

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**Case No. 2024-CF-002000 A**

**EDDIE LEE DURAN JR.,**

**Defendant.**

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**ORDER DENYING MOTION TO DISMISS  
AND  
ORDER ON MOTIONS IN LIMINE**

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**THIS CAUSE** is before the Court on Defendant's "Motion to Dismiss Pursuant to Statutory Immunity" and accompanying "Memorandum of Law in Support of Defendant's Motion to Dismiss Based on Statutory Immunity." Defendant is currently charged with manslaughter with a firearm, a felony of the first degree pursuant to sections 782.07(1) and 775.087(1), Florida Statutes. In his motion, Defendant seeks immunity from prosecution pursuant to sections 776.012 and 776.032, Florida Statutes, and Florida Rule of Criminal Procedure 3.190(b). Also before the Court are multiple motions in limine filed by the State in July 2026. In those motions, the State seeks to exclude certain defense witnesses and testimony.

The Court held an evidentiary hearing on August 3-5, 2026. The parties agreed that the State would present its evidence first, followed by Defendant's presentation of evidence. Because of that agreed-upon procedure, the Court reserved ruling on the issue of whether Defendant raised a prima facie claim that would shift the burden of proof to the State to disprove Defendant's claim of immunity. Additionally, the Court permitted the defense to proffer

testimony from witnesses whose testimony is the subject of motions in limine. The Court reserved ruling on those motions.

The parties filed written closing arguments on August 14, 2026. Having carefully considered these matters and the applicable law, the Court finds as follows:

### **Background**

The circumstances in this case illustrate a tragic collision of a law enforcement officer's attempt to carry out his duty to serve and protect the public, and a law-abiding citizen's right to possess a firearm in his own home.

On May 3, 2024, Defendant was an Okaloosa County Sheriff's deputy who responded to a dispatch call based on fourth-party information of a report of a physical disturbance between a male and female at Elan Apartments. Defendant spoke with a leasing consultant for Elan Apartments who told him that a tenant had reported that the occupants of the apartment above her were fighting, that it happens frequently, but this time it sounded like it was getting out of hand. The leasing consultant also said to Defendant that two weeks earlier, she had been walking by the apartment and heard "someone yell, like shut the f\*\*k up, like, you stupid b-word and all this other stuff, and I heard a slap, like right after it, but I wasn't sure where it came from."

The leasing consultant directed Defendant to apartment 1401. Defendant used an elevator to go to the fourth floor and then proceeded down a hallway to apartment 1401. There were no windows facing the hallway, so a peephole in the apartment door was the only way an apartment occupant could see a person outside the apartment door.

Defendant listened at the apartment door and heard nothing indicating a physical or domestic disturbance.

Defendant knocked on the door.

A dog barked.

Defendant avoided the front of the door; he wanted to avoid being in a “fatal funnel.”<sup>1</sup> According to Defendant, he heard profanity and the word “police.” He knocked again and said, “Sheriff’s Office. Open the door.” He knocked again, repeating his announcement and command to open the door.

Senior Airman Roger Fortson opened the door to his home. A small dog accompanied him on his left. Down by his right side, Senior Airman Fortson held a firearm pointed down with his finger outside the trigger guard.

Almost immediately after Senior Airman Fortson opened his door, Defendant said, “Step back.” About one second later he drew his agency firearm and shot Senior Airman Fortson at a distance of a little more than arm’s reach. After the first shot, Senior Airman Fortson began falling to the floor.

Defendant fired five shots in total. Prior to Defendant’s first shot, Senior Airman Fortson’s firearm was pointed down and slightly behind him, away from Defendant with his finger outside the trigger guard.<sup>2</sup>

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<sup>1</sup> At the evidentiary hearing, Defendant testified, “We’re taught that we never know if there’s an individual behind the door with a firearm that could shoot through the firearm [sic]. So our training dictates that we stand to the left or the right of the door, preferably on the side of the door with the handle so that it opens opposite to you.” (Transcript of Evidentiary Hearing, page 241). Subsequent references to this transcript are designated as “T.” and followed by the relevant page number(s).

<sup>2</sup> This occurs at 16:32:03 on the body camera recording introduced at the evidentiary hearing. All references to time in this order are based on the time stamps included in the body camera recording.

Defendant would later testify that being surprised with a firearm at the door was the only thing that prompted him to fire his weapon.<sup>3</sup>

As Senior Airman Fortson lay on the ground, Defendant yelled, “Drop the gun! Drop the gun! Drop the gun!” Defendant did not realize that Senior Airman Fortson no longer held the firearm; it had already fallen from his hand.

Defendant kept his agency firearm aimed in Senior Airman Fortson’s direction. Defendant said, “He had a gun as soon as he opened that door.”<sup>4</sup> Less than two minutes later, Defendant made a similar statement about the presence of a “gun” as soon as the door opened.

Senior Airman Fortson died as a result of multiple gunshot wounds.

\* \* \*

Defendant did not know when he was standing outside of apartment 1401 on May 3, 2024, that the person he would ultimately shoot and kill was a combat-decorated member of the United States Air Force who was well-respected and considered to be an exceptional athlete, student, and valued Ghost Rider special missions aviator.<sup>5</sup>

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<sup>3</sup> At the evidentiary hearing, Defendant was asked by defense counsel, “What caused you to pull and fire your weapon?” Defendant answered, “Being surprised with a firearm at the door, sir.” T. 281. Defendant reiterated that observing the firearm was the sole reason he shot Senior Airman Fortson. Defense counsel asked Defendant, “What was the only thing that prompted you to pull your gun and fire it that day?” Defendant answered, “The firearm, sir.” T. 284.

<sup>4</sup> Defendant’s statement occurs at approximately 16:32:58 on the body camera recording introduced at the evidentiary hearing.

<sup>5</sup> David Roza, *In Grassroots Effort, Airmen Worldwide Come Together to Grieve SrA Roger Fortson*, AIR & SPACE FORCES MAGAZINE (May 16, 2024), <https://www.airandspaceforces.com/air-force-roger-fortson-funeral/>; Tech. Sgt. Ryan Conroy, *Hurlburt Field honors Senior Airman Roger Fortson during memorial service*, (May 20, 2024), <https://www.dvidshub.net/news/471786/hurlburt-field-honors-senior-airman-roger-fortson-during-memorial-service>.

Although Senior Airman Fortson's background is not legally relevant and is not part of the Court's analysis of the motion to dismiss, the Court notes that earlier that day, Senior Airman Fortson was at Charles Johnson's home playing video games, which was a common activity for Senior Airman Fortson. Mr. Johnson was also in the Air Force, and he considered Senior Airman Fortson his best friend. Indeed, they saw each other almost every day.

Tytiana Hendrix dated Senior Airman Fortson from October 2023 until the time of his death. She lived in Georgia, so sometimes she would travel to visit him in Florida. Sometimes he would travel to Georgia and visit her. They communicated by FaceTime every day. Ms. Hendrix considered Senior Airman Fortson to be patient with her and "very calm." Although they had arguments, she "was the yellor" in their relationship. She had "never seen him angry."

