which told Dr. Vega that the aspect of the gun to the leg was at an angle, as opposed to perpendicular, and the shot was fired from "below" the entrance wound.

Much time was spent by both sides questioning Dr. Vega about the relative position of the muzzle to the victim's leg at the time this injury was inflicted. Dr. Vega acknowledged that such an injury could occur if the muzzle of the firearm was below the wound, such as if the shooter was on the floor beneath the victim's leg, as well as if the victim was falling, his leg was raised above the plane of the body, his right hip was flexed, and his leg was in front of his body. Upon a suggestion from defense counsel that the leg wound could have come during a karate kick, Dr. Vega stated that it would have to be a "unique" kind of kick as it would require the victim, as he faced the defendant in a standing position, to expose the back of his lower leg to the defendant.

Given all of the evidence presented and the court's own opportunity to view the photographs of the victim's leg wound, the court does not find that the defendant was lying on the floor beneath the victim when she fired this shot, and the court does not conclude that the victim was attempting some sort of "unique" martial arts kick when this shot was taken.

The clear and convincing evidence supports the conclusion that this shot was taken either (1) as the victim fell to the ground and his right leg rotated outward to expose the inside of his calf to the muzzle of the firearm or (2) as he lay on the ground, with his leg in the air or on the ground, with the knee bent in such a way that the inside the calf was exposed to the muzzle of the firearm.

Superficial Injury to Right Arm

On March 3, 2023, the defendant filed a Motion in Limine to prevent Dr. Vega from testifying that the wound to the victim's right arm was caused by a grazing bullet. The Motion in Limine cited F.S.S. 90.702, 90.704, and 90.705(2) as well as Daubert.[20] Among the factual bases asserted in the defendant's Motion in Limine as support were that: Dr. Vega's autopsy report referred to the arm wound as an "[a]brasion, probable grazing gunshot wound, right arm" and "quite superficial, with probable direction of posterior to anterior;" during testimony in a dependency hearing, Dr. Vega testified that he found two very distinct gunshot wounds and "a third injury, which was probably a gunshot wound," that this third wound was "a little difficult to determine," that "it had features more suggestive of a back to front trajectory across the outside of the arm," and that the arm wound was "in all likelihood" fired from a position where the firearm was behind the victim; and finally, in a deposition, Dr. Vega had a "much lower degree of certainty with [the abrasion on the victim's right arm] . . . as opposed to the other [two] injuries" and that he had a "reasonable doubt as to the trajectory of the projectile."[21]

The defendant's Motion in Limine argued that Dr. Vega's opinion lacked sufficient basis or methodology, his opinion would not aid the trier of fact, his opinions were speculation, the predicate for admission of his opinion was deficient, and his opinions were not relevant to the issues to be decided by the jury.

For the purposes of the SYG hearing, the defendant stipulated to Dr. Vega's qualifications to render expert opinions in the field of being a medical examiner and objected to his testimony about the injury to the decedent's right arm being caused by a grazing bullet. The court heard substantial testimony from Dr. Vega about his experience and training in wound interpretation, which allows him to identify an injury to a human body, determine the nature of the injury and the kind or class of implement that caused such an injury, and conclude when the injury occurred and the circumstances under which the injury was sustained. The court heard how Dr. Vega relied upon this training and experience as he observed the wound to the victim's right arm, analyzed and considered what he saw, and reached the conclusion that the wound to the right arm was possibly from a gunshot.

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[20] Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993).

[21] These factual assertions are taking directly from the defendant's Motion in Limine and not from any original source.

