

*Duran, Eddie Lee – State of Florida v.
(46-2024-CF-002000-A)*

**Motion to Dismiss Pursuant to the
Statutory Immunity Set Forth in
Sections 776.032 and 776.012(2)
Fla. Stat. (2021) and Rule 3.190(b),
Fla. R. Crim. P.; Factual Background,
and Argument in Support of Motion.**

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

STATE OF FLORIDA

Case No. 46-2024-CF-002000-A

vs.

EDDIE LEE DURAN, Jr.
Defendant.

MOTION TO DISMISS PURSUANT TO STATUTORY IMMUNITY

1. The Defendant, Eddie Lee Duran, who was at all times material to this case a deputy sheriff employed by the Okaloosa County Sheriff's Office, is charged by an Amended Information with manslaughter arising from an incident which required discharging his agency assigned firearm on May 3, 2024.
2. Deputy Duran hereinafter asserts, without conceding any culpability, that his actions on May 3, 2024, arose while in the course and scope of his employment as deputy sheriff and were in lawful self-defense of himself and/or others, and that he is entitled to immunity from prosecution pursuant to §§ 776.012, 776.032 Fla. Stat. and Fla. R. Crim. P 3.190(b).

Factual Background in Support of
Motion to Dismiss for Statutory Immunity

3. On May 3, 2024, Calan Taneal Sims was an E-3, Airman First Class in the United States Airforce assigned to a medical group at the Hurlburt Military

Base in Okaloosa County, Florida. (Attachment #1, Deposition of Calan Sims, p. 6-7)

4. On that date, Ms. Sims was residing in unit 1301 at the Elan Apartments located at 319 Racetrack Road NW, Ft. Walton Beach, Florida which was located directly below apartment 1401. (Attachment #1, Deposition of Calan Sims, p. 9-10)
5. On May 3, 2024, at approximately 3:45 p.m., Ms. Sims was at home recovering from a dental extraction when a person she believed to be the occupant of apartment 1401 arrived at his apartment. (Attachment #2, AI Assisted Unofficial Transcript of FDLE Video Interview of Calan Sims, with Original Video and Audio Provided p. 4)
6. On that date, apartment 1401 was leased to Roger Fortson, an Airman in the United States Air Force. (Attachment #3, Deposition of Keely Rodriguez, p. 11)
7. A few minutes after the person Ms. Sims thought to be the resident of apartment 1401 had returned, Ms. Sims heard what sounded like an angry male voice “being argumentative” coming from apartment 1401.
(Attachment #1, Deposition of Calan Sims, p. 16-17)
8. Although Ms. Sims had previously heard loud noises coming from apartment 1401, on this occasion it seemed to her that the sounds were not only louder than in the past, but also that the argument was getting “more physical.” (Attachment #2, AI Assisted Unofficial Transcript of FDLE

Video Interview of Calan Sims, with Original Video and Audio Provided, p. 5)

9. The seemingly angry voice coming from apartment 1401 featured profanity and accusations that someone was “lying straight to my face” and that “you got me f—ked up.” (Attachment #4, Official Statement of Calan Sims sworn to on May 3, 2024)
10. After the argument remained loud for 20 or so minutes, Ms. Sims called the main office at the Elan complex at 4:22 p.m. (Attachment #1, Deposition of Calan Sims, p. 20 and Attachment #4, Official Statement of Calan Sims sworn to on May 3, 2024)
11. Due to the Property Manager being off premises, Ms. Sims actually spoke on the phone with Keely Rodriguez, the Leasing Agent at Elan Apartments.
12. During that phone call, Ms. Sims alerted Ms. Rodriguez of her concerns regarding not only a “potential physical altercation taking place” in apartment 1401, but also that the argument already seemed to be getting “handsy.” (Attachment #3, Deposition of Keely Rodriguez, p. 16-19)
13. After listening to Ms. Sims’ concerns about a possible problem in apartment 1401, Ms. Rodriguez initially responded by telling Ms. Sims that there was nothing that the Elan management could do in response to her concerns. Ms. Rodriguez did suggest that a possible recourse for Ms. Sims would be for her to place a call to the “police.” (Attachment #4, Official Statement of Calan Sims sworn to on May 3, 2024, p. 19-20)

14. At the time of Ms. Sims' call, the Okaloosa County Sheriff's Office (OCSO) did not consider Elan Apartments to be in an elevated crime area. (Attachment #5, Deposition of OCSO Corporal Casey Duh, p. 26)
15. After having concluded her phone call to Ms. Rodriguez, Ms. Sims felt reluctant to call law enforcement as it seemed that the noise from the upstairs apartment "was lowering down." (Attachment #1, Deposition of Calan Sims, p. 18)
16. Almost immediately after receiving Ms. Sims' call about the situation in apartment 1401, Ms. Rodriguez placed a call to the non-emergency line for the OCSO. When Ms. Rodriguez was connected to OCSO dispatch, she repeated the concerns that had been expressed by Ms. Sims about a possible disturbance getting "handsy" in apartment 1401. (Attachment #3, Deposition of Keely Rodriguez, p. 20)
17. The OCSO dispatch records confirm that at 16:24, OCSO received a call from Ms. Rodriguez during which time Ms. Rodriguez repeated what Ms. Sims had told her including that "it sounds like he's fighting with someone else" and "it sounds like it's getting a little bit out of control." Ms. Rodriguez also related to OSCO dispatch that Ms. Sims told her that it had been "going on for like 15-20 minutes," and seemed to be "getting out of hand." Ms. Rodriguez further stated to dispatch that it "sounded like a man and a woman" and that "it sounded like it started getting physical." Ms. Rodriguez reported that Ms. Sims had told her that "it happens often but it's never gotten this out of hand." Ms. Rodriguez related not only that

which had been reported to her by Ms. Sims but also told OCSO dispatch that within the past few weeks she had personally overheard a male voice coming from the area of apartment 1401 say “shut the f—k up you stupid bi—h,” although she was unsure of the exact apartment from which that angry voice had originated. Ms. Rodriguez told dispatch that based on her call from Ms. Sims, what she had previously overheard “might have been them” and after standing near apartment 1401 for a moment, “it just went quiet.” (Attachment #6, Official Statement of Keely Rodriguez, sworn to May 3, 2024, and Attachment #7, Records of Ms. Keely Rodriguez’s call to non-emergency OCSO Line at 0:00:00-0:03:08)

18. Within minutes after receiving and recording the call from Ms. Rodriguez, OCSO Communications dispatched information regarding the call from Ms. Rodriguez through their Computer Aided Dispatch (CAD) system to Deputy Duran’s Mobile Computer Terminal (MCT). The initial dispatch to Deputy Duran was “copy disturbance, physical in progress, zone 16.” (Attachment #8, Final Investigative Report for IA 2024-12, p. 3)
19. Thereafter, within just a little more than a minute, Deputy Duran responded to the dispatch and arrived at the Elan Apartments. (Attachment #9, Duran Body Camera dated May 3, 2024 at 16:28:12)
20. The OCSO dispatch received by Deputy Duran not only identified the caller but had also related the caller’s concerns of a possible dispute between “male and female” occupants in apartment 1401. (Attachment #8, Final Investigative Report for IA 2024-12, p. 3)