On the day Senior Airman Fortson was killed, Ms. Hendrix was in Georgia. She spoke with him on the phone in the morning, again in the afternoon when he was at Mr. Johnson's house, and again on his way home to his apartment. According to Ms. Hendrix they did not argue at all on May 3, 2024.

After Senior Airman Fortson returned home, he played another video game while talking with Ms. Hendrix on FaceTime. Ms. Hendrix later explained that Senior Airman Fortson would wear a headset and usually have the microphone on when playing video games, and he usually joked and laughed when playing.

Then came Defendant's first knock on the door, interrupting the video game and conversation. Senior Airman Fortson asked who it was, but he did not hear a response.<sup>6</sup>

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<sup>6</sup> Ms. Hendrix testified, "[W]hen we first heard the knocks, he then, like, asked who it was, and we were both like trying to figure out if it was a knock because it was a pretty light knock. So we were like someone's knocking at the door. And then he asked who is it." T. 92.

After the second knock on the door, according to Ms. Hendrix, Senior Airman Fortson looked out of the door's peephole but did not see anyone.

After the third knock, according to Ms. Hendrix, Senior Airman Fortson said, "Who the f\*\*k is it." He retrieved his firearm and went to the door, and then the sad events unfolded as previously described.

Defendant is currently charged with manslaughter with a firearm, a felony of the first degree pursuant to sections 782.07(1) and 775.087(1), Florida Statutes.

### **Defendant's Motion**

Defendant alleges that he "responded to what appeared to be credible evidence of a domestic disturbance that could include physical danger to a person or persons within apartment 1401." (Motion, 7). Defendant states that he "saw that [Senior Airman] Fortson was holding a 9mm Glock semi-automatic handgun in his right hand down by his side." (Motion, 13). Defendant states, "At the moment Deputy Duran first saw [Senior Airman] Fortson, he instantaneously recognized what appeared to be an aggressive look on [Senior Airman] Fortson's face." (Motion, 14). Defendant states that "[a]t the moment" he "observed [Senior Airman] Fortson's handgun, he yelled for [Senior Airman] Fortson to 'step back' as he drew his [agency firearm] and fired five shots, all of which struck [Senior Airman] Fortson." (Motion, 14).

Defendant claims "he is entitled to immunity from prosecution" because his actions occurred "while in the course and scope of his employment as deputy sheriff and were in lawful self-defense of himself and/or others . . . ." (Motion, 1).

Defendant claims, "At the time he fired his weapon, Deputy Duran reasonably believed that he was in imminent danger of being shot and killed, which caused him to react in a manner consistent with the law enforcement training he had repeatedly received throughout his career."

(Motion, 14). He also claims he “was in reasonable fear of imminent death or great bodily injury to himself and/or other persons.” (Motion, 17).<sup>7</sup>

Defendant blames Senior Airman Fortson for the tragic events of May 3, 2024. Defendant asserts, “While no one can know the reason or reasons [Senior Airman] Fortson had for deciding to arm himself with a Glock before answering the door for Deputy Duran, it was that decision alone that impelled a justifiably frightened Deputy Duran to draw and discharge his weapon in reaction to the clear, present, and imminent threat of deadly force presented by [Senior Airman] Fortson.” (Motion, 19). In the memorandum accompanying the motion to dismiss, Defendant argues, “The simple truth remains that when [Senior Airman] Fortson armed himself before opening his front door for a deputy sheriff, he made an unwise, unnecessary, and tragically bad choice.” (Motion, 46).<sup>8</sup>

### **Legal Authority**

#### ***The Sanctity of a Citizen’s Home - The Castle Doctrine***

“The sanctity of the citizen’s home is a basic tenet of Anglo–American jurisprudence: In 1604, an English court made the now-famous observation that ‘the house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose.’

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<sup>7</sup> The memorandum of law which is attached to the motion includes an argument in footnote three that the Court could direct dismissal of the charge against Defendant because he “was the victim of an aggravated assault.”

<sup>8</sup> In Defendant’s written closing argument, he continues to blame Senior Airman Fortson for his own tragic death. Defendant argues on page 14, “If only [Senior Airman] Fortson had simply opened the door and explained that he was alone rather than having taken a Glock to the door, all of this tragedy would have been avoided.” Defendant argues on page 37 that Senior Airman Fortson “for some inscrutable reason” chose “to open the door only after arming himself with a semi-automatic handgun.” Defendant also argues, “None of what happened that day would have happened had [Senior Airman] Fortson not chosen to arm himself before simply opening his door and allowing [D]eputy Duran to sort out what was really going on.” *Id.*

*Semayne's Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K.B.).” *Jardines v. State*, 73 So. 3d 34, 45–46 (Fla. 2011), *aff'd sub nom. Florida v. Jardines*, 569 U.S. 1 (2013).

### ***The Right to Bear Arms***

The Second Amendment to the United States Constitution provides the right to keep and bear arms, and the Supreme Court of the United States has recognized that right. *See D.C. v. Heller*, 554 U.S. 570, 595 (2008) (“There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.”). The Supreme Court also opined that “the inherent right of self-defense has been central to the Second Amendment right.” *Id.* at 628. The Second Amendment “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Id.* at 635; *see McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791 (2010) (“In *Heller*, we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense.”).

The Florida Constitution also provides an individual right to bear arms: “The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.” Art. I, § 8(a), Fla. Const.

The Florida Legislature has specifically determined that a person who is not otherwise prohibited from owning or possessing a firearm under state or federal law can lawfully possess weapons or firearms in his or her home. § 790.25(2)(n), Fla. Stat. (2025). In other words, in Florida, a person has a clearly established unequivocal statutory right to openly carry a firearm in his or her own home. *See Peoples v. State*, 287 So. 2d 63, 66–67 (Fla. 1973) (“[T]he Legislature in adopting the Revised Statutes of 1969, which includes Chapter 790 dealing with the subject of

weapons and firearms, has declared (Section 790.25(1)) it to be the policy of the Legislature not only that it is necessary to promote firearm safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons, but also that the lawful use in defense of life, home and property and for other lawful purposes is not to be prohibited.”) (quoting *Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972)); *Russ v. State*, 304 So. 2d 481, 481 (Fla. 1st DCA 1974); *Collins v. State*, 475 So. 2d 968, 969 (Fla. 4th DCA 1985) (“[I]t is not unlawful for a person to possess firearms ‘at his home or place of business.’”) (quoting section 790.25(3)(n), Florida Statutes (1983)); *Santiago v. State*, 77 So. 3d 874, 876 (Fla. 4th DCA 2012) (“[S]ection 790.25 permits the lawful possession of a firearm in one’s residence.”); *Florida Carry, Inc. v. Univ. of Florida*, 180 So. 3d 137, 145 (Fla. 1st DCA 2015) (acknowledging that pursuant to section 790.25, possession of firearms in a home is lawful); *McCarron v. State*, 185 So. 3d 666, 674 (Fla. 2d DCA 2016); *State v. Anderson*, 764 So. 2d 848, 849 (Fla. 3d DCA 2000) (“Section 790.25 protects the rights of citizens in Florida to lawfully own and possess firearms.”); *Burns v. State*, 361 So. 3d 372, 377 (Fla. 4th DCA 2023) (“Burns had the right to openly carry the firearm he displayed and loaded because he was on his home property.”); *Gonzalez v. State*, 412 So. 3d 829, 846 (Fla. 6th DCA 2024) (“[A]n individual in Florida has an explicit statutory right to openly carry a knife (or firearm) on his or her own home property.”) (Mize, J., concurring).