The court received Dr. Vega's testimony at the SYG hearing, heard the argument of counsel, reviewed the defendant's Motion in Limine, and reserved ruling on the issue of whether Dr. Vega's opinion about the wound to the victim's right arm would be admissible. Having now considered the totality of the facts, evidence, and law, the court finds that Dr. Vega's opinion regarding the injury to the victim's right arm is admissible and will be considered by the court. *See* Jones v. Otis Elevator Co., 861 F.2d 655, 662 (11th Cir. 1998) (citations omitted) ("absolute certainty is not required" for expert testimony to be admitted.) *See also*, White v. Westlund, 624 So.2d 1148, 1151 (Fla. 4th DCA 1993) ("whatever qualification is placed on the opinion by the expert (i.e., surgery is possible or likely) goes to the *weight* of the opinion, and not its *admissibility*") (emphasis in original), and Shearon v. Sullivan, 821 So.2d 1222 (Fla. 1st DCA 2002) (Trial court's striking of plaintiff's neurologist reversed, because the expert's testimony as to the need for future care and surgery, using terms such as "probability," "51%," "possibility," and "very speculative," goes to the weight to be given to the expert's opinion and not its admissibility.).

During the hearing, Dr. Vega described the injury to the decedent's right arm as "superficial" and "essentially a scrape of the skin" that left a red, irregularly-shaped wound. There was no damage to the underlying bone or soft tissues and no bruising. These observations limited Dr. Vega's ability to determine what caused the wound, and he noted that it was not characteristic of any particular mechanism of injury. Despite these limitations, Dr. Vega opined that the wound to the victim's right arm was "probably" and "more likely than not" a grazing gunshot wound.[22]

Injury to Back of Head

Dr. Vega found this injury to be a typical scrape and bruise from striking the back of the head. This could have happened if the victim hit his head while he was falling or upon his contact with the floor.

Injury to Back of Thigh

This was a very minor injury and barely noticeable. Dr. Vega had no opinion as to how the injury occurred, and it would not have been debilitating or caused any problems.

Considering all of his findings, Dr. Vega concluded that the victim's death was caused by the bullet that traversed his chest and went through his lungs. Dr. Vega was not able to determine if the victim was immediately incapacitated, and the victim could have had the ability to make some purposeful movements after being shot. However, Dr. Vega stated that people who suffer similar gunshot injuries fall pretty quickly.

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[22] During the hearing, Dr. Vega also testified that grazing gunshot wounds can be difficult to determine, that this particular wound did not have all of the characteristics he would expect to find with such a wound, and that he could not be "certain."

Rich Talbot

Mr. Talbot has been a crime scene technician with the Manatee County Sheriff's Office for over 23 years and has been the manager of that department for over 20 years. In addition to his supervisory duties, he remains an active crime scene technician.

On the day of the homicide, CST Talbot assisted CST Conlon with her processing of the scene, including assistance with the trajectory rods that are seen in some of the photographs. A few days later, he returned to the home with CST Rudolph and scanned the area with a FARO laser scanner. No details were provided to the court about this scan.

On October 6, 2020, CST Talbot used a regular camera and an infrared (IR) camera to process the victim's shirt for any gunpowder residue, soot, or stippling.[23] Upon his initial examination, CST Talbot located one hole that he identified as a bullet hole. Next, using both cameras, including three different lenses with the IR camera, he took multiple photographs of the victim's shirt, but he was unable to view or identify any gunpowder residue, soot, or stippling.

To his understanding, CST Talbot testified this his findings would indicate that the muzzle of the firearm was more than three (3) feet from the victim when he was shot in the chest and potentially four or more feet away.

Detective Justin Warren

Detective Warren has been with the Manatee County Sheriff's Office for over 20 years and is on the Manatee County homicide investigative unit. He served as the lead detective in this case.

On the day of the homicide, the 911 call was made around 6:56 p.m., and Detective Warren was notified at approximately 7:20 p.m. While he gave assignments to other detectives and law enforcement officers at the scene, he initially reported to the Sheriff's Office to draft a residential search warrant. In communicating with other law enforcement personnel, Detective Warren learned that a self-defense claim was being asserted.

The defendant's impeachment of Detective Warren comprised three, main topics: how quickly he obtained a search warrant for the residence where the homicide occurred; his reference to "Murder" in the application for the residential search warrant despite the nascency of the investigation; and inconsistencies between two (2) prior versions of the Probable Cause Affidavit (PCA) narrative that were emailed to the prosecutor and the final PCA narrative.

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[23] CST Talbot described stippling as small particles expelled by a gunshot that land on a surface and cause a pattern of burn marks.