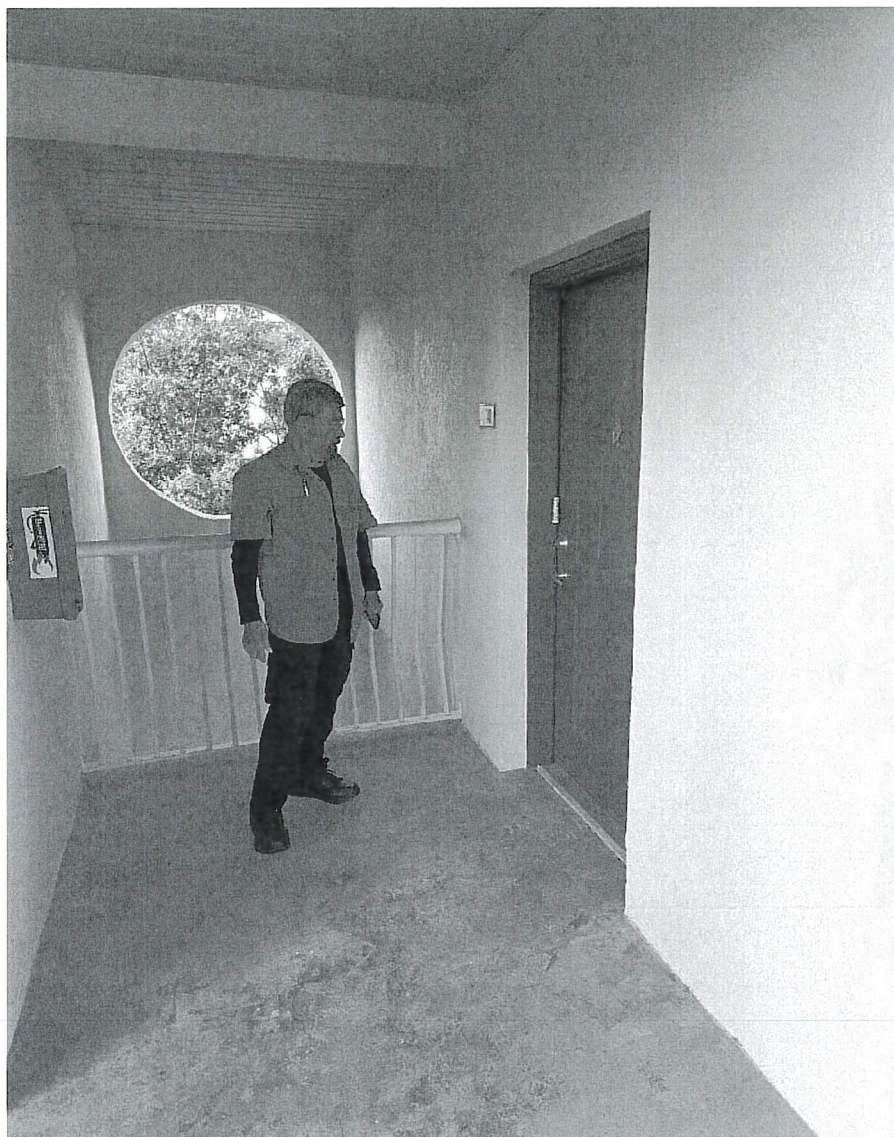
21. Upon arriving at Elan Apartments, Deputy Duran proceeded to the leasing office where he spoke with two men who informed Deputy Duran that Ms. Rodriguez had stepped out. As Deputy Duran was leaving that office, he met Ms. Rodriguez as she was returning from the parking area. At that time, Ms. Rodriguez reported that during her call from Ms. Sims it seemed that she was scared. Ms. Rodriguez again reiterated to Deputy Duran that Ms. Sims said that this time, “it sounds like it’s getting *really* out of hand.” Ms. Rodriguez also repeated to Deputy Duran that, in the recent weeks, she had personally overheard someone saying “shut the f—k up you stupid bi—h” coming from the area of apartment 1401. (Attachment #9, Duran Body Camera dated May 3, 2024, at 16:29:02-16:29:46)
22. Based on the foregoing information, Deputy Duran 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. (Attachment #10, Deposition of OCSO Internal Affairs Captain Robert Wagner, p. 34-36)
23. Based on a reasonable belief that someone in apartment 1401 was, or could be, in physical danger, or worse, Deputy Duran, in accordance with OCSO policy and training, determined he should immediately proceed to apartment 1401 rather than wait for any “backup” to arrive. (Attachment #10, Deposition of OCSO Internal Affairs Captain Robert Wagner, p. 36)
24. As an experienced law enforcement officer, Deputy Duran would have been trained and repeatedly reminded that domestic disturbances are among

the most dangerous types of responses law enforcement officers encounter. (Attachment #11, Deposition of FDLE Special Agent Jason Young, p. 8)

25. At the time Deputy Duran decided to proceed to apartment 1401, he was aware that an OCSO deputy had in the recent past been killed while responding to a domestic dispute. (Attachment #12, Expert Report and Curriculum Vitae of Dr. George L. Kirkham, Professor Emeritus, Florida State University, p. 9)
26. There were no reported problems associated with weather or visibility in the area of Elan Apartments.
27. Based upon the information received from Ms. Rodriguez, there was neither confusion as to the exact location of apartment 1401, nor the fact that apartment 1401 was the specific unit wherein the reported domestic disturbance was taking place. (Attachment #10, Deposition of OCSO Internal Affairs Captain Robert Wagner, p. 18)
28. At all times during his May 3, 2024, response to the Elan Apartments, Deputy Duran's body camera was activated and fully operative. (Attachment #9, Duran Body Camera dated May 3, 2024, at 16:28:10 – 16:36:15)
29. After taking the elevator to the fourth floor and walking to the front door of apartment 1401, Deputy Duran, in accordance with his training and experience, took time to preliminarily listen at the door in an effort to determine what might be going on inside the apartment. By observation of

the body camera, it was evident that Deputy Duran was also looking for the best and safest place to locate himself. (Attachment #13, Expert Report and Curriculum Vitae of retired Firearms Instructor Kevin Williams, p. 4) (See Attachment #15, Deposition of OCSO Senior Investigator Aaron Pittman, p. 14-15)

30. One of the evident difficulties confronting Deputy Duran was that the space between the outside fourth floor railing and the front door of the apartment was less than six feet. (Attachment #10, Deposition of OCSO Internal Affairs Captain Robert Wagner, p. 19, and Attachment #14, Photo of Expert Massad Ayoob Examining Door Frame)



(Attachment #14, Photo of Expert Massad Ayoob Examining Door Frame)

31. The OCSO Response to Resistance Policy, 04.01(5) provides that;

Reactionary Gap – deputies should be cognizant of and utilize a reactionary gap during all police contacts. The reactionary gap is defined as a safety zone between the deputy and subject which affords the deputy more time to react to aggression; i) average distance is six feet or more; and ii) varies with the type of weapon the subject may possess. Outside strategies show that the reactionary gap for an attacker armed with a contact

weapon is normally recommended at no less than 21 feet.
(Attachment #29, OCSO Response to Resistance Policy, p. 4)

32. Due to the confined area outside apartment 1401, Deputy Duran was placed in a “tactically more dangerous” situation. (Attachment #15, Deposition of OCSO Senior Investigator Aaron Pittman, p. 13)
33. Because apartment 1401 is located towards the end of a small outside “breezeway,” Deputy Duran initially determined that his best position was just to the left side of the front door. Deputy Duran later repositioned himself to the right side of the door due to the confined area adjacent to the front door. (Attachment #9, shown on Duran Body Camera dated May 3, 2024)
34. The front door of apartment 1401 had a standard “peephole” which could allow for persons inside the unit to view persons outside the front door since the unit had no front windows.
35. For reasons of officer safety, law enforcement officers, including OCSO deputies, are regularly instructed not to stand directly in front of a door when waiting for someone to respond to their presence. (Attachment #16, Deposition of FDLE Lead Investigator Kevin Skelton, p. 17-18)
36. While initially standing to the left of the front door, Deputy Duran, consistent with his training and experience, initially listened at the door for approximately twenty seconds, in an effort to detect any sounds coming from inside the apartment. (Attachment #9, Duran Body Camera dated May 3, 2024, at 16:31:12 – 16:31:15)

37. At the time of his first knock on the door, Deputy Duran did not identify himself as being a deputy sheriff. Knocking without identifying themselves as “police” is a tactic used by law enforcement in an effort to see if they can “ease somebody to respond rather than getting them immediately defensive because police are at the door.” (Attachment #10, Deposition of OCSO Internal Affairs Captain Robert Wagner, p. 22-23 and Attachment #9, Body Camera for Deputy Duran dated May 3, 2024, at 16:31:15)
38. Immediately after first knocking on the door, Duran heard a voice coming from inside the apartment which sounded to Deputy Duran like a profanity and the word “police.” (Attachment #10, Deposition of OCSO Internal Affairs Captain Robert Wagner, p. 23)
39. Later, during the investigation of the incident, those words which had been faintly recorded on Deputy Duran’s body camera were isolated from the video and enhanced by an FDLE analyst who used the standard Amped FIVE and iZotope RX-10 methodologies, which are routinely admitted in courts throughout Florida. Upon being enhanced, the recorded sound was determined to be a male voice coming from within the apartment stating, “awe f—k, police.” (Attachment #17, Deposition of Master Detective Peter Hernandez, p. 14,15, and 22, and Attachment #24, “Enhanced” Audio Clip of Deputy Duran’s Body Camera)
40. The voice coming from within the apartment indicated to Deputy Duran that at least one occupant in the apartment was aware that the person knocking on the front door was an unwelcome law enforcement officer.