### ***Mere Display of a Firearm is Non-Deadly Force***

“The display of a firearm constitutes non-deadly force as a matter of law.” *Burns v. State*, 361 So. 3d at 375; see *Stewart v. State*, 672 So. 2d 865, 868 (Fla. 2d DCA 1996) (“Deadly force occurs when the natural, probable, and foreseeable consequences of the defendant’s acts are death.”); *Jackson v. State*, 179 So. 3d 443, 446 (Fla. 5th DCA 2015) (“[T]he mere display of a

gun, or even pointing a gun at another's head or heart without firing it, is not deadly force as a matter of law.”).

### ***Florida's Stand Your Ground Law***

“Florida's Stand Your Ground law confers immunity from prosecution if an individual uses deadly force in accordance with section 776.012(2), Florida Statutes.” *Fletcher v. State*, 273 So. 3d 1187, 1189 (Fla. 1st DCA 2019).

Section 776.012(2), Florida Statutes, states as follows:

A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

“When a defendant files a motion to dismiss under section 776.012(2), the trial court must conduct an evidentiary hearing and weigh the factual evidence presented.” *Craven v. State*, 285 So. 3d 992, 993 (Fla. 1st DCA 2019).

### ***Defendant's Burden: Present Prima Facie Claim at Hearing; Burden then Shifts to State***

“At a hearing to determine whether a defendant is entitled to immunity, the defendant must first present a prima facie claim of immunity, after which the burden of proof shifts to the State to prove by clear and convincing evidence that the defendant is not entitled to immunity.” *Morris v. State*, 325 So. 3d 1009, 1011 (Fla. 1st DCA 2021); *see* §776.032(4), Fla. Stat. (2025).<sup>9</sup>

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<sup>9</sup> There is disagreement among circuits on this procedural issue. For example, in the Second Judicial Circuit, a defendant does *not* have an evidentiary burden and can simply raise a prima facie claim by motion. *See Jefferson v. State*, 264 So. 3d 1019, 1027 (Fla. 2d DCA 2018).

“The Legislature’s clear directive that the person seeking immunity must raise ‘a prima facie claim ... at a pretrial hearing’ cannot mean that the person seeking immunity may simply rest on the unsworn allegations in their earlier-filed immunity motion.” *Freeman v. State*, 373 So. 3d 1255, 1260 (Fla. 1st DCA 2023). “[B]efore the State bears the burden to overcome the immunity claim with evidence, it follows that the defendant seeking self-defense immunity bears the initial burden of presenting evidence at the pretrial immunity hearing sufficient to raise a prima facie claim.” *Id.* at 1261.

“A prima facie claim is an assertion that, at first glance, is sufficient to establish a fact or right but is yet to be disproved or rebutted by someone.” *Id.* at 1258. (quotations and bolding omitted). “To raise a prima facie claim of self-defense, a defendant must show that the elements of justifiable force are met.” *Edwards v. State*, 351 So. 3d 1142, 1148–49 (Fla. 1st DCA 2022). “[T]he defendant must allege specific facts that show or tended to show that he (1) used deadly force; (2) reasonably believed deadly force was necessary to prevent imminent death or great bodily harm to himself or another; (3) used such deadly force while resisting the victim’s attempt to murder him, to commit a forcible felony on him, or to commit a forcible felony on or in [the defendant’s] dwelling; and (4) was not otherwise engaged in criminal activity and was in [a] place he had a right to be.” *Id.* at 1149.

### ***Clear and Convincing Evidence***

“Clear and convincing evidence has been quantified as an intermediate level of proof that falls between proof by a preponderance of the evidence and proof beyond a reasonable doubt.” *Id.* at 1150. “[E]vidence is clear and convincing when the truth of the facts asserted is highly probable. Or when the evidence is credible, the witnesses distinctly remember the facts, and the testimony is precise and explicit. Courts have also found evidence to be clear and convincing

when the sum total of the evidence [is] of sufficient weight to convince the trier of fact without hesitancy.” *Id.* at 1151 (quotations and citations omitted). “[C]lear and convincing does not mean that there are no inconsistencies in the evidence.” *Id.* <sup>10</sup>

### ***Subjective AND Objective Standard***

“[A] showing of self-defense legally involves both an objective component, to which the reasonable person standard applies, and a subjective component, which leaves room for the admission of other relevant evidence establishing the overall circumstances.” *Oquendo v. State*, 420 So. 3d 466, 468–69 (Fla. 2025). Although evidence of a defendant’s state of mind <sup>11</sup> may provide support for a defendant’s subjective belief of being in danger, this type of evidence is “categorically irrelevant” as to the objective component. *See id.* at 469.

The objective component requires the trial court considering this type of immunity claim to “determine whether a reasonable person in [the defendant’s] position would have used the same force as [the defendant].” *Raulerson v. State*, 409 So. 3d 713, 718 (Fla. 1st DCA 2025).

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<sup>10</sup> The Florida Supreme Court has opined, “[C]lear 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 allegations sought to be established.” *Inquiry Concerning Davey*, 645 So. 2d 398, 404 (Fla. 1994) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

<sup>11</sup> In *Oquendo v. State*, the Supreme Court of Florida considered the issue of “whether Florida’s self-defense standard is solely governed by the objective reasonable person standard or also encompasses a subjective component that may allow evidence of PTSD . . . .” *Oquendo v. State*, 420 So. 3d 466, 474 (Fla. 2025). The Court specifically held “that the test for self-defense includes both a subjective and objective component.” *Id.* at 478. The Court also found that “because section 776.012(2) identifies both an objective reasonable person component and a subjective component to self-defense, state-of-mind evidence such as PTSD evidence can be relevant to the subjective component, even though it is irrelevant to the objective component.” *Id.* at 476.

“‘[T]he 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 force.’” *Id.* (quoting *Garrett v. State*, 148 So. 3d 466, 468 (Fla. 1st DCA 2014)); *see also Bouie v. State*, 292 So. 3d 471, 481 (Fla. 2d DCA 2020) (“The question under this objective evaluation of a defendant’s conduct is whether, based on the circumstances as they appeared to the defendant at the time of the altercation, a reasonable and prudent person in the same position as the defendant would believe that the use of deadly force is necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony.”).

One of the best explanations of how the subjective and objective components function in the context of justifiable self-defense comes not from the courts, but from Massad Ayoob, a prolific, and well-respected, writer in the self-defense arena, who also happens to be one of the defense experts. In a 2023 article, Massad Ayoob explained as follows:

The belief one is in deadly danger warranting a lethal-force response ***must be both reasonable and sincere***. It’s reasonable to shoot a man threatening to kill you with a pistol, which turns out later to be a realistic toy ... but only if the shooter reasonably believed it was a real gun. If I let you examine my realistic plastic toy copy of a Beretta 92, you can’t shoot me and claim the belief it was a real 9mm I was going to shoot you with.