Time to Obtain the Residential Search Warrant

As for the celerity with which Detective Warren obtained the residential search warrant, approximately one hour, he testified that this was not unusual and that the reviewing magistrate did not ask him any questions. In addition, CST Conlon, who had no role in applying for the residential search warrant, testified that getting a residential search warrant this quickly was routine for her agency.

The court does not find Detective Warren's testimony incredible based on the amount of time it took him to procure the residential search warrant.

Use of the Word "Murder" in the Application for the Search Warrant

As for Detective Warren's use of the word "Murder" and reference to F.S. 782.04 in the application for the residential search warrant,[24] instead of a more generic reference to "Homicide," the defendant implies that Detective Warren rushed to judgment by calling Doug's death a murder so early in the investigation and that his credibility should be diminished because of the jaded lens with which he viewed the facts of the case.

Simply put, an application for a search warrant must establish that evidence of a crime will be found in a particular location, the entry and search of which require the investigating officer to provide sworn testimony alleging sufficient facts to establish probable cause to the reviewing magistrate. *See* F.S. 933.01, *et. seq.* Without some crime alleged by law enforcement in the application, whether expressed by commonly-referenced nomenclature (i.e., Burglary, Sale of a Controlled Substance, Murder) or reference to specific Florida Statutes, along with a description of the particular location to be searched and the particular evidence to be seized, the application for the search warrant could neither be approved by the reviewing magistrate nor, if approved, survive the inevitable Constitutional challenge, because it would be impossible to determine if there was probable cause to search *that* location for the fruits of *that* crime. *See* State v. Delrio, 56 So.3d 848, 850 (Fla. 2nd DCA 2011) ("An affidavit supporting a warrant application must satisfy two elements: (1) that a particular person has committed a crime, and (2) that evidence relevant to the probable criminal act is likely located at the place to be searched.") (citation omitted) (emphasis added). *See also*, Malden v. State, 359 So.3d 442, 444-45 (Fla. 1st DCA April 19, 2023) ("The founders were concerned with general warrants, issued without an independent check and sufficient criminal suspicion. The Fourth Amendment requires a showing that *particular* evidence of a *particular* crime will *probably* be found in a *particular* place.") (emphasis in the original).

"Homicide" is "[t]he killing of one person by another." Black's Law Dictionary (7th ed. 1999). It neither speaks to nor implies anything about the intent, justification, or excusability of the death. And, while use of the term "Murder" or "Manslaughter" by one well-versed in the

[24] The Application for Search Warrant and the Search Warrant were not introduced into evidence. The court relies on the characterizations of their contents as described by the attorneys.

intricacies of criminal law brings with it the inextricable descriptors commonly associated with the unlawful killing of a human being, such as "premeditated," "imminently dangerous," or "depraved mind," the court does not find that Detective Warren's use of the term "Murder" leads inexorably to the conclusion that he rushed to judgment and directed the investigation to his desired end.

In sum, the court does not find Detective Warren less credible because he used the word "Murder" or referenced F.S. 782.04 in his application for the residential search warrant.

Different Versions of the Probable Cause Affidavit Narrative

Finally, the defendant sought to impeach Detective Warren with two versions of his Probable Cause Affidavit (PCA) narrative that were emailed to the prosecutor before being finalized into the version that was used to initiate the case against the defendant. The main thrusts of the defendant's impeachment were that, from the first draft to the final version, the detective softened the victim's violence toward the defendant in the moments immediately preceding the homicide and anonymized the source of the information about the defendant's injuries caused by the victim on the day of the homicide by removing her therapist's name.[25]

The defendant's cross-examination attempted to show that the detective's original drafts of the PCA narrative specified that the defendant's therapist referred to the victim's physical contact with the defendant as "scraping" and "body-checking," but the final version of the PCA narrative described the physical contact as "inadvertently scratched" and did not provide the source of this information. The defendant argues that this was the detective's effort to lessen the chance that a reviewing magistrate would ask questions about the incident and perhaps refuse to sign an arrest warrant on the basis of SYG immunity.