(Attachment #12, Expert Report and Curriculum Vitae of Dr. George L. Kirkham, Professor Emeritus, Florida State University, p. 4)

41. A few seconds after hearing the voice inside the apartment, Deputy Duran knocked a second time in a more forceful manner and in a loud voice informed all occupants that he was with the sheriffs' office. At that time, Deputy Duran ordered the front door to be opened. (Attachment #9, Duran Body Camera dated May 3, 2024, at 16:31:49)
42. After waiting about nine seconds, Deputy Duran knocked on the door for a third time, again identified himself as law enforcement, and repeated his order for the front door to be opened. (Attachment #9, Duran Body Camera, at 16:31:55 – 16:31:57)
43. Within five seconds of the third knock, the door began to be opened by a person previously unknown to Deputy Duran. Initially that person (who turned out to be Roger Fortson) opened the door by pulling it inward with his left hand while stepping forward. At that time, Deputy Duran still had not unholstered his agency issued Sig Sauer P320 semi-automatic pistol. (Attachment #10, Deposition of OCSO Internal Affairs Captain Robert Wagner, p. 33)
44. As Fortson became visible, Deputy Duran saw that Fortson was holding a 9mm Glock semi-automatic handgun in his right hand down by his side. Subsequent to the shooting incident, it was determined that Fortson's 9 mm Glock handgun was fully loaded with a bullet already in the chamber. (Attachment #28, FDLE Investigative Summary, p. 12)

45. At the moment Deputy Duran first saw Fortson, he instantaneously recognized what appeared to be an aggressive look on Fortson's face. (Attachment #18, Sworn Affidavit of Deputy Eddie Duran, p. 3)
46. The 9mm Glock pistol held in Fortson's right hand is capable of firing at least six (6) rounds in 1.7 seconds. (Attachment #12, Expert Report and Curriculum Vitae of Dr. George L. Kirkham, Professor Emeritus, Florida State University, p. 16)
47. At the time Fortson opened his front door, Deputy Duran was standing less than five feet away from the Glock Fortson was holding in his right hand (Attachment #16, Deposition of FDLE Lead Investigator Kevin Skelton, p. 42-43). At the moment Deputy Duran observed Fortson's handgun, he yelled for Fortson to "step back" as he drew his service weapon and fired five shots, all of which struck Fortson. As a result of having been shot, Fortson fell to the floor of his apartment. (Attachment #9, Duran Body Camera dated May 3, 2024, at 16:32:03 – 16:32:05)
48. 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. (Attachment #13, Expert Report and Curriculum Vitae of Retired Firearms Instructor Kevin Williams, p. 3)
49. Immediately after firing his weapon, Deputy Duran forcefully commanded Fortson, who was lying on the floor, to drop his gun. After determining that Fortson was no longer armed and dangerous and that no other person

was in the apartment, Deputy Duran called for emergency assistance and began to render assistance to Fortson. (Attachment #9, Duran Body Camera dated May 3, 2024, at 16:32:07 – 16:32:10)

50. At the time Deputy Duran fired his weapon, he was already behind in the “action-reaction” process about which he and all other deputy sheriffs at OCSO had been repeatedly warned and instructed. Deputy Duran’s actions were in accordance with his OCSO training. When Fortson opened the door with a semi-automatic handgun in his right hand, Deputy Duran reacted immediately because he was at obvious risk of “being killed.” (Attachment #15, Deposition of OCSO Senior Investigator Aaron Pittman, p. 20-21)

51. Due to his close proximity to an armed assailant, Deputy Duran had no other available way to adequately protect himself other than to draw and discharge his weapon in self-defense. (Attachment #13, Expert Report and Curriculum Vitae of Retired Firearms Instructor Kevin Williams, p. 4)

52. At the time he was confronted by Mr. Fortson, Deputy Duran was unaware that Fortson was the only person in apartment 1401, a fact which was only discovered after Deputy Duran and OCSO backup deputies “cleared” the apartment. (Attachment #9, Duran Body Camera dated May 3, 2024, at 16:33:40 – 16:33:43)

53. Only after the shooting incident did FDLE and OCSO investigations determine that the loud altercation first reported by Ms. Sims was a “Facetime” argument between Fortson and Tytiana Hendrix.

54. For some months, Ms. Hendrix and Fortson had been engaged in an “off and on” relationship which had resulted in Fortson’s recent decision to break off his relationship with her. (Attachment #19, Deposition of Charles Johnson, p. 25-26)
55. Prior to the events of May 3, 2024, Deputy Duran had been employed as a law enforcement officer for fifteen years with three different agencies (OCSO, the Altus (Oklahoma) Police Department, and the United States Army where he served as a military police officer for seven (7) years). Deputy Duran’s personnel history shows that he had no previous complaints or allegations regarding ever having used excessive force. Deputy Duran’s training records reveal that he had been trained and updated on the proper responses to the type of situation he encountered on May 3, 2024. (Attachment #12, Expert Report and Curriculum Vitae of Dr. George L. Kirkham, Professor Emeritus, Florida State University, p. 7)
56. In preparing for this case the defense retained Massad Ayoob, a recognized firearms and threat assessment expert, who has performed testing confirming that the time required for raising and firing an already drawn handgun in close quarters is less than .2 seconds. Although the usual response time for a law enforcement officer to draw, fire, and aim his or her weapon is 1.71 seconds, the actual time of Deputy Duran’s drawing and firing on the occasion of the events of May 3rd was 1.5 seconds. It is the expert opinion of three retained defense experts that Deputy Duran’s use of deadly force in this case was consistent with his training and

experience as a law enforcement officer. (Attachment #12, Expert Report and Curriculum Vitae of Dr. George L. Kirkham, Professor Emeritus, Florida State University, p. 15-16; 22; Attachment #13, Expert Report and Curriculum Vitae of Retired Firearms Instructor Kevin Williams, p. 5; Attachment #20, Deposition of Massad Ayoob, p. 23-24; Attachment #25, Video Demonstration by Expert Massad Ayoob 1, and Attachment #26, Video Demonstration by Expert Massad Ayoob 2)

57. On May 3, 2024, Roger Fortson was transported to a nearby medical facility in Ft. Walton Beach where he died later that day while undergoing surgery. (Attachment #21, Investigative Report – Addenda Report by Investigator Chrissy Nieten; Case #240718 dated May 3, 2024, p. 12)
58. On May 6, 2024, an autopsy of Roger Fortson was conducted by medical examiner Dr. Danielle Armstrong at the Sacred Heart Morgue in Pensacola, Florida. She concluded that the cause of Fortson’s death was “multiple gunshot wounds.” (Attachment #22, Post-Mortem Examination by District 1 Medical Examiner, p. 1-8)
59. At the moment when Deputy Duran drew and discharged his weapon, he was in reasonable fear of imminent death or great bodily injury to himself and/or other persons. (Attachment #18, Sworn Affidavit of Deputy Eddie Duran, p. 4)
60. Following the May 3, 2024, shooting of Mr. Fortson and other incidents at OCSO, the sheriff retained the services of the Force Science Institute headquartered in Bloomington, Minnesota. Force Science is a research