Conversely, as one prosecutor put it, someone might sincerely believe the person they shot was an alien about to abduct him to another planet, but it would not be a reasonable belief and therefore would not be forgiven by the court. (emphasis added).<sup>12</sup>

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<sup>12</sup> Massad Ayoob, *Explaining Deadly Force: The Foundational Elements*, SHOOTING INDUSTRY <https://shootingindustry.com/discover/explaining-deadly-force-the-foundational-elements/> (last visited Aug. 31, 2026).

### **Motions in Limine**

In making the following rulings, the Court reserves jurisdiction, should any of the witnesses be offered at trial, on the balancing test of consideration of whether the probative value of the testimony is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.

#### ***State's Motion in Limine One***

The State seeks to exclude the testimony of defense witness Kevin Williams, who served as a certified law enforcement officer for 28 years in the Orlando Police Department. The defense proffered Mr. Williams's testimony at the evidentiary hearing. Mr. Williams testified about his training and experience, including experience as a firearms instructor. Mr. Williams testified regarding the events of this case and opined that Defendant's actions on May 3, 2024, were consistent with the training commonly used in the Okaloosa County Sheriff's Office at that time. Mr. Williams testified about law enforcement tactics, techniques, and concepts such as the "fatal funnel." When asked whether Defendant's use of force "was a reasonable response to the threat and risk presented by [Senior Airman] Fortson when he answered the door with a gun in his hand," Mr. Williams answered, "Yes." <sup>13</sup>

The Court grants the State's motion in part. Mr. Williams's testimony concerning law enforcement training and related concepts is admissible to provide explanation of the technical terms. *See Drejka v. State*, 330 So. 3d 1055, 1063 (Fla. 2d DCA 2021) (expert testimony to explain tactical law enforcement/military terms was admissible in a self-defense case). However, the Court finds that the admissibility of this testimony is limited because it should only be considered for the purpose of determining the subjective component of Defendant's claim of

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<sup>13</sup> T. 508-509.

self-defense immunity. The testimony is relevant to consideration of Defendant's state-of-mind, which concerns the subjective component. *See Oquendo*, 420 So. 3d at 469. However, as to the objective component, the testimony is categorically irrelevant. *See id.*

Further, Mr. Williams's opinion that Defendant's use of force was reasonable invades the province of the factfinder. "[E]xpert opinions about the reasonableness of the defendant's use of force are generally inadmissible because [w]hether self-defense applies in a given case is a classic question that jurors are well equipped to handle." *Wilson v. State*, 433 So. 3d 804, 810 (Fla. 4th DCA 2026) (quotations omitted), *review denied*, No. SC2026-0658, 2026 WL 2017493 (Fla. July 13, 2026). In other words, it is for the factfinder to determine whether Defendant's use of force was reasonable. *See Salomon v. State*, 267 So. 3d 25, 31 (Fla. 4th DCA 2019); *State v. Andrews*, 820 So. 2d 1016, 1025 (Fla. 4th DCA 2002) ("Whether Officer MacVane was standing in harm's way and therefore was justified in discharging his firearm in defending himself from the oncoming vehicle was for the jury to determine."); *see also Hunt v. State*, 284 So. 3d 1092, 1093 (Fla. 4th DCA 2019) ("The credibility of appellant's claim of self-defense was exclusively within the province of the jury. The deputy's testimony invaded this exclusive province. Thus, we reverse and remand for a new trial."). Further, the testimony would improperly bolster Defendant's testimony. *See Mitchell v. State*, 965 So. 2d 246, 251 (Fla. 4th DCA 2007).

Thus, the State's Motion in Limine One is granted in part. Accordingly, the objections made by the State during the proffer of testimony at the evidentiary hearing are sustained to the extent provided by the granting in part of Motion in Limine One.

#### ***State's Motion in Limine Two***

The State seeks to exclude the testimony of defense witness Massad Ayoob and video recordings he created. The defense proffered Mr. Ayoob's testimony at the evidentiary hearing.

Mr. Ayoob testified regarding his background, training, and experience as an instructor and author in the field of weapons and self-defense. He testified that he is a former law enforcement officer with approximately 43 years of experience, and he is the director of Massad Ayoob Group, a school that teaches judicious use of lethal force in defense of self and others. Mr. Ayoob provided opinion testimony about law enforcement training, Defendant's own training, and the use of force by law enforcement officers. When asked whether he found Defendant's use of force proportionate to the risk presented when Senior Airman Fortson opened the door with a firearm in his hand after Defendant had twice announced his presence as a law enforcement officer, Mr. Ayoob indicated an affirmative response.<sup>14</sup> Mr. Ayoob opined that he disagreed with Defendant's termination from the Okaloosa County Sheriff's Office, and he testified that Defendant's use of force was objectively reasonable.

The Court finds that Mr. Ayoob's testimony regarding law enforcement training and use of force by law enforcement officers is admissible for purposes of considering the subjective component of the self-defense claim. However, the testimony is not admissible concerning the objective component. *See Oquendo*, 420 So. 3d at 469. Further, Mr. Ayoob's opinion on the reasonableness of Defendant's conduct is not admissible because it invades the province of the factfinder. *See Wilson*, 433 So. 3d at 810; *Andrews*, 820 So. 2d at 1025. Further, that testimony improperly bolsters Defendant's testimony. *See Mitchell*, 965 So. 2d at 251.

As to the video recordings, one recording demonstrates Mr. Ayoob's personal reaction time to an audio stimulus. The other recording shows Mr. Ayoob and an assistant taking turns, at a distance of about four feet, portraying someone simulating Defendant's position (i.e., firearm in holster facing armed individual) and the other in Senior Airman Fortson's position (i.e.,

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<sup>14</sup> T. 457.

firearm in right hand down at side). That video recording shows the person in Senior Airman Fortson's position raising the firearm and shooting the person in Defendant's position before that person shoots. Mr. Ayooob concludes that "action beats reaction, and that seems to be an immutable law."

The Court acknowledges that Mr. Ayooob's video recordings are interesting and provide some insight into human reaction times, but they are not admissible. *See generally Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993) ("We recognize that, in practice, a gatekeeping role for the judge, no matter how flexible, inevitably on occasion will prevent the jury from learning of authentic insights and innovations. That, nevertheless, is the balance that is struck by Rules of Evidence designed not for the exhaustive search for cosmic understanding but for the particularized resolution of legal disputes.").

More specifically, the Court finds that the methodology underlying the opinions presented is not sufficiently reliable under section 90.702, Florida Statutes. Both video recordings include Mr. Ayooob's personal reaction time, and one video recording also includes his assistant's personal reaction time. The conclusions reached are subjective as to the specific individuals depicted. Additionally, because the methodology used is subjective as to the participants in the video recordings, the testimony and opinion regarding the video recordings is not applied reliably to the facts of this case. For example, no evidence was presented regarding the specific reaction times of Senior Airman Fortson and Defendant, and no testimony was presented regarding a body of scientific knowledge concerning average human reaction times to support Mr. Ayooob's statements regarding these matters. *See Kemp v. State*, 280 So. 3d 81, 89 (Fla. 4th DCA 2019) ("Nothing in *Daubert* requires a court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert, and [a] court may conclude that

there is simply too great an analytical gap between the data and the opinion proffered.”)  
(quotations omitted).