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[25] During this part of the hearing, the court noted that the defendant was not attempting to impeach Detective Warren's in-court testimony with prior inconsistent statements. Rather, the defendant was attempting to impeach the detective's Probable Cause Affidavit narrative with prior drafts of that narrative. Police reports and their contents are ordinarily considered inadmissible hearsay. *See* Burgess v. State, 831 So.2d 137, 140 (Fla. 2002). Here, not only was Detective Warren's report hearsay. The defendant's therapist's statements to Detective Warren were hearsay within hearsay, and the defendant's statements to her therapist that found their way into Detective Warren's report were self-serving hearsay within hearsay within hearsay. Ultimately, the court allowed the defendant to proceed with her cross-examination, comfortable in its ability to properly consider the use of and evidentiary weight to give to hearsay and prior inconsistent statements. However, the court's evidentiary rulings during the SYG hearing should not be considered foreshadowing of the rulings to be made at trial. There may be different arguments from the parties and other considerations for the court once a jury is seated and the presentation of evidence begins. *See*, Maya v. State, 48 Fla. L. Weekly D989 at p.2 (Fla. 6th DCA May 12, 2023) ("Courts have recognized that a jury might find it difficult to properly apply the nuances of impeachment versus substantive evidence, leading to a significant danger that a prior inconsistent statement offered for impeachment might be improperly used as substantive evidence, even when the trial judge instructs otherwise."), and Hawn v. State, 300 So.3d 238, 242 (Fla. 4th DCA 2020) ("To be inconsistent, a prior statement must either directly contradict or be materially different from the expected testimony at trial. The inconsistency must involve a material, significant fact rather than mere details. 'Nit-picking' is not permitted under the guise of prior inconsistent statements.") (quoting Pearce v. State, 880 So.2d 561, 569 (Fla. 2004)).

Having heard the cross-examination on this issue and considered the argument of counsel, the court does not consider Detective Warren's PCA narrative, the prior drafts of the PCA narrative, the multiple levels of hearsay represented in the PCA narrative, or the edits made to the PCA narrative prior to the final version to be competent, substantial evidence, and the the court does not discount Detective Warren's credibility because he communicated with the prosecutor about the contents of his PCA narrative or because he made changes and edits to those prior versions before settling on a final version. The court reviewed the final version of the PCA narrative that was submitted to the court, and in light of the information learned about this case during the SYG hearing, the court does not find it to be misleading or incomplete, so as to constitute a fraud on the court, or utterly lacking in probable cause.

Photographs of the Defendant's Body

While Detective Warren was still at the Sheriff's Office on September 27, 2020, a patrol deputy brought the defendant in, but she was not under arrest. At some point, Detective Warren was approached by the defendant's family law attorney, and two other attorneys, at least one of which was a criminal defense attorney, arrived later. The attorneys asked law enforcement to get a search warrant in order to take photographs of the defendant's body and one was obtained from a judge.

Upon meeting the defendant, Detective Warren did not notice any visible, physical injuries,[26] and her clothing was not ripped, torn, stained, disheveled, or stretched out, as he would typically- but not always- expect to see from a physical confrontation. She was wearing a sports bra and a pair of shorts. In addition to directing a crime scene technician to photograph the defendant's entire body, including her head and face, Detective Warren asked if the attorneys wanted any particular parts of the defendant's body photographed, and they suggested arms, legs, neck, and hands. They did not mention her face, eyes, or abdomen. Additional photographs were taken three (3) days later to see if the defendant's injuries became more pronounced or if any additional injuries had manifested. In total, around 100 pictures were taken of the defendant. During a later interview, the scratch to the defendant's abdomen was mentioned to Detective Warren.

Interpretation of the Victim's Injuries and the Relative Positions of the Parties

On cross-examination, Detective Warren testified that the right side of the victim's body was facing the defendant when he was shot and that the gunshot to the victim's lower right leg entered from the outside of the leg and exited the inside of the leg. However, Detective Warren stated several times that he would defer to the medical examiner regarding the relative positions of the parties at the time of the shooting as well as the mechanism of any injuries.