and training organization that studies human behavior, perception, and human physiology during high-stress encounters. Force Science primarily educates law enforcement agencies, courts, and legal professionals on how stress impacts performance and memory. OCSO initially retained Force Science to review and evaluate OCSO policies and training with a focus on action/reaction, threat evaluation, and training on the danger of action/reaction threats and officer responses to lethal confrontations. Subsequent to being retained, Force Science personnel presented their findings and recommendations to the OCSO sheriff and command staff. During the Force Science presentation, Lewis “Von” Kliem, a preeminent police practices expert who has been recognized as such in more than three-hundred cases throughout the United States, was asked specific questions regarding his findings related to the shooting of Roger Fortson by Deputy Duran. Mr. Kliem in his deposition testimony stated that Deputy Duran’s shooting of Roger Fortson was in self-defense and that “he didn’t see this as a close call.” (Attachment #27, Deposition of Lewis “Von” Kliem, p. 38). Mr. Kliem’s presentation to the command staff included a power-point displaying actual footage of the shooting, as well as animations demonstrating the imminent lethal threat confronted by Deputy Duran. (Attachment #30, Lewis “Von” Kliem PowerPoint Presentation to OSCO). Mr. Kliem explained that by putting the entire matter in context, it was clear that Deputy Duran’s decision to draw and fire his weapon was entirely justified and that Deputy Duran acted in

conformity with his past training and experience.¹ Kliem, in explaining his opinions, stated that arming himself with a Glock before answering the door for a person he recognized to be a law enforcement officer constituted an overt act by a person who wanted to put the law enforcement officer in apprehension of serious bodily injury or death. (Attachment #27, Deposition of Lewis “Von” Kliem, p. 39-40). Throughout his presentation, Kliem pointed out that some persons had reportedly suggested that Deputy Duran could have just run down the hall and sought cover. Kliem responded that that very suggestion would be evidence that the Deputy actually felt threatened by a man who had armed himself before opening the front door. Mr. Kliem also noted that retreat would not have been the appropriate choice for Deputy Duran because he had reason to believe that a possible victim might still be in the apartment. (Attachment #27, Deposition of Lewis “Von” Kliem)

61. While no one can know the reason or reasons 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 Fortson. (Attachment

¹ At the end of his presentation, Mr. Kliem received “very little” push back as to his assessment from the sheriff or command staff except the sheriff did respond that his presentation had made a “liar out of me.” To be fair, Kliem perceived that remark as a compliment by the sheriff. (Attachment #27, Deposition of Lewis “Von” Kliem)

#13, Expert Report and Curriculum Vitae of Retired Firearms Instructor Kevin Williams, p. 5)

62. As a reasonably prudent and cautious law enforcement officer, Deputy Duran acted in accordance with the training he had received throughout his career when he shot Roger Fortson in self-defense. (Attachment #23 – OCSO Training Records of Deputy Duran, p. 1-16; Attachment #15, Deposition of OCSO Senior Investigator Aaron Pittman, p. 21-22; and Attachment #5, Deposition of OCSO Corporal Casey Duh, p. 31-32)

*Duran, Eddie Lee – State of Florida v.
(46-2024-CF-002000-A)*

**Memorandum of Law in
Support of Defendant's
Motion to Dismiss Based on
Statutory Immunity**

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The case before this Court is relatively straightforward because almost every salient fact surrounding the shooting of Roger Fortson by Deputy Duran is undisputed due to Deputy Duran's having worn an activated "body cam" when dispatched to Elan Apartments on May 3, 2024. The importance of that body cam evidence is best summarized by FDLE Lead Investigator Special Agent Kevin Skelton:

Q: Of course one of the primary pieces of evidence, would you agree, is the body worn camera from Deputy Duran?

A: Yes.

Q: Probably the most significant piece of evidence?

A: I would think so.

Q: Okay. Any issue, any concern or question that that body cam in any way had been altered, changed, cut, edited in any way?

A: Not that I am aware of, no.

Q: Okay, all right. In observing that body cam, you observed or were able to kind of hear what Duran was hearing as he responds to this situation, is that correct?

A: Yes. (p. 13 LI 13-25; p. 14 LI 1-3)

From the outset, this Court is advised that everything Deputy Duran knew and acted upon after arriving at Elan Apartments is attached to this motion, and standing alone provides this Court an adequate legal basis for granting Deputy Duran's Motion for Statutory Immunity filed pursuant to Section 776.012 and Section 776.032, Florida Statutes (2023). Section 776.032 provides:

- (1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom the force was used or threatened is a law enforcement officer as defined in s. 943.10(14) who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or should have known that the person was a law enforcement officer....

- (4) In a criminal prosecution, once a prima facie claim of self-defense has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1).

§776.032(1), (4), (2023) (emphasis added).

To procedurally assert his statutory defenses, Deputy Duran is required only to file this rule 3.190(b) motion within which he establishes a “prima facie” claim to immunity by setting forth the elements of justifiable force. *State v. Moore*, 337 So. 3d 876, 880-81 (Fla. 3d DCA 2022). A prima facie claim of self-defense need only allege “specific facts that... tend to show” that the defendant “used deadly force” because he had a reasonable belief that such force “was necessary to prevent imminent death[,] great bodily harm,” or the commission of a forceable felony to himself or others. *Id.* at 881-82.

The elements the defendant, here the movant, needs to initially assert are that he: (1) used deadly force; (2) had a reasonable belief that such force was necessary to prevent imminent death or great bodily harm to himself or others;

(3) used such deadly force while resisting the victims attempt to murder him or commit a forceable felony on him or another; and (4) was not otherwise engaged in criminal activity while in a place he had a right to be. *Freeman v. State*, 373 So. 3d 1255, 1258 (Fla. 1st DCA 2023) (quoting *Edwards v. State*, 351 So. 3d 1142, 1149 (Fla. 1st DCA 2022)). In assessing the sufficiency of Deputy Duran's sworn motion, this Court is required to assume all facts to be true, and if those alleged facts satisfy the requirements of the applicable self-defense statute, the burden of proof then shifts to the State to overcome Deputy Duran's self-defense claim by "clear and convincing evidence." *Riggins v. State*, 344 So. 3d 625, 626 (Fla. 2d DCA 2022).

Because the Court now has before it a pretrial motion filed on behalf of Deputy Duran, pursuant to Rule 3.190(b), Fla. R. Crim. P. (2025) and this Court's scheduling order, the Court need only determine whether "at first glance" the alleged facts assert the essential elements required for a claim of statutory self-defense. If so, then it becomes incumbent upon the State to prove, by clear and convincing evidence, that Deputy Duran did not act in self-defense. *Jefferson v. State*, 264 So. 3d 1019, 1027 (Fla. 2d DCA 2018).

As a starting point for its analysis, this Court can actually watch the moment that Deputy Duran used deadly force to defend himself. It is solely Deputy Duran's split-second decision to defend himself from an imminent threat that gave rise to the single count of manslaughter set forth in the Amended

Information.² Similarly, there is no question that Deputy Duran's Motion – supported by body camera evidence, sworn witness statements, and depositions from both law enforcement investigators and retained and non-retained expert witnesses – provides abundant evidence that Deputy Duran resorted to the use of deadly force based upon his reasonable belief that he was about to be shot at point blank range by an upset and/or angry Roger Fortson; a man who, after knowing that a law enforcement officer was at his front door, chose to answer the door without bothering to inform the officer that he would be holding a fully loaded 9mm semi-automatic Glock pistol in his right hand. It was only in that split second that Deputy Duran unholstered and fired his service weapon in response to that which any reasonable law enforcement officer would have believed to be a deadly threat against his or her life.³ Similarly, as this Court will see and hear, there is no dispute that when Deputy Duran was dispatched to what had been described as an "in progress" domestic altercation, he was at a place where he not only had a right to be but also was required to be. The un rebutted evidence shows Deputy Duran's presence and conduct at Elan

² The State's initial Information charging Deputy Duran with manslaughter included the usual "culpable negligence" language. However, in response to the Defendant's request for particulars, the State filed an Amended Information that omits any allegation of negligence by Deputy Duran.