Additionally, the overarching concept presented by the defense is that a person who acts first has an advantage over a person who reacts. This is not something beyond the common understanding of the average person, so the testimony and video recordings should not be admitted. *Torrez v. State*, 294 So. 3d 390, 403 (Fla. 4th DCA 2020) (“[E]xpert testimony should be excluded where the facts testified to are of such a nature as not to require any special knowledge or experience in order for the jury to form conclusions from the facts.”) (quoting *Johnson v. State*, 393 So. 2d 1069, 1072 (Fla. 1980)).

Thus, the State’s Motion in Limine Two is granted in part. Accordingly, the objections made by the State during the proffer of testimony at the evidentiary hearing are sustained to the extent provided by the granting in part of Motion in Limine Two.

#### ***State’s Motion in Limine Three***

The State seeks to exclude the proposed testimony of defense witness George Kirkham. The defense did not proffer testimony from Mr. Kirkham at the evidentiary hearing, and thus, for purposes of the present motion to dismiss, this motion in limine is moot. The Court reserves ruling on this motion in limine should the defense offer Mr. Kirkham as a witness at trial.

#### ***State’s Motion in Limine Four***

The State seeks exclusion of any testimony that identifies statements or words included on Defendant’s body camera recording. At the hearing, the defense proffered the testimony of Detective Peter Hernandez of the Orange County Sheriff’s Office. Detective Hernandez testified that he is also assigned full-time to the Florida Department of Law Enforcement’s electronic support team, and he oversees the audio/video enhancements lab. Detective Hernandez testified

regarding his training and certifications concerning audio/video enhancements and the process he uses to enhance those types of recordings. Detective Hernandez testified that he enhanced a specific time period of the audio in the body camera recording at issue in this case. Detective Hernandez also gave his opinion as to the specific words he believed he heard on the recording, which the defense offers to corroborate Defendant's testimony.

The Court finds that although Detective Hernandez's testimony is admissible regarding his procedures and methods of enhancing the audio recording, and the enhanced recording is admissible, his opinion on what he believes he heard is not admissible. Detective Hernandez does not have personal knowledge of the contents of the recording, and he is not an expert witness skilled in the interpretation of inaudible tape recordings. *See Wilson v. State*, 311 So. 3d 964, 966–67 (Fla. 1st DCA 2020) (“[W]here ... a partially inaudible tape recording is appropriately played for the trier of fact, the case law is clear that neither a written nor oral interpretation of the inaudible portions of the tape recording is admissible unless such interpretation is properly authenticated by a person having personal knowledge of the contents of the tape recording or by an expert witness skilled in interpreting inaudible tape recordings.”) (quoting *Wilson v. State*, 680 So. 2d 592, 594 (Fla. 3d DCA 1996)). Moreover, to the extent the defense offers Detective Hernandez's lay opinion as to what he believes he heard on the body camera recording, the Court finds that the testimony should not be admitted due to the danger of unfair prejudice. The factfinder is in as good a position as Detective Hernandez or any other witness to listen to the recording and formulate an opinion on it. *See Thorp v. State*, 777 So. 2d 385, 395 (Fla. 2000) (“As a general rule, lay witnesses may not testify in the form of opinions or inferences; it is the function of the jury to draw those inferences.”). In other words, Detective Hernandez is in no better position than the factfinder to determine what was captured by the

body camera recording. *See Alvarez v. State*, 147 So. 3d 537, 542-43 (Fla. 4th DCA 2014) (where a detective was in no better position than the jurors to view a video to determine the skin color and faces of perpetrators, the trial court erred in permitting the detective's opinion testimony).

Thus, the State's Motion in Limine Four is granted. Neither Detective Hernandez, nor any other witness, may provide an opinion identifying statements or words included in the body camera recording.

***State's Motion in Limine Five***<sup>15</sup>

The State seeks exclusion of Lewis "Von" Kliem's testimony. At the hearing, the defense proffered Mr. Kliem's testimony, who is a lawyer with a law enforcement and military background, as well as experience as a legal instructor for police. Mr. Kliem is the president and director of the consulting division at Force Science. Part of the work of Force Science involves looking for reasonable practices concerning the use of force by law enforcement officers. Mr. Kliem has authored hundreds of articles, some of which have addressed action/reaction training for law enforcement officers.

Mr. Kliem testified about action/reaction principles regarding law enforcement training, imminent threat analysis, and related concepts. He testified about the dangers to law enforcement officers who respond to a report of domestic disturbance. Mr. Kliem provided his opinion on multiple matters, including his opinion that Defendant's response in the circumstances was

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<sup>15</sup> Defendant filed "Defendant's Preemptive Motion to Allow Expert Testimony of Lewis 'Von' Kliem" on July 17, 2026, requesting that Mr. Kliem be permitted to testify at the statutory immunity hearing and for the Court to hold a *Richardson* hearing if necessary. The motion is rendered moot because Mr. Kliem's testimony was proffered at the hearing, and the testimony is admitted subject to the limitations set forth in the Court's ruling on the State's Motion in Limine Five.

reasonable. When asked about his opinion on whether “the circumstance of the man answering the door with a gun in his hand presented an imminent threat to an officer,” Mr. Kliem answered, “Clearly, he did.”<sup>16</sup>

The Court finds that Mr. Kliem’s testimony regarding law enforcement training and practice is admissible regarding determination of the subjective component of Defendant’s claim of self-defense immunity, but the testimony is not admissible as to the objective component at issue in the self-defense claim. *See Oquendo*, 420 So. 3d at 469. Further, Mr. Kliem’s opinion on the reasonableness of Defendant’s conduct is not admissible because it invades the province of the factfinder. *See Wilson*, 433 So. 3d at 810; *Andrews*, 820 So. 2d at 1025. Further, that testimony improperly bolsters Defendant’s testimony. *See Mitchell*, 965 So. 2d at 251. Thus, the State’s Motion in Limine Five is granted in part. Accordingly, the objections made by the State during the proffer of testimony at the evidentiary hearing are sustained to the extent provided by the granting in part of Motion in Limine Five.

### **Analysis of Defendant’s Self-Defense Immunity Claim**

#### **Defendant Failed to Present a Prima Facie Claim of Self-Defense Immunity**

***Element 1 – Whether the defendant used deadly force; Element 4 – Whether the defendant was not otherwise engaged in criminal activity and was in a place he had a right to be***

At the conclusion of the hearing the parties agreed that elements one and four are not in material dispute. Indeed, the Court finds that Defendant clearly used deadly force by discharging his agency firearm at Senior Airman Fortson five times. Because Defendant was responding to a dispatch call and performing his duties as a law enforcement officer when doing so, he was not otherwise engaged in criminal activity and was in a place he had a right to be.

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<sup>16</sup> T. 355.

