



HAROLD F. PRYOR
STATE ATTORNEY
SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA
BROWARD COUNTY COURTHOUSE
201 S.E. SIXTH STREET
FORT LAUDERDALE, FL 33301-3360

HOMICIDE UNIT

PHONE (954) 831-7922

STAND YOUR GROUND IMMUNITY MEMO

To: HAROLD F. PRYOR, STATE ATTORNEY
From: Stephen J. Zaccor, HTU Div. Chief
cc: REGINA FAULK, CHIEF A.S.A.

INV RE DEATH OF: BART DIGUGLIELMO

September 1, 2026

DOI: JUNE 30, 2026

BSO CASE #:15-2606-002429

DATE PRESENTED 07.08.26

The State of Florida: allows open carrying of firearms, *McDaniels v. State*, 419 So.3d 1180 (Fla. 1st DCA 2025); does not require a permit to carry a concealed firearm, §790.01 of the Florida Statutes, 2023; allows eighteen-year-olds to purchase and possess firearms, *Eubanks v. State*, 2026 WL 1740598, (Fla. 4th DCA June 17, 2026); and is on the verge of decriminalizing possession of firearms by certain convicted felons, *see*, Attorney General's brief in *Morgan v. State*, 1D25-0377 (Fla. 1st DCA 2026).

These laws are a direct result of Florida's strong pro-Second Amendment ideals. A core tenet of those ideals is the fundamental right to defend oneself. *D.C. v. Heller*, 554 U.S. 570 (2008). Consistent with that philosophy, Florida drastically altered its self-defense law when it enacted the Stand Your Ground Immunity in 2005. That statute, its subsequent amendments and case-law interpretations of it, make Melissa Payne immune from criminal liability.

IMMUNITY vs. AFFIRMATIVE DEFENSE

It is critical to understand the difference between immunity from prosecution and an affirmative defense. Under the Stand Your Ground law a person is immune from arrest, prosecution, and civil liability. §776.032 of the *Florida Statutes*. To be clear, this means a person cannot be arrested, charged by a prosecutor, nor subjected to a lawsuit in civil court for monetary damages. In contrast, an affirmative defense can be raised by someone who has been arrested, charged by a prosecutor, or sued in civil court, and presented to a jury in the hopes of persuading jurors that an individual's conduct was justified, and therefore not criminal. To highlight the difference: when Stand Your Ground Immunity applies a judge can dismiss criminal charges or a civil complaint; when an affirmative defense applies a judge cannot dismiss and it is the accused's burden to persuade the jury that it applies.

The affirmative defenses of Justifiable Use of Deadly Force and Justifiable Use of Non-Deadly Force have been available to people who are charged with a crime as result of the use of force for centuries. Assuming for the sake of argument, this homicide occurred prior to the enactment of the Stand Your Ground immunity, Payne could have been arrested by the Broward Sheriff's Office, charged by the State Attorney's Office, pled not guilty, proceed to trial, and argue to a jury that her use of deadly force was justifiable. If the jury agreed, she would be found not guilty. If the jury did not, she would likely be found guilty of an unlawful homicide. However, this homicide occurred in 2026 and the Stand Your Ground immunity is in full force and effect.

THE LAW

The question presented is whether Melissa Payne is immune from prosecution pursuant to Florida's Stand Your Ground law.

The Stand Your Ground immunity is codified in §776.032 of the Florida Statutes which reads in pertinent part:

(1) A person who uses or threatens to use force as permitted in s. 776.012,..... 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.....As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.

(4) In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution 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).

§776.012 of the Florida Statutes provides:

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.**

Restated, if at the time Melissa Payne used deadly force: she was not doing anything unlawful; was in a place she had a right to be; and “she reasonably believe[d] that using or threatening to use such force [was] necessary to prevent imminent death or great bodily harm,” then she is immune from arrest and prosecution. It is important to note, Melissa Payne does not have to prove she is immune from prosecution. *Derossett v. State*, 311 So. 3d 880, 890 (Fla. 5th DCA 2019). Rather, the State has to prove she is not immune. *Id.*

THE FACTS

A dispute over a parking space. In a Walmart parking lot. The facts surrounding the June 30, 2026, homicide of Bart DiGuglielmo are as tragic as they are absurd. There is relatively no dispute about what actually happened because the entire incident was captured by various video recording devices. As such, there is a video timeline of the events preceding and following the use of deadly force.

On June 30, 2026, at approximately 12:19 P.M., Melissa Payne (*hereinafter* MP) was driving a white Chevrolet Malibu in the Walmart parking lot in North Lauderdale, Florida. She was accompanied by her niece, S.A. and S.A.’s infant daughter. At the same time, Bart DiGuglielmo (*hereinafter* BD) was driving his white Kia SUV. There were no other occupants in BD’s vehicle. In the photographs below, MP’s vehicle is circled in yellow and BD’s vehicle is circled in red.

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Both vehicles attempted to park in the same parking space:



A brief stalemate ensued and the occupants of both vehicles exited their respective vehicles. The next photo is taken from a Tesla automobile that was parked nearby and depicts BD after he exited his Kia SUV:



BD inexplicably abandoned his car in the through lane of travel, walked toward the shopping cart area, retrieved a cart, and walked into Walmart. During his absence, MP was able to successfully park her vehicle:



After about 90 seconds, he returned to his vehicle. S.A. recorded the interaction on her cell phone (see below). Witness A.S. reported she heard BD threaten “I’m gonna fuck your shit up.” Witness H.S. reported she heard BD threaten he was going to “mess her car up.” Witness M.J. reported she heard BD threaten that he was “going to fuck her shit up.” BD then entered his KIA and drove off at a high rate of speed:





BD drove north in the parking lot, turned left at the end of the row, and parked in a designated handicap spot two aisles west of where MP parked:



The aerial photo of the Walmart parking lot shows the relative locations of where BD parked in relation to where MP parked:



BD remained in his vehicle for about 90 seconds. When he exited, he did not walk due south to enter Walmart. Rather, he walked due east towards the aisle where MP was seated in her parked car with her niece's infant daughter.