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[26] On cross-examination, the detective stated that he saw photographs of scratches on the defendant's abdomen at a later date. Defense counsel showed the photographs to the detective and asked him to describe the color of the scratches and whether they appeared to be fresh or scabbed over, but the detective testified that he is not a wound expert. The photographs are in evidence and have been viewed by the court.

Interview with Dr. Quintal

On cross-examination, the defendant questioned Detective Warren about his interview with Dr. Quintal, a non-testifying doctor of unknown specialty who was treating the defendant for unknown reasons. In response to the question of whether the detective learned from Dr. Quintal that the defendant was afraid of the victim, the detective stated that the doctor had some feelings "about that," but the court sustained the State's objection to the admission of Dr. Quintal's actual statements to Detective Warren. The defendant argued that Dr. Quintal's statements to the detective regarding the defendant's fear of the victim were not offered for the truth of the matter asserted or, in the alternative, that they were the doctor's opinions. Both of these bases for admission were denied by the court, because Dr. Quintal's statements to Detective Warren were hearsay and contained the defendant's self-serving hearsay. There was also no foundation laid for the admission of Dr. Quintal's professional opinions.

Investigating the Victim's Past, Including Prior Incidents of Threats and Violence

On cross-examination, the detective was asked if he investigated whether the victim had a violent background or had been violent towards the defendant, and the detective confirmed that they reviewed Manatee County records and their internal records as well as obtained records from South Carolina. It was apparent to the court that defense counsel and the detective were not of the same understanding regarding the nature and extent of "a background," "a background investigation," and "a criminal history check." Despite this obvious misunderstanding, the detective insisted that law enforcement did their due diligence to thoroughly investigate this case before making an arrest.

During his investigation, Detective Warren heard about incidents where a firearm was discharged into the ceiling of a residence, the victim punched a hole in drywall at a residence, and the victim was standing in the defendant's yard at night. In response to the State's objection, the court asked defense counsel if the answers provided by the detective regarding prior incidents of threats or violence by the victim were being offered for the truth of the matter asserted, and he confirmed that they were not. As a result, Detective Warren's answers to this line of cross-examination are not considered by the court as competent and substantial evidence.

The DNA Report

On cross-examination, the detective confirmed that he asked a CST to swab the defendant's arms, legs, hands, and neck for DNA evidence. The defendant attempted to get the DNA results into evidence through the detective, and the court sustained the State's objections.

The Victim's Cell Phone

As part of his investigation, Detective Warren came into possession of the victim's cell phone. While he did not complete the forensic download, he viewed the contents using a computer program.

Among the things that Detective Warren viewed on the forensic download was a confirmation email for the local pick up of a U-Haul truck and its return in Bowie, Maryland. He also found that the victim was conducting searches to find a roommate in that same area of Maryland, which contradicted information he received that the victim was moving in with the defendant and her mother in Maryland.

The State then sought to introduce numerous text messages and attachments from the victim's cell phone. While the defendant stipulated to the authenticity of the texts and attachments, she objected on hearsay and relevancy grounds. The State argued that the defendant's portions of the texts were clearly admissible and that the victim's portions of the texts were not being introduced for the truth of the matter asserted but to show the nature and flow of the communications between the parties in the days leading up to the homicide and on the day of the homicide. In keeping with its theme, the State argued that the relevance of the texts was to show that the Benefield's communications were not angry, threatening, or hostile, which contradicts the defendant's claims in her motion and the arguments of her counsel. The court was not provided the text messages or attachments prior to the hearing and found it difficult to make a ruling without seeing them. Subject to the defendant's objections, the State was allowed to proffer the texts and attachments.