***Element 2 – Whether the defendant reasonably believed deadly force was necessary to prevent imminent death or great bodily harm to himself or another***

**Subjective Component**

Based on the testimony of Defendant, Mr. Kliem, Mr. Ayoob, and Mr. Williams, Defendant has demonstrated a prima facie claim as to the subjective component<sup>17</sup> of the claim. Defendant subjectively believed that deadly force was necessary to prevent imminent death or great bodily harm to himself.<sup>18</sup>

Defendant testified that with the information from the initial dispatch call and the information he received from the leasing consultant, he believed he was responding to a “physical domestic violence situation.”<sup>19</sup> Defendant testified that he had been trained that domestic violence situations are high risk scenarios, and he had experience with responses to domestic violence or disturbance calls and found them to be more difficult responses than others.<sup>20</sup> He testified that he had been taught that a domestic violence call is “one of the most dangerous calls” to receive and that the Okaloosa County Sheriff’s Office “had deputies in the past that were killed in the line of duty.”<sup>21</sup>

Defendant testified that when the apartment door opened, he directed Senior Airman Fortson to step back, but he stepped forward.<sup>22</sup> Defendant testified that when he saw the firearm

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<sup>17</sup> As stated earlier in this order, “a showing of self-defense legally involves both an objective component, to which the reasonable person standard applies, and a subjective component, which leaves room for the admission of other relevant evidence establishing the overall circumstances.” *Oquendo v. State*, 420 So. 3d 466, 468–69 (Fla. 2025).

<sup>18</sup> Defendant has not demonstrated a subjective belief that he believed deadly force was necessary to prevent imminent death or great bodily harm to another person, but Defendant need not make that showing since he satisfied the subjective test by demonstrating his subjective belief that he personally was faced with imminent death or great bodily harm.

<sup>19</sup> T. 237.

<sup>20</sup> T. 230-231.

<sup>21</sup> T. 231.

<sup>22</sup> T. 248.

in Senior Airman Fortson's hand, he was thinking, "I'm dead" and "I'm about to be shot."<sup>23</sup>

Defendant testified that in response, "I drew my firearm and I shot him."<sup>24</sup> Defendant explained that when he fired, he was about four feet away from Senior Airman Fortson, and that based on his training, that distance is "considered a very dangerous reactionary gap."<sup>25</sup>

The other testimony offered by defense witnesses supports Defendant's testimony regarding his subjective belief. The Court finds that Defendant has demonstrated a *prima facie* claim of his subjective belief that deadly force was necessary to prevent imminent death or great bodily harm to himself.

### **Objective Component**

However, as to the objective component, the Court is not convinced that Defendant has shown a *prima facie* claim under the circumstances. Defendant testified that the *only thing* that prompted him to fire his weapon that day was "the firearm."<sup>26</sup> The display of a firearm is considered non-deadly force as a matter of law. Although Defendant subjectively believed that seeing the firearm under the circumstances justified the use of deadly force, that subjective belief is not objectively reasonable. From an objective standpoint, considering *all* the circumstances—not just the fact that Senior Airman Fortson held a firearm in his hand when he opened his door—a reasonably cautious and prudent person would not use deadly force.

In Defendant's motion to dismiss and written closing argument, he asserts that the standard to be applied in this case is a "reasonable officer on the scene" standard. For this proposition, he relies on cases concerning Fourth Amendment excessive-force claims, such as

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<sup>23</sup> T. 248.

<sup>24</sup> T. 248.

<sup>25</sup> T. 249.

<sup>26</sup> T. 284.

*Graham v. Connor*, 490 U.S. 386 (1989); *Barnes v. Felix*, 605 U.S. 73 (2025); and *Long v. Slaton*, 508 F.3d 576 (11th Cir. 2007). However, these cases do not address the legal issue before this Court—a motion to dismiss based on statutory immunity under sections 776.012 and 776.032, Florida Statutes. Those cases are not binding authority concerning the motion to dismiss.

Although the defense has focused significant time and effort to elicit opinions from defense witnesses on the issue of the reasonableness of Defendant’s use of force, as noted earlier, that testimony is not admissible. Although evidence of matters that give rise to a defendant’s own mindset in the circumstances can be considered in regard to the subjective component, the same is not true for the objective component. *See Oquendo*, 420 So. 3d at 469.

To conclude otherwise would mean that in any case in which a defendant raises a claim of self-defense immunity, the defendant could offer testimony or other evidence about the defendant’s own personal experiences, background, profession, training, and other idiosyncrasies to create a “reasonable prudent person” standard in the defendant’s own image. This would improperly inject a defendant’s own state of mind—the subjective component—into the objective component. To do this would eviscerate the objective component and erroneously convert the legal standard into a solely subjective test.

Over a century ago, Chief Justice Shackleford of the Supreme Court of Florida opined as follows:

As a matter of fact, we have learned from the teaching of common sense and everyday observation and experience that the ‘*reasonably prudent man*,’ ‘the man of ordinary prudence,’ or under whichever one of the various kindred aliases he may be designated, has no actual existence, and ‘*does not correspond to anybody in particular in everyday life, but is rather a type with whom everybody may be compared.*’

*Hainlin v. Budge*, 47 So. 825, 832-33 (Fla. 1908) (emphasis added). Misunderstanding the objective test may result in application of an erroneous, variable test that would be “as variable as the foot of each individual.” *Id.* (citations and quotations omitted).

Although *Hainlin* is a case concerning negligence, Chief Justice Shackelford’s opinion is instructive. The objective test to be applied in the context of a claim of self-defense immunity must function in a way so that a defendant’s conduct is measured against a type with whom *everybody* may be compared. The correct standard is not based on a certain occupation or training. In other words, because the matter before this Court is a motion to dismiss based on statutory immunity under sections 776.012 and 776.032, Florida Statutes—not an excessive force Fourth Amendment claim—the correct standard for this Court to apply in this case is a “reasonably cautious and prudent person” standard, not a “reasonable officer on the scene” standard.

Accordingly, the Court finds that Defendant has not shown a prima facie claim.

***Element 3 – Whether Defendant used the deadly force while resisting an attempt to murder him or commit a forcible felony on him***

Defendant also fails to show a prima facie claim because Senior Airman Fortson merely came to the door with a firearm in his right hand pointed down with his finger outside the trigger guard. Again, Defendant specifically testified that the *only thing* that prompted him to shoot Senior Airman Fortson that day was “the firearm.”

As noted previously, the display of a firearm is *non-deadly* force as a matter of law. Further, a person may possess a firearm in his own home. From an objective standpoint, the mere presence of the firearm in Senior Airman Fortson’s hand was not an attempt to murder Defendant or commit a forcible felony on him. Defendant has not made a prima facie claim that Senior Airman Fortson attempted to murder him or commit a forcible felony on him.

Thus, because Defendant failed to demonstrate a prima facie claim as to elements two and three, the State had no burden to overcome Defendant's claim of immunity.

**Even if Defendant Had Presented a Prima Facie Claim, Defendant is Not Entitled to Relief**

Even if Defendant had presented a prima facie claim of self-defense immunity, the State presented clear and convincing evidence overcoming Defendant's immunity claim. The Court finds that Defendant did not reasonably believe that deadly force was necessary to prevent imminent death or great bodily harm to himself or another.