³ It is evident Deputy Duran is entitled to a dismissal of the Amended Information due to his firing his weapon in self-defense. Nonetheless, this Court could also direct the dismissal of the charge against Deputy Duran because at the moment that he fired his weapon, he was the victim of an aggravated assault by Fortson. An aggravated assault occurs when there is an "intentional unlawful threat or act to do violence to the person of another, coupled with the apparent ability to do so and doing some act which creates a well-founded fear in such other person that such violence is imminent." §784.011(1), Fla. Stat. (2023). To have committed an aggravated assault, the assailant, Roger Fortson, need not have pointed the gun or said anything to Deputy Duran. *See, Williams v. State*, 238 So. 3d 915 (1st DCA 2018)(emphasis added).

Apartments was solely in an effort to prevent anyone from being injured in what he reasonably and justifiably believed to be an “in progress” domestic disturbance.

As a result of the sworn paragraphs and other allegations set forth in his Motion, as well as the supporting documents filed with the Court, there cannot be any serious contention that the burden of proof in this case is not now shifted to the State. Consequently, in order for this case to proceed, the State must disprove by “clear and convincing evidence” that Deputy Duran acted in self-defense. To satisfy that burden, the State must show the Court that it is “highly probable” Deputy Duran did not have a reasonable belief that he was facing imminent danger or great bodily harm when confronted with, and surprised by, an obviously agitated Roger Fortson who was holding a semi-automatic Glock in his right hand. *Edwards*, 351 So. 3d at 1151.

This Court is reminded that after the Florida legislature enacted Section 776.012(2), a person confronted with an imminent threat of death or great bodily harm no longer has any obligation to retreat, rather, they enjoy a statutory right to stand his or her ground against an obvious or apparent aggressor. In *State v. Peraza*, 259 So. 3d 728, 733 (Fla. 2018), the Florida Supreme Court made it clear that all the protections secured by Florida’s Stand Your Ground law are equally available to law enforcement officers.

In considering the objective reasonableness of a law enforcement officer’s decision to employ deadly force, this Court is compelled to consider the “totality

of the circumstances” surrounding the incident. *See, Barnes v. Felix*, 605 U.S. 73, 80 (2025). Similarly, in 2023 Florida’s Third DCA instructed trial courts that when considering a claim of Stand Your Ground immunity, the objective standard of what is reasonable must “be measured in light of the facts and circumstances as they appeared and were known by the individual defendant.” *State v. Quevedo*, 357 So. 3d 1249, 1253 (Fla. 3d DCA 2023). Accordingly, this Court must consider the entire background and context of a shooting which prompted the State to file the Amended Information against Deputy Duran. The defense submits that even a cursory review of all of the facts show that Deputy Duran is entitled to statutory immunity as a direct result of Sections 776.032 and 776.012(2), Florida Statutes (2023).

To put this case in proper context, the Court must acknowledge the unfortunate prologue to the shooting of Mr. Fortson. On the early afternoon of May 3, 2024, Deputy Duran was simply carrying out his normal road patrol assignments when he received a CAD message alerting him that there was a domestic dispute “in progress” at Elan Apartments. Due to his proximity to that location, Deputy Duran was the first deputy to arrive at the complex. Shortly after his arrival, Deputy Duran came into contact with leasing agent Keely Rodriguez, the person who had initially called in her concerns to the OCSO non-emergency line. Deputy Duran was then told by Ms. Rodriguez that there was an apparent disturbance taking place in apartment 1401. Ms. Rodriguez reiterated to Deputy Duran that she received a complaint from a “scared sounding female” who resided in the apartment directly below apartment 1401. Deputy Duran was

told that that woman, Calan Sims, had been hearing a twenty-to-thirty-minute argument going on in apartment 1401. According to Ms. Rodriguez, Ms. Sims had said that even though she had heard such loud noises in the past, this time there was loud profanity and it seemed like the argument was getting “handsy.” Ms. Rodriguez also repeated to Deputy Duran that she, herself, had previously heard a male voice coming from the area of apartment 1401 telling someone to “shut up bitch” followed by what sounded like a “slap.” Based on the foregoing information and his past experiences and training regarding domestic violence responses, Deputy Duran felt he needed to immediately proceed to the apartment either to prevent someone from getting hurt or to provide aid to someone who may have already been hurt.

To date, no disclosed witness has even questioned the correctness and necessity of Deputy Duran’s decision not to wait for backup in light of his concern that some person in 1401 might be in imminent danger, or worse yet, in need of emergency assistance. Every witness disclosed by the State concedes that Deputy Duran’s decision to proceed on his own to apartment 1401 was consistent with both departmental protocol and OCSO training. As Deputy Duran was leaving the parking lot to take the elevator up to apartment 1401, he directed Ms. Rodriguez to remain available to immediately direct other deputies to his location, further demonstrating his perception of the gravity and potential danger of the situation.

Prior to the time of this incident, Deputy Duran's OCSO training records confirm that he had been instructed about the high risks law enforcement officers encounter when responding to domestic disturbances. Indeed, the deposition testimony from OCSO deputies and FDLE agents unequivocally show that such training routinely emphasizes the increased dangers faced by law enforcement officers when responding to domestic disturbance calls.

According to the expert report submitted by Dr. George Kirkham, emeritus professor at the FSU College of Criminology and Criminal Justice, nearly ten percent of all officer deaths and thirty percent of all injuries to officers were incurred during their responses to domestic violence calls. Even more alarming to local law enforcement in the Fort Walton area at the time was the fact that in 2023 a deputy sheriff had been killed while responding to a disturbance call at an apartment. (Expert Report by Dr. George Kirkham, p. 5)

Dr. Kirkham's report also shows that when responding to a domestic disturbance officers are facing one of the two most dangerous situations they will ever encounter. Dr. Kirkham's expert report shows that long before Deputy Duran was confronted by an armed Roger Fortson, domestic violence calls were already recognized as the second most deadly and dangerous events to which law enforcement officers respond.⁴

⁴ It should be noted that Dr. Kirkham's Curriculum Vitae shows that throughout his career as an expert he has most often appeared on behalf of plaintiffs suing police departments and law enforcement officers for using excessive force.

Having been repeatedly trained about the need for great caution when responding to potential domestic disturbances, Deputy Duran followed his past training upon arriving at the front door of apartment 1401. First, the body camera shows that he evaluated the limited area in which he would have to proceed. Realizing that his actions would necessarily take place within a confined space, Deputy Duran made sure that he followed OCSO instructions to always avoid standing directly in front of the door. Each of his ensuing actions were also in accordance with OCSO protocols and training. After positioning himself next to the door, Deputy Duran listened quietly in order to hear and assess what might be going on inside the apartment. Upon not hearing anything, Deputy Duran was confronted with the possibility that someone in the apartment was already hurt – or worse. Accordingly, Deputy Duran first knocked on the front door without identifying himself as a law enforcement officer; a standard tactic for law enforcement officers in situations like the one he was confronting. Deputy Duran’s immediate goal was to calm rather than exacerbate what he reasonably believed had taken place within the apartment.

The response to Deputy Duran’s first knock was obviously concerning considering he immediately heard a male voice saying something that sounded to him like “f---ing police.” After the shooting, the actual FDLE enhancement of Deputy Duran’s body camera revealed the evidence of what was determined by an expert to be “awe f—k police.” The only explanation for such a response was either that Fortson might have looked out the “peephole” on the front door and observed Deputy Duran or that Fortson was already angry and simply suspected

that there could be a law enforcement officer at his front door. In either event, the response heard by Deputy Duran was enough to alert the Deputy that his presence was acknowledged and most likely unwelcome. Deputy Duran then knocked a second time and, in a loud voice, advised any people inside the apartment that as a deputy sheriff he was ordering the door to be opened. After a very short interval, Deputy Duran knocked a third time, again identified himself as being with the sheriff's office, and again ordered the front door to be opened. Throughout this process, Deputy Duran remained concerned as to whether some person or persons inside the apartment had already found themselves in harm's way. Despite those concerns, Deputy Duran still had not unholstered his weapon even as the front door began to be pulled open.