Having now seen and heard the texts and attachments introduced by the State and considering the arguments of the parties on relevance and hearsay, the court admits and considers the text messages and attachments as State's Exhibit 45, over the defendant's objections. Those portions of the text messages from the defendant are admissible under F.S. 90.803(18)(a). While not ruled upon individually, those portions of the texts and attachments from the victim are admissible, variously, as not being hearsay (s. 90.801(1)(c) in that they are not considered by the court for the truth of the matter asserted), as spontaneous statements (s. 90.803(1)), and as then-existing mental, emotional, or physical conditions (s. 90.803(3)). As for relevancy, the court finds that the texts and attachments are relevant, under F.S.S. 90.401 and 90.402, as they support the State's position that there was no anger, threat, or hostility between the parties in the days leading up to the homicide and on the day of the homicide, including texts shortly before the 911 call.

Every morning from September 20, 2020, through September 27, 2020, the day of the homicide, Doug texted an attachment to Ashley with a Bible verse. Throughout the week, they exchanged pleasantries and responded positively to each other's messages with "like," "love," and "laugh" reactions. There were text conversations about the upcoming move, packing up boxes, making sure the pet cats were put away, picking up the U-Haul, supplies that were needed, scheduling time to continue working, and coordinating the delivery of vehicles to

Maryland. On September 23, 2020, the parties discussed the beauty of the day and planned to take their daughter to Sarasota to enjoy the weather.

The State played a video that was attached to a text sent by Doug to Ashley on September 20, 2020, at 6:40 p.m. The court was unable to understand much of what was said, but the video was recorded by a male, presumably the victim, as he sat across from the defendant (on the left of the screen) and her mother (on the right of the screen) in a booth at a restaurant or bar. The parties were engaged in small talk and banter, occasionally laughed, and appeared to be having a typical family night out. There were no harsh words or raised voices, and neither of the women appeared to be in distress. The court did not see a date of recording for the video.

Other attachments by Doug to Ashley included photographs of the defendant and their daughter at the beach.

There were also texts about the upcoming mediation, agreements that the parties intended to make, actions that needed to be taken to resolve the pending family law matters, and references to a joint counseling session that was scheduled. They made plans to meet the night before or the morning of the mediation to finalize their intentions and tell their respective attorneys what they wanted done. On September 24, 2020, the day of the mediation, at 10:09 a.m., the parties exchanged texts about how "quick and easy" the mediation was.

On the day of the homicide, the morning started at 6:42 a.m. with Doug sending a Bible verse to Ashley. Later that morning, they exchanged "good morning" texts. After 1:00 p.m., the parties exchanged texts comparing what they had done that day, what they were working on at the moment, and what the plans were for the rest of the day. The routine and mundane topics of the past week were repeated as Doug provided updates on his packing progress and need to get their dog to the spa for grooming, and Ashley asked him to pick up more boxes and tape on his way over.

At 3:54 p.m., Doug texted that he was in front of the defendant's residence, and Ashley asked for a minute, presumably before he came into the house.

At 5:10 p.m., Doug texted that he was about to "head back" and sent an attachment that could not be opened by law enforcement.

At 5:11 p.m., Doug texted that he had everything in (presumably the U-Haul) except a couch, 10 medium-sized boxes, and a "tutu cab."[27] To this text, Ashley reacted with a "laugh" and sent, "Ha, omg."

At 5:32 p.m., Doug texted, "Trucker on the way." This is the last text presented by the State. The 911 call was made at 6:56 p.m.

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[27] This phrase was not described or explained during the hearing.

The court finds that the written, objective communications between the parties in the week leading up to the homicide and on the day of the homicide, including texts back and forth no more than two (2) hours before the homicide, reflect normal conversations for a husband and wife engaged in a seemingly cordial dissolution and working together to pack and move two residences across the country. The texts and attachments are devoid of any anger, threats, or hostility by the victim toward the defendant and support the State's position that there is no evidence to conclude that the victim's demeanor suddenly, radically, and inexplicably shifted to homicidal violence toward the defendant that would justify her use of deadly force.

Detective Brian Moreland

Detective Brian Moreland has been employed with the Manatee County Sheriff's Office since 2004 and assigned to the Crimes Against Children (CAC) division since 2011. As part of his duties as a CAC detective, he was assigned to investigate a series of child abuse reports made by Ashley against Doug between December, 2019, and April, 2020. All of the child abuse reports made by Ashley against Doug were closed without any charges being brought.