The State elicited testimony from Defendant that the radio call from dispatch did not specifically indicate domestic violence, and when Defendant arrived at Senior Airman Fortson's door he did not hear anything.<sup>27</sup> Defendant admitted that silence could mean nothing was happening.<sup>28</sup> From a reasonable person's perspective, knowing what Defendant knew about the circumstances while on the scene, he had grounds to reasonably believe that if there had been a domestic disturbance as reported, it had ended.

The body camera recording, which the State moved into evidence, demonstrates that at approximately 16:32:00 on the time-stamped recording, Senior Airman Fortson opened the door to his home after Defendant's third knock. At 16:32:02, Defendant said, "Step back." Notably, at 16:32:03, a small white dog is visible, tail up, calmly looking at the officer. Almost immediately, Defendant drew his agency firearm and began shooting Senior Airman Fortson. Defendant fired his first shot at 16:32:03.

Defendant did not testify about the small dog that accompanied Senior Airman Fortson to the door. The dog is clearly visible and an inescapable part of the overall circumstances. The dog

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<sup>27</sup> T. 253, 256.

<sup>28</sup> T. 256.

did not appear frightened or agitated—at least not until Defendant began shooting, at which point, the dog fled from the door and retreated into the apartment. The calm behavior of the dog at the door suggests that if there *had* been a domestic disturbance, it had dissipated. A reasonably cautious and prudent person in the same circumstances as Defendant would consider the dog’s calm disposition together with the fact that no one reported actually seeing anyone in apartment 1401 arguing or fighting; indeed, the report of the disturbance was fourth-party information, and the leasing consultant’s own report of an event from *two weeks earlier* was vague and uncertain as to location.

The information Defendant had about a disturbance was thin, and so a reasonably cautious and prudent person in the same circumstances as Defendant would consider the possibility that apartment 1401 was not involved in any domestic disturbance at all.

There is additional significance to the presence of the dog. As mentioned earlier, the body camera recording reveals the obvious sound of a dog barking after Defendant’s first knock on the door, yet Defendant testified that he heard *nothing*. This fact calls into question Defendant’s testimony about hearing profanity and the word “police.”<sup>29</sup> From an objective standpoint, the enhanced recording introduced by the defense does not clearly indicate what was said inside the apartment building. The person with the clearest understanding of what was said inside apartment 1401 is Ms. Hendrix, since she was communicating over FaceTime with Senior Airman Fortson. As noted earlier, she testified that Senior Airman Fortson had said, “Who the f\*\*k is it.” The Court finds Ms. Hendrix’s testimony credible. Nevertheless, even if the word “police” had been said, this shooting was not objectively reasonable.

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<sup>29</sup> Defendant is a former K-9 officer, T. 225.

Defendant indicated, upon cross-examination by the State, that he did not factor into his decision-making the idea that a person inside the apartment may become more apprehensive if the person does not know that law enforcement is present outside the door.<sup>30</sup> Defendant acknowledged that he did not use his siren or lights when arriving at the apartment complex, and he understood the person in the apartment would not be able to see his patrol vehicle.<sup>31</sup> Defendant admitted that the act of announcing one's presence as a law enforcement officer outside of a door does not mean that whoever is in a home actually hears the announcement.<sup>32</sup> Defendant testified that he was intentionally out of sight when he heard profanity and the word "police."<sup>33</sup> A reasonably cautious and prudent person in the same circumstances as Defendant would consider the fact that to any extent that the door's peephole could be used by a person inside the apartment, the peephole might not provide a view of a person outside the door who is avoiding the front of the door. Defendant also admitted, in reference to his testimony about the use of profanity and the word "police," that he did not know whether what he heard was in the form of a sentence or a question.<sup>34</sup> The Court finds that a reasonably cautious and prudent person in the same circumstances as Defendant would have considered the possibility that a person inside apartment 1401 might be apprehensive about the identity of the individual outside of the apartment door. A reasonably cautious and prudent person would also have considered the fact that the apartment had no windows to allow someone inside the apartment to view the area outside the door. Under these circumstances, even if a person inside the apartment had heard, "Sheriff's Office. Open the door," the person would not necessarily be able to visually determine

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<sup>30</sup> T. 259.

<sup>31</sup> T. 261.

<sup>32</sup> T. 263.

<sup>33</sup> T. 260-261.

<sup>34</sup> T. 260.

whether the individual outside appeared to be a real law enforcement officer or an imposter intending to do harm. Simply put, it is unreasonable to believe that the mere announcement of “Sheriff’s Office. Open the door” made outside of an apartment obligates the person inside to believe that the individual outside is truly a law enforcement officer without something more.

Consequently, a reasonably cautious and prudent person in the same circumstances as Defendant would take into consideration the possibility that the occupant of the apartment might answer the door with a firearm for the occupant’s *own* lawful self-defense purposes.

As stated earlier, the display of a firearm is considered non-deadly force as a matter of law. Further, a person generally may lawfully possess firearms in his or her own home. As a general matter, the defense’s criticism of Senior Airman Fortson for answering the door to his home with a firearm in his hand is contrary to clear, long-standing constitutional and statutory rights regarding lawful firearm ownership. The defense’s criticism appears to be based on this flawed premise: When a law enforcement officer knocks on a door and announces his or her presence as a law enforcement officer, the occupant(s) on the other side of the door forfeit constitutional and statutory rights regarding firearm possession.

To be clear, while this Court does not suggest that citizens should generally answer the doors of their homes while holding a firearm, a citizen absolutely does not forfeit constitutional and statutory rights when a law enforcement officer knocks and announces law enforcement presence, without other circumstances being present.<sup>35</sup>

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<sup>35</sup> This Court strongly encourages everyone reading this order to become informed of the best practices for avoiding tragedy when responding to an unexpected knock at the door. For example, if the person knocking at the door claims to be a law enforcement officer, readers of this order should know how to verify that the person is an officer, which might include contacting local law enforcement for verification of that person’s identity when that verification cannot otherwise be safely and reliably done from inside of their home.

In circumstances like the ones in this case (e.g., no windows permitted Senior Airman Fortson to view Defendant and determine identity; Defendant's positioning to the side of the door could prevent Senior Airman Fortson from determining Defendant's identity; Defendant had little information regarding apartment 1401; and no sounds at or near the apartment door indicated that any domestic disturbance was occurring or had occurred), a reasonably cautious and prudent person could expect that the occupant of apartment 1401 might lawfully answer the door holding a firearm for purposes of self-defense. Under the circumstances of this case, a reasonably cautious and prudent person would not use deadly force upon the observation of a firearm held at the side, pointed down, with the finger outside the trigger guard.

Further, the State provided clear and convincing evidence that Defendant was not resisting an attempt to murder him or commit a forcible felony. Defendant stated upon cross-examination that he has "dealt with thousands of people that look at [him] aggressively" and that "had no play" in his shooting of Senior Airman Fortson.<sup>36</sup> Defendant testified that because he gave Senior Airman Fortson a command, and instead, he "moved forward with a firearm in his hands,"<sup>37</sup> Defendant believed he was being attacked, and the stepping-forward movement with the firearm was the reason for shooting.<sup>38</sup> Although that is Defendant's subjective belief, it is objectively unreasonable.