It was at that moment, while observing the front door being opened in an inward direction by Fortson's left hand, that Deputy Duran was stunned and surprised to see an angry man holding a 9mm Glock semi-automatic pistol in his right hand with his right arm in a "forward" position. (Expert Report of Kevin Williams). Within approximately 1.5 seconds, and while within four feet of Fortson's pistol, Deputy Duran drew and fired his agency issued weapon as he yelled for Fortson to "step back." After firing multiple shots at Fortson, Deputy Duran shouted "where is the gun," at which time Fortson, while lying on the floor, replied that he had dropped it. Deputy Duran, accompanied by other deputies who had just arrived, cleared the apartment, called 911, and began to render aid to Fortson.

Immediately after the shooting, more OCSO deputies arrived to assist Deputy Duran in securing the scene. It was only after the shooting that the investigators from OCSO and FDLE determined that the loud argument and language that had been overheard by Ms. Sims resulted from a loud “Facetime” argument between Fortson and an “on again-off again girlfriend” with whom he had just broken up. The investigation also revealed that the 9mm Glock that Fortson had in his hand was fully loaded with one round “in the chamber.”

The only question remaining for this Court is whether the State has shown or can show by clear and convincing evidence that Deputy Duran’s use of force was based on an unreasonable and unnecessary belief that he was preventing imminent death, or great bodily harm. *Garcia v. State*, 286 So.3d 348, 352 (Fla. 2d DCA 2019). To justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person would, under the same circumstance, have believed the danger could only be avoided by the use of that force. *Garrett v. State*, 148 So. 3d 466, 468 (1st DCA 2014). In making its decision, this Court must consider the “totality of the circumstances” faced by Deputy Duran during the split second he recognized his life was in danger.⁵

⁵ See *Barnes*, 605 U.S. at 80. Further, not binding on this Court, the Sixth Circuit Court of Appeals for the United States has reminded all courts, “[t]hus under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer on the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face everyday. What constitutes ‘reasonable’ action may seem quite different facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freeland*, 954 F.2d 343, 347 (6th Cir. 1992).

In making such an assessment, this Court must analyze the unexpected circumstances that confronted Deputy Duran. In *Barnes v. Felix*, 605 U.S. at 80, the United States Supreme Court stated the following:

That inquiry into the reasonableness of police force requires analyzing the “totality of the circumstances”. *Id.*, at 427-428, 137 S. Ct. 1539; *Garner*, 471 U.S., at 9, 105 S. Ct. 1694. There is no “easy-to-apply legal test” or “on/off” switch in this context.” *Scott v. Harris*, 550 U.S. 372, 382-383, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007). Rather the Fourth Amendment requires, as we once put it, that a court “slosh its way through” a “fact bound morass.” *Id.*, at 383, 127 S. Ct. 1769. Or said more prosaically, deciding whether a use of force was objectively reasonable demands “careful attention to the facts and circumstances” relating to the incident, as then known by the officer. *Graham*, 490 U.S. at 396, 109 S. Ct. 1865.

The U.S. Supreme Court has advised all courts that the “‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). In that same decision, this Court will find language uniquely apropos to this case:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. *Id.* at 396-397.

More recently and directly on point is the language found in *Viera v. State*, 163 So. 3d 602, 605 (2014), which says:

As stated in *Mobley v. State*, 132 So. 3d 1160 (Fla. 3d DCA 2014), the objective standard is to be applied by a trial court in evaluating the factual circumstances in a Stand Your Ground motion to dismiss. That standard requires the court to determine whether, based on circumstances as they appeared to the defendant when he or she acted, a reasonable and prudent

person situated in the same circumstances and knowing what the defendant knew would have used the same force as did the defendant.

One of the best sources of guidance for this Court is found in *Smith v. State*, 415 So. 3d 278, 289 (Fla. 6th DCA 2025), quoting from a 1st DCA case that stated:

The conduct of a person acting in self-defense is measured by an objective standard, but the standard must be applied to the facts and circumstances as they appeared at the time of the altercation to the one acting in self-defense. A person acting in self-defense is not held to the same course of conduct which might have been expected had he been afforded an opportunity of cool thought as to possibilities, probabilities, and alternatives. *Price v. Gray's Guard Serv. Inc.*, 298 So. 2d 461, 464 (Fla. 1st DCA 1974).

Based upon the foregoing cases outlining how a claim of statutory self-defense immunity is to be measured, Deputy Duran's claim of immunity would seem to check every possible box.

In reaching its decision, this Court need only determine that there were facts and circumstances that supported Deputy Duran's having to make his split-second decision to draw and fire his weapon.

No one disputes that Deputy Duran had every reason to believe he was being dispatched to a possible domestic violence situation. The very wording contained in the CAD call to which Deputy Duran responded advised him of a "disturbance" that was "physical" and "in progress." Upon arriving at the Elan Apartments, Deputy Duran was immediately given a credible set of facts that would lead any reasonable law enforcement officer to believe there was not

merely a possibility, but rather a probability, of an on-going domestic dispute in apartment 1401. The objective reasonableness of that belief is seemingly supported by every law enforcement officer or expert who has reviewed or investigated this case. The best evidence of what Deputy Duran believed he was going to encounter can be found in the deposition of OCSO Senior Investigator Aaron Pittman, who after reviewing the body camera evidence testified:

Q: And at that time point you kind of got preliminary information that there was potentially a report of a physical disturbance, a domestic, and at that time is that when you reviewed the body cam of Eddie Duran?

A: Yes sir, immediately following that.

Q: Okay. So you kind of got to see what he was being informed of and where he was directed to; is that correct?

A: Correct.

Q: Were there any questions about or concerns about that he was directed to the wrong apartment?

A: No, sir.

Q: Okay. In that video, you can see information that Duran has that established that he had a basis to believe there was an ongoing domestic violence situation in 1401?

A: Correct.

Q: In your years of experience, do you have an opinion as to whether or not responding to domestic violence situations adds -- is an added danger for law enforcement?

A: It is. (Pittman depo at p. 10-11)

Similarly, the testimony of FDLE Special Agent Jason Young shows the concerns and beliefs of Deputy Duran to have been reasonable given the information he had been provided:

Q: All right. Did she indicate on May 3rd that things had gotten quote, worse than normal, and she thought it had actually now gone from just arguing to physical?

A: That's correct. And that's why she contacted 911. She felt like it had gotten physical and it was worse than normal.

Q: Okay. Do you recall if she called 911 or if she called the manager of the apartment complex and tried to figure out what she should do?

A: She contacted the manager of the apartment. (Deposition of Young, p. 10-11)

The importance of those facts to Special Agent Young is best understood in light of his earlier deposition testimony:

Q: Okay. Based on your training and experience, do you -- are responses to potential or allegations of domestic violence a heightened danger for law enforcement?

A: Yeah, I mean, that's taught from the very basics of academy, when you're in the academy, that the most dangerous calls you go to in many cases are cases with domestic violence. That's where a lot of officers are hurt and killed, and we're taught to, you know, be at a heightened level of awareness when going to calls that involve domestic violence. (*Id.* at p. 8)

Indeed, the State has failed to disclose or identify a single witness who has questioned whether Deputy Duran had sufficient reasons to believe there was an active or ongoing domestic disturbance in apartment 1401. As stated earlier, the reasonableness of Deputy Duran's decision to immediately respond to apartment 1401 rather than wait for backup has also never been questioned. In fact, just the opposite can be gleaned from the deposition of OCSO Internal Affairs Captain Robert Wagner:

Q: Okay. And I don't think there's any dispute the information that he has is that there's a potential physical disturbance going on? Its been identified from that apartment 1401, correct?

A: Correct. (Wagner deposition, p. 35-36)

Later in his deposition testimony, Capt. Wagner, when asked about the decision by Deputy Duran to immediately go to apartment 1401, responded:

Q: Okay. And Deputy Duran makes a decision to go to that apartment before backup arrives. Was there an issue or question about the policy or the decision to do that?

A: No.

Q: Okay.

A: Yes, he did that. No, there's not a policy concern. (Wagner Deposition, p. 36)

The rationale for Deputy Duran's decision to proceed rather than await backup is best explained by OCSO Senior Investigator Aaron Pittman who testified:

Q: And that information was establishing, in a reasonable officer's mind, that there is, in fact, a domestic situation in 1401?