In December, 2019, Ashley alleged that Doug sexually abused their two-year-old daughter. While the child was too young for a forensic interview, a medical examination was conducted. Detective Moreland interviewed both parents and closed the case with no charges filed.

On March 21, 2020, Ashley made a report that Doug was physically abusing their child. Before that complaint could be fully investigated, Ashley made another physical abuse report on March 23, 2020. Both cases were closed without any charges.

On April 5, 2020, Ashely made another physical abuse complaint against Doug, and before that case could be investigated, she made another physical abuse complaint on April 27, 2020, alleging Doug caused bruising and marks on their child. These final two complaints were closed without charges being filed.

Dr. Brad Broeder

Dr. Broeder is a clinical psychologist who has been licensed in the State of Florida for 36 years. While he has a private clinical practice, he also serves as a consultant to the Manatee and Sarasota County Child Protection Teams (CPT). As part of his duties to the CPT, he helps with in-service trainings, attends multi-disciplinary staffings, and conducts psychological evaluations of parents and children.

In this particular case, he was contacted by the team coordinator of the Manatee County CPT to conduct evaluations of both Doug and Ashley, which he did. He met variously with Ashley and Doug individually, together, and together along with their daughter. He also met with the defendant and her mother. He conducted home visits and did evaluations in his

office. He met with Ashley and Doug at least twice at his office, once a child exchange and the other a formal meeting. At the time Dr. Broeder was conducting his evaluations, the child was approximately two and a half years old.

During Dr. Broeder's individual time with Ashley, she told him, on more than one occasion, that she had no intention of reconciling with Doug and that it was her intention to relocate to Maryland with her mother and her daughter. She did not want Doug to go with them, despite email exchanges where Doug said he was also moving to Maryland and intended to live with Ashley and her mother. Quite the opposite, Ashley was adamant to Dr. Broeder that Doug was not moving in with her, and they were not getting back together. She also told Dr. Broeder that she did not believe Doug could be a good parent and was not comfortable with him having the child overnight. Her intention, once she lived in Maryland for at least six months, was to appeal to the Child Protection authorities there for help, because she wanted to block Doug from having their child.

Ashley never told Doug these things in Dr. Broeder's presence. Instead, she told Dr. Broeder, she was "going with the flow" so as not to make him angry and have him "blow up." She claimed that Doug was controlling, highly manipulative, and intense. This appeasement strategy included going to lunch or a movie with Doug, but she told Dr. Broeder that they were not living together and were not intimate.

While she told Dr. Broeder about the allegations she previously made against Doug and her claims of abuse toward their daughter, Ashley never told Dr. Broeder that Doug had physically harmed her or that she was afraid of being battered by him. She described the gun incident in South Carolina as "frightening." She claimed that Doug had a violent temper and punched holes in the wall at their home in South Carolina. She also admitted to getting into yelling and screaming matches with Doug. However, Dr. Broeder noted that Ashley did not mention any examples of violence since moving to Florida. Ashley told Dr. Broeder that she suspected Doug had poisoned her, and she claimed not to breastfeed their baby for fear of poisoning. She alleged that she had a toxicology report confirming her beliefs and that she suspected Doug had poisoned his first wife.

Even considering Ashley's accusations, Dr. Broeder never had any concerns for the safety of her or the child. During his evaluation periods, Dr. Broeder had the opportunity to observe Doug alone with the child and when both parents were present with the child, and his observations were positive regarding Doug's ability to be a comforting and soothing parent.

As Dr. Broeder neared the end of his evaluation period, Ashley expressed her frustration with the system, including CPT, law enforcement, the courts, Judge Moreland, and Dr. Broeder, because she believed that no one was helping her protect her child. She told Dr. Broeder that she was running out of time and would have to "take matters into her own hands."

The last time Dr. Broeder saw the Benefields was in August, 2020, and his report was submitted around September 14, 2020.