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<sup>36</sup> T. 265.

<sup>37</sup> T. 266.

<sup>38</sup> T. 266. Defendant later contradicted his own testimony about the stepping-forward movement as a contributing factor in his decision to shoot. As the Court noted earlier, Defendant was asked by defense counsel, "What caused you to pull and fire your weapon?" Defendant answered, "Being surprised with a firearm at the door, sir." T. 281. Defendant confirmed that observing the firearm was the sole reason he shot Senior Airman Fortson. Defense counsel asked Defendant, "What was the only thing that prompted you to pull your gun and fire it that day?" Defendant answered, "The firearm, sir." T. 284.

The Court finds that the body camera recording shows that although Senior Airman Fortson made a small movement forward as the apartment door opened, the door was still in the process of fully opening at that point, and Senior Airman Fortson's movement was consistent with the typical manner of a person opening a door and stepping into the doorway.

Senior Airman Fortson opened the door to his home in a normal, orderly manner—he did not yank the door open or otherwise use violence to open the door. He opened the door in a calm, regulated way, consistent with non-threatening behavior. Nothing about the way Senior Airman Fortson opened his door suggested anger, aggression, or any intent to do harm. A reasonably cautious and prudent person in the circumstances would not have interpreted Senior Airman Fortson's movement as threatening. Thus, the Court rejects the notion that Senior Airman Fortson's movement when opening the door was threatening behavior.

Although Defendant testified on direct examination that from his vantage point he saw Senior Airman Fortson's firearm in an upward canted position when the door began to open, the body camera recording shows the firearm is *pointed down and away from Defendant with the finger outside the trigger guard*. The body camera recording does not provide a view of the position of the firearm when the door is first opened at approximately 16:32:00, but at 16:32:03, it is obvious that the firearm is pointed down. Interestingly, consistent with the body camera recording, Defendant asserts in his motion that as Senior Airman "Fortson became visible, Deputy Duran saw that [Senior Airman] Fortson was holding a 9mm Glock semi-automatic handgun in his right hand *down by his side*." <sup>39</sup>

The Court finds that Senior Airman Fortson's firearm was pointed down, with his finger outside the trigger guard, when the door opened.

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<sup>39</sup> Motion, 13. (emphasis added).

Notably, the body camera recording also clearly shows that Senior Airman Fortson held the firearm in a way showing a mere carrying of the firearm. His relaxed hold on the firearm, with his finger outside the trigger guard, is not indicative of a person ready to fire.

Further, even *if* Senior Airman Fortson's firearm had been canted forward as Defendant claims, the circumstances shown in the body camera recording indicate that once Senior Airman Fortson opened the door and saw Defendant, Senior Airman Fortson then realized Defendant was a law enforcement officer. *If* Senior Airman Fortson's firearm initially was presented in a canted position when the door began to open as Defendant claims, then it follows logically that Senior Airman Fortson quickly pointed the firearm downward and clearly away from Defendant, which suggests that before Senior Airman Fortson opened the door, he did not realize that Defendant was a law enforcement officer and took immediate action to make clear the firearm was not pointed at Defendant.

In sum, the Court finds that a reasonably cautious and prudent person in the same position as Defendant would not have believed that the use of deadly force was necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony.

The Court notes that Defendant's motion to dismiss might be distilled down to a troubling assertion: Because Senior Airman Fortson answered the door while holding a firearm down at his side, Defendant had no reasonable choice but to immediately use deadly force. Indeed, Defendant's testimony made it clear that it was *solely* the sight of the firearm that caused him to shoot Senior Airman Fortson.

The testimony of Mr. Williams, Mr. Ayoob, and Mr. Kliem appears to have been offered, in part, to support the notion that when a law enforcement officer has knocked and announced, if

a person opens the door while holding a firearm at his side, the presence of the firearm is sufficient in and of itself for an officer to use deadly force.

Even before Benjamin Franklin endeavored to reform the “Night Watch” system in Colonial Philadelphia in the 1730s,<sup>40</sup> our country has shown broad public support for a professional civil police force to protect us all and enforce the law.<sup>41</sup>

This has resulted in the extensive training and education of our law enforcement officers as testified to in this case.

That law enforcement has universally taken up as its motto “To Protect and Serve” reflects the adoption of American core beliefs about law enforcement by our law enforcement officers.<sup>42</sup>

In carrying out this great responsibility, law enforcement officers are often called upon to put themselves at great risk of death or serious bodily harm and must make life and death

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<sup>40</sup> BENJAMIN FRANKLIN, *The Autobiography of Benjamin Franklin* 133-34 (Easton Press 1976); FEDAGENT, <https://www.fedagent.com/news/historys-blotter-ben-franklin-on-how-to-improve-the-nightwatch> (last visited Sept. 4, 2026).

<sup>41</sup> “Almost as soon as the first colonists gathered together in quasi-urban settlements, they became conscious of common needs which could not be handled effectively on an individual basis. One of these was police protection, hopefully equated then, as now, with the prevention of criminal activity. Initially, public-spirited citizens in some colonial communities took turns serving as the night watch. Later, local governments, acting through town meetings, assigned the duty, on a rotating basis, to specified citizens. Failure to serve was punished by fines. Gradually citizens of means began to pay other people to serve as their substitutes on night-watch duty. In time the entire watch was privately paid and eventually, in all municipalities, police protection came to be a publicly administered service, paid for by taxes. In New York, for example, the Dutch colonists in 1658 set up the police arrangements under the control of the local burgomaster. When New York passed to English control, a watchmen’s organization, under command of the high constable assisted by subconstables, was established.” Eugene McQuillin, *The Law of Municipal Corporations* § 1:17 (3d ed.) Westlaw (database updated June 2026).

<sup>42</sup> The Okaloosa County Sheriff’s Office incorporates this motto in a portion of its mission statement in this manner: “*We are honored to serve and protect.*” Okaloosa County Sheriff’s Office, <https://www.sheriff-okaloosa.org/> (last visited Aug. 27, 2026).

decisions in a snap of fingers, a scenario most people never consider until tragic circumstances, such as in this case, are thrust into the public eye.

Nevertheless, the mere sight of a firearm in circumstances as presented in this case does not justify the use of deadly force as contemplated by a motion to dismiss based on statutory immunity.

The motion must be denied.

### **Ruling**

Therefore, it is **ORDERED AND ADJUDGED** as follows:

1. The State's Motion in Limine One is granted in part.
2. The State's Motion in Limine Two is granted in part.
3. The State's Motion in Limine Three is moot for purposes of the motion to dismiss.
4. The State's Motion in Limine Four is granted.
5. The State's Motion in Limine Five is granted in part.
6. Defendant's Motion to Dismiss is **DENIED**.

**DONE AND ORDERED** in Fort Walton Beach, Okaloosa County, Florida.

09/11/2026 11:20:47  
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WFS/eeb

signed by CIRCUIT COURT JUDGE WILLIAM F STONE 09/11/2026 11:20:47 ev2LLhMH

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