A: Correct.

Q: Then he -- backup is on the way. He goes up to the apartment. Is that a standard policy when you're trying to stop or prevent further domestic violence to immediately react?

A: Yes, sir.

Q: Okay. Is that -- has that always been the policy or is that something that's kind of derived kind of from the active shooter mentality and go towards the -- what's going on?

A: So I would think maybe standard operating procedure or I'd have to look specifically as far as written directive policy, but I do know that as far as law enforcement goes, we have a duty to protect all life, and sometimes backup can be a long way away up in the north end. The nearest backup could be 45 minutes, and if there's an active disturbance going on, I can't just wait for backup. I have to do something. So with that, as far as the -- definitely with the training, the law enforcement training, it's a calculated decision on contact, no contact.

Q: Okay. Did you have any criticism of his decision to immediately go to 1401 to try and find out what was going on?

A: No, sir. (Depo of Pittman at p. 12-13)

As a result of the foregoing, this Court should accept, and the State concede, that Deputy Duran's being at the front door of apartment 1401 placed him at the exact place where he had every right – and even obligation – to be. Based on the foregoing un rebutted evidence, it should be clear that as Deputy Duran stood at the front door of 1401, he had every reason to believe that either there was an ongoing domestic disturbance or that there already had been one and there could be an injured victim still inside the apartment.

Without question, there were certain tactical factors that complicated Deputy Duran's mission as he stood outside the apartment. The breezeway in front of that unit was on the fourth floor, and less than six feet wide; worse yet there really was no safer location available to Deputy Duran. Every investigator who has reviewed this case has commented that, from the outset, Deputy Duran found himself at a tactical disadvantage, due to the confined area from where he would be required to operate. Consistent with his previous experience and training, Deputy Duran knew not to stand directly in front of the door which left him only with the option of his situating himself to the immediate left or right of the door; both of which failed to provide the sufficient "reactionary gap" needed for officer safety. The importance of the reactionary gap was best provided for in OCSO Response to Resistance Policy #04.01(5), and explained by Capt. Wagner:

Q: There are things that you are trained in terms of if you can get -- have the ability to retreat, have distance, because distance allows time to sometimes react to things; is that correct?

A: Yes, sir. So frequently referred to as a reactionary gap where we want to maintain a certain level of distance. Potentially gives us time to make a choice as to how we're going to respond.

Q: Okay. Was there the ability to create that kind of gap in the physical limitations of the fourth floor balcony?

A: There was some ability. It was limited. (Wagner Deposition, p. 20)

An even more blunt assessment of Deputy Duran's confined area in which to locate was given by OCSO Corporal Casey Duh:

Q: Understood. So Eddie goes to the fourth floor balcony. Tactically is this a disadvantage for law enforcement?

A: Absolutely.

Q: Can you tell me why?

A: Well, one, you're on the fourth floor. So any time you're in an apartment complex or like a big apartment complex, like Elan, which we have a lot of in Ft. Walton, Destin, you know, it's concrete for one. There might be windows. I mean, I guess on this one there wasn't any front-facing windows, which, I guess, that could be good for us. But you have a limited amount of space.

I mean, the width of this table is hallway, you know, maybe. Maybe a little bit bigger, right? So you're turning sideways when you pass somebody on that passageway, right? That's a lack of -- like, where am I gonna go if I start getting shot at? Am I jumping over the edge four stories? No, probably not. You know what I mean?

Q: Right.

A: And then, you know, obviously, it's a long corridor, so if somebody comes out of that door, like it's -- I mean, it's you or me.

(Duh Deposition, p. 22)

The vital importance of Deputy Duran's being so confined and thus limited in his ability to create a safer reaction space on the fourth-floor breezeway, has

also been commented on by the Defendant's Firearms Training Expert Witness, Kevin Williams. Mr. Williams is a twenty-eight-year veteran of the Orlando Police Department, and as such served as the Rangemaster for Orlando Police Department as well as other, smaller departments. Mr. Williams commented:

A national training topic for law enforcement was started in 1983, when Dennis Tueller of the Salt Lake City Police Department published his work on what has become known as the Reactionary Gap. This was based on the distance a police officer needs to be from an attacker armed with a contact weapon, such as a knife, to prevail in a deadly force encounter. At the time, it was measured at 21 feet. In 2008, I took a firearms class from Mr. Tueller, during which he explained that 21 feet was a starting point and that, depending on the circumstances, a greater distance might be necessary. I routinely conducted testing within my own agency and found that more distance was required. I bring this up to point out that Deputy Duran and Mr. Fortson were approximately 4 feet apart, and Mr. Fortson had a firearm and not a contact weapon. (Kevin Williams Expert Report, p. 5)

Later, Mr. Williams concluded that given the limited available space, Deputy Duran's "action/ reaction" choice caused him to pull his weapon and fire at a man who already had a Glock drawn and ready to shoot.

The case law this Court will review repeatedly focuses on the same issue – was the decision by the law enforcement officer to use deadly force reasonable, in light of the totality of the circumstances which he knew at the time when he was confronted by an imminent lethal threat? The best way for this Court to determine the answer to that vital question is to consider whether, at that front door in that moment when Fortson opened the door holding a Glock in his right hand, would another similarly trained law enforcement officer have acted the same under the same circumstances?

In the instant case that answer can be found in the testimony of law enforcement officers both within and outside Deputy Duran's agency. When asked about the facts of this case, OCSO Corporal Duh responded as follows:

Q: Have you been in training situations or been educated on the reaction curve?

A: Action is always faster than reaction.

Q: So it's fair to say that if Eddie Duran waited, he would be shot before he ever had an opportunity to draw a gun?

A: That is highly likely.

(Duh Deposition, p. 32)

Once Corporal Duh, a corporal trained by the same department as Deputy Duran, reviewed the body cam he offered this answer to the critical question before the Court:

Q: Is it unreasonable for Eddie Duran to believe that deadly use of force against him was imminent given the situation we've talked about, the facts?

A: Is it is unreasonable for him to --

Q: -- to believe that use of deadly force against him was imminent?

A: It's not unreasonable.

(Duh Deposition, p. 41)

Perhaps even more telling was the deposition testimony by FDLE's lead investigator, Kevin Skelton, a law enforcement officer who is also familiar with action/reaction training. He stated:

Q: Do you believe that officers have to wait to be fired upon before returning fire?

A: No.

Q: Would you agree one of the alternatives would be for Eddie Duran to wait and see what Fortson was going to do with the gun?

A: Based on what I observed not being there, I think that's a bad decision but --

Q: Could it be a fatal decision?

A: Yes.

(Skelton deposition, p. 47-48)⁶

A similar answer was given by FDLE Special Agent Jason Young, previously a deputy sheriff in nearby Escambia County for eighteen years:

Q: And that Fortson would have a significant tactical advantage, and we've already talked about that, that he could shoot Duran before he could remove the gun from his holster, you agree with that?

A: Yeah, like I said, it's very tight quarters. The deputy did not have a good way to retreat. He was faced with a very difficult situation where he had only, you know, moments to react.

Q: Okay. In your training and experience, do you have to wait until the gun is raised at you before you react with deadly force?

A: No, sir.

Q: All right. Do you believe in the situation as you understand it that Eddie Duran was presented with that he needed to wait until the gun was pointed at him before he reacted?

A: No. No, you don't have to wait for the gun to be pointed at you.

(Young Deposition, p. 13)

⁶ When confronted with a similar question, the Eleventh Circuit Court of Appeals stated plainly, "the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect." *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007).

Later in his deposition, Agent Young, who has received the “action/reaction” training previously given to Deputy Duran, offered the following as to the reasonableness of Deputy Duran’s decision to shoot:

A: Yeah. My personal opinion is that based on the situation that he found himself in, I don’t feel it was unreasonable.

Q: Okay.