LEGAL CONCLUSIONS AND RULING

As stipulated by the State and found by the court, the Defendant's Motion raises a prima facie claim of self-defense. However, the court does not consider the Defendant's Motion or its attachments as substantive evidence. It merely opens the courthouse doors and shifts the burden to the State to prove by clear and convincing evidence that the defendant is not entitled to immunity from prosecution.

The court heard the testimony of the State's witnesses and received exhibits in the form of photographs, documents, text messages, and an audio recording. The competent and substantial evidence presented by the State proves clearly and convincingly that the defendant is not entitled to court-ordered immunity from criminal prosecution, as she was not justified in using deadly force against the victim on September 27, 2020.

Considering the totality of the competent and substantial evidence admitted during the SYG hearing, the State has proven by clear and convincing evidence that the victim's homicide was not a singular act of necessary self-defense but was instead the culmination of a lengthy, concerted effort by the defendant to eliminate the victim from her life and the life of their child. When the defendant's efforts to enlist the assistance of law enforcement, child protective services, and the judicial system failed, she took matters into her own hands, as she told Dr. Broeder she would.

Considering just the events of September 27, 2020, only the defendant and victim were present when the homicide occurred, and Florida courts have recognized that this can cause difficulty for the State in some cases.[28] However, the competent, substantial evidence admitted by the State at the SYG hearing, in the form of text messages between the parties in the hours leading up to the homicide, does not show that there was an appearance of danger- real or perceived- such that a reasonably cautious and prudent person under the same or similar circumstances would have believed that the use of deadly force was necessary to prevent imminent death or great bodily harm to herself or to prevent the imminent commission of a forcible felony.

When considering the totality of the competent and substantial evidence presented during the SYG hearing, the court finds that the State has proved by clear and convincing evidence that the defendant is not entitled to judicially-ordered immunity from criminal prosecution in this matter, and her motion will be denied.

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[28] As stated in Jefferson v. State, 264 So.3d 1019, 1029 (Fla. 2nd DCA 2018), "[w]e are mindful that there will be situations where the accused is the only available witness to the events leading up to an act that is claimed to be justifiable use of deadly force. This may result in great difficulty for the State to overcome the accused's prima facie claim by clear and convincing evidence." (citations omitted).

Now, therefore, be it **ORDERED and ADJUDGED**

1. That the defendant's Motion to Dismiss and Request for Declaration of Immunity, filed February 1, 2023, sufficiently pleads a prima facie claim of self-defense so as to shift the burden to the State to prove by clear and convincing evidence that the defendant is not entitled to court-ordered immunity from criminal prosecution under Florida's Stand Your Ground law. *See* F.S. 776.032(1) and (4).
2. That the competent, substantial, admissible, and reliable evidence presented by the State during the SYG hearing clearly and convincingly proves that the defendant is not entitled to court-ordered immunity from criminal prosecution for the death of Doug Benefield on September 27, 2020. *See* F.S. 776.032(1) and (4).
3. That the defendant's Motion to Dismiss, Request for Declaration of Immunity, and Incorporated Memorandum of Law, filed February 1, 2023, is **DENIED.**[29]

DONE and ORDERED this ____ day of September, 2023, at Bradenton, Manatee County, Florida.

eSigned by STEPHEN WHYTE, Circuit Judge 09/18/2023 16:51:22 MTUCSuUc

Stephen M. Whyte, Circuit Court Judge

Copies
State Attorney's Office- Suzanne O'Donnell
Attorney for Defendant- Neil Taylor

[29] "When raising a substantive challenge to a trial court's ruling on a self-defense immunity claim, a defendant may seek relief by petitioning for a writ of prohibition." Edwards v. State, 351 So.3d 1142, 1146 (Fla. 1st DCA 2022) (citing Boston v. State, 326 So.3d 673, 677 (Fla. 2021) ("[A] defendant who avails him or herself to a *pretrial* immunity hearing and who believes legal error was committed at the *pretrial* immunity hearing may still seek relief by filing a petition for writ of prohibition.")) (emphasis in original). However, the defendant should not delay in seeking such a writ from the appellate court. *See* Snow v. State, 352 So.3d 529 (Fla. 1st DCA 2022).