A: Horrible and awful, but I don’t believe it was an unreasonable reaction.
(Young Deposition, p. 17)

Arguably the most important testimony in this case is provided by Lewis “Von” Kliem, the president and director of Force Science, a company regularly retained by law enforcement agencies throughout the United States for training and policy reviews. Mr. Kliem is an attorney, former law school professor, former police legal advisor, and former litigation consultant who has been permitted to render expert opinion testimony in approximately three hundred civil and criminal cases. Mr. Kliem was a military “JAG” officer before leaving the service and becoming an assistant United States attorney. Mr. Kliem has published numerous articles directly related to the best practices and policies for law enforcement agencies.

Shortly after the Elan Apartments shooting, Force Science was retained by the OCSO Department of Internal Affairs to review its own training and other internal policies and procedures. As part of its wide-ranging review, a Force Science team, directed by Mr. Kliem, specifically reviewed the facts surrounding the shooting of Mr. Fortson by Deputy Duran. Initially, Force Science had not

planned on reviewing the specifics of the shooting but did so at the request of the sheriff and his command staff. Mr. Kliem described his assignment as follows:

Q: When you were asked from the sheriff, was he asking for -- even though it was kind of a departure from what you primarily had been retained to do, did you provide an opinion, based on your understanding of the Duran shooting?

A: Yeah. We -- we ended up walking through that in some detail, and I showed him animations and videos to demonstrate speed of assault and the response times, basically what our research showed and what real world cases would show to show him essentially had -- if an officer is expected to wait for an overt act beyond the threat itself, that he -- the reality of the time response gap he would be in. So I was able to show him animations of that.

(Deposition of Lewis "Von" Kliem, p. 23)

After going into great detail with the sheriff and his command staff regarding all of the evidence in the Duran case such as the tactical disadvantages, the action/reaction gap, the information provided to Deputy Duran, and the lack of options available to Deputy Duran, Mr. Kliem gave the following opinion regarding whether Deputy Duran's shooting was both reasonable and lawful:

A: Well, no, because the evaluation -- we're evaluating his decision and the information he had that informed the decision, not information that was later learned. The question is always is it reasonable for him to rely on that information and the inferences drawn from that information? And it's about apparent threats, not actual threats. And all of that is informed by a reasonable belief standard. Officers can be mistaken.

Now I know we're not talking about a constitutional standard. I don't think this is even a close question constitutionally. They're going to have to show, even just for qualified immunity, that this was -- the quality of force he used was excessive. And it was so obvious that he did, it was beyond debate. No officer could do what he did. And that's simply not the case....

But they still can't apply -- they still, almost everywhere -- I'll let you defer to Florida law, but everywhere I've seen, they're still required to only evaluate it from the perspective of the officer or the person using force, based on the information they had and then, again, what they reasonably believe.

(Deposition of Lewis "Von" Kliem, p. 42-43)

Later, based upon his own reasoning as an expert, Mr. Kliem was asked for the opinions he had shared with the OCSO sheriff and command staff:

Q: So when -- with the information that Duran had, would you believe that any officer who had the information provided to them, when that door opens, is it objectively reasonable to believe that that person is presenting the imminent use of deadly force against the officer?

A: Yes.

Q: Okay. Any caveats to that? Any equivocation, any yes/but that you can consider?

A: No, because ultimately what I'm -- what I'm thinking of is some foundational principles of use of force. One is which the officers have to be reasonable but not right, and reasonable people can disagree. The question is whether or not his interpretation of a threat fell within a range of reasonable options. And there's no caveat to that. It fell within a range of reasonable interpretations of the threat.

(Emphasis added) (Deposition of Lewis "Von" Kliem, p. 44-45)

Plainly, this Court must now decide if the state has, or for that matter could, in light of the entire evidence provided by the defense, determine that there is clear and convincing evidence that Deputy Duran acted beyond that which was reasonable when he drew his pistol and fired at a man who chose to arm himself with a semi-automatic pistol before answering the door for a person he knew to be a law enforcement officer.

This Court is the gatekeeper as to how, or if, this case should proceed further. For the case to go further, this Court would have to ignore the sworn testimonies of several law enforcement officers, three retained experts, and an expert retained by the sheriff's office nearly two years ago. The defense, without waiving the obvious *Brady* implications presented by the OCSO, asserts that the case against Deputy Duran should proceed no further since the State can produce no rebuttal evidence that would even approach the required higher standard of proof. The simple truth remains that when Mr. Fortson armed himself before opening his front door for a deputy sheriff, he made an unwise, unnecessary, and tragically bad choice. Certainly, there will be some members of the public who for various reasons want this case to proceed. They will likely assert their disagreement with the very laws that control this case, but those people can neither change the facts or the applicable law.

While this Court is not bound by the opinions of similarly trained law enforcement officers, retained and non-retained experts in action/reaction training and threat assessment, each of them reviewed this case, including specifically, the body camera which recorded every moment of the event, and all have determined Deputy Duran's response not to have been unreasonable. Common sense, as applied by Courts throughout this country, recognizes that law enforcement officers need not wait to react until they are staring down the muzzle of a gun. The only result of such an application of our laws would be even more tragic outcomes for more law enforcement officers and their families.

Some may argue that every Floridian has a right to carry a gun, a fact that is as true as it is legally irrelevant. Certainly our constitution permits every law-abiding Floridian to carry a gun for any number of purposes. However, when that person chooses to first curse the police and then after three knocks by a deputy, surprises the deputy by having armed himself before answering the door with a semi-automatic pistol in his hand, he is most likely going to get shot. No one should suggest that Mr. Fortson chose to arm himself out of fear – if that were the case, he could have refused to open the door. The only reason Mr. Fortson chose to arm himself was to intimidate a deputy who simply wanted to make sure everyone in that apartment was safe.

The State can only prevent the granting of this Motion by providing “clear and convincing evidence” that Deputy Duran was not acting in self-defense or the defense of others when he shot an armed assailant standing four feet in front of him while responding to what he believed could have been an incident of domestic violence. Clear and convincing evidence is evidence that “produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to truth of the allegations.” *Bouie v. State*, 292 So. 3d 471 (Fla. 2nd DCA 2020) (emphasis added) (citation omitted). In cases such as this one, the Court should adhere to the admonition found in *Bouie*, stating that:

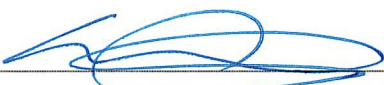
“[t]he legislature has directed that a defendant who files a sufficient motion to dismiss on grounds of immunity is entitled to it unless the state clearly and convincingly establishes that he is not.” *Id.* at 483.

In this case, the Court must acknowledge that no such clear and convincing evidence has been, or frankly, could ever be forthcoming in a case where numerous law enforcement investigators as well as retained and non-retained experts have all opined that the shooting of Mr. Fortson by Deputy Duran was reasonable, justifiable, and in self-defense.

For all of the reasons set forth in the foregoing, this Court should find that the allegation against Deputy Duran should be dismissed in accordance with statutory immunity, as set forth in Section 776.012, Section 776.013, and Section 776.031, Florida Statutes (2023).

VERIFICATION

I, EDDIE LEE DURAN JR., being first duly sworn, state that I am a party to this action, that I have read the foregoing Motion to Dismiss and know the contents thereof, and that the factual statements contained therein are true and correct to the best of my knowledge, information, and belief.



Signature, EDDIE LEE DURAN, JR.

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

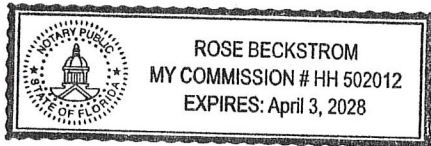
STATE OF FLORIDA

Case No. 46-2024-CF-002000-A

vs.

EDDIE LEE DURAN, JR.,
Defendant.

The foregoing Affidavit was sworn to and subscribed before me this 2nd
day of July, 2026, by, EDDIE LEE DURAN, JR., who is personally known
to me X or has produced FLDC. as identification.



Rose Beckstrom
NOTARY PUBLIC

Rose Beckstrom

Printed, typed, or stamped commissioned
name

My commission expires: 4/3/28

SEAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered via electronic mail to the Office of the State Attorney at malderman@osa1.org; jnewby@osa1.org on this 6th day of July, 2026.

Respectfully submitted,

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