BD continued to walk east towards MP's vehicle where he stopped and lingered under a tree for about twenty-two seconds:



BD then walked across the aisle and remained standing, smoking a cigarette, under another tree. Witness A.S. described him as “visibly angry” and that he was shaking as he was watching MP. Witness H.S. also described BD as visibly angry and that his hand was shaking as he stood there.



After about fifty seconds he began to walk toward MP in her vehicle. MP exited holding a phone in her left hand and a firearm in her right:



Witness A.F. reported he yelled to MP and BD “it’s not worth it!” He further reported MP exclaimed “If you keep coming up to me, I’m going to fucking shoot you!” A.F. added, despite those warnings, BD continued to approach MP. Witness H.S. reported that MP stated “Don’t come over here!” “Don’t come near my car!”, and “Don’t try that!” The video depicts BD initially backed off, but then continued to aggressively approach MP. At this time, a white minivan, which was parked next to MP, pulled away:

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MP backed away into the space created by the minivan's departure:



BD continued to intermittently advance while making hand gestures and MP further backed up between two adjacent parked vehicles:



MP backed up even further to the point she was no longer visible and BD continued to advance:



As MP continued to back up around the vehicle, BD continued his pursuit:



As BD continued his pursuit the vehicle blocks him from view and MP comes back into full view pointing her firearm directly at him:





As the pictures above depict, MP made it completely around the vehicle and BD pursued her the entire time. BD then walked up to MP's vehicle and, with keys in his hand, motioned as if he was going to damage it:



BD then turned back and re-approached MP:



It is at this point that MP fired her weapon and struck BD in the abdomen:



MP placed her firearm on the roof of her vehicle and was briefly taken into custody by the Broward Sheriff's Office upon their arrival. Approximately five minutes later, another Deputy advised MP of her *Miranda* rights and requested to speak with her. MP waived her rights and made a statement (captured on Body Worn Camera). Her recitation of the facts was consistent with the various sources of video evidence.

MP described who she was with and the reasons for being at Walmart. She further described the initial interaction with BD regarding the parking spot and that afterwards he made threatening comments about her vehicle, specifically that he was going to scratch it accompanied by hand gestures. As a result, MP thought it better to remain with her vehicle. She added that BD left his vehicle in the lane and proceeded to Walmart. When he returned he made additional threats and drove away. MP's niece, S.A., exited the vehicle and went into Walmart leaving her infant daughter in the car with MP. She became concerned when BD returned a few minutes later. She got out of her car with her firearm and he continued to advance upon her. Unfortunately, the Deputy's questioning was interrupted and did not resume.

A Detective also took a statement from MP's husband, C.H., who was one of the people on the phone with her when this confrontation occurred. He reported that he heard the confrontation and knew it was over a parking spot. C.H. heard MP warn someone to back away and he eventually heard a gunshot. He stated that MP then stated "Bae, I shot. Call the cops." C.H. made his way to the Walmart.

BD was transferred to Broward General Hospital where he succumbed to his injuries. The Medical Examiner's Office determined the cause of death was a gunshot wound and the manner of death was homicide. Post-mortem toxicology revealed the presence of Amphetamines, Delta 9 T.H.C., and Sertraline in his blood.

ANALYSIS

MP was in a public place, a Walmart parking lot, and therefore was in a place she had a right to be. She is not a convicted felon and had a right to possess a firearm, therefore she was not doing anything unlawful at the time she used deadly force.¹

Accordingly, pursuant to §776.012, MP had the right to stand her ground if she was in reasonable fear of death or great bodily harm. The reasonableness of her fear is objectively reviewed. *State v. Quevedo*, 357 So.3d 1249(Fla. 3d DCA 2023). “The objective standard of what is reasonable must be measured in light of the facts and circumstances as they appeared and were known to the individual defendant.” *Id.*

Before objectively examining whether MP’s fear was reasonable it is crucial to recognize that it is not whether MP’s belief was reasonable, rather that the State must prove, by clear and convincing evidence, that her belief was not reasonable. “The 2017 amendment to section 776.032 states that “once a prima facie claim of self-defense immunity from criminal prosecution 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.” *Boston v. State*, 326 So. 3d 673, 677 (Fla. 2021); “[O]nce a criminal defendant raises ‘a prima facie claim of self-defense immunity,’ then ‘the burden of proof by clear and convincing evidence² is on the party seeking to overcome the immunity.” *Craven v. State*, 285 So. 3d 365,

¹ If one argues that when MP exited her vehicle she committed the crime of Aggravated Assault with a Firearm, the State would point to §776.031 of the Florida Statutes which allows non-deadly force to be used in defense of property. As MP was clearly concerned about BD’s threats to damage her vehicle, this conduct was not unlawful. *See, Little v. State*, 302 So. 3d 396, (Fla. 4th DCA 2020).

² [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. *Derossett v. State*, 311 So. 3d 880, 891 (5th DCA 2019); *Acevedo v. State*, 787 So. 2d 127, 130 (3rd DCA 2001)

367 (Fla. 1st DCA 2019). Clear and convincing evidence is no small burden as it is what is required before the State can terminate an individual's parental rights and take their children from them. *Florida Dept. Of Children And Families v. F.L.*, 880 So. 2d 602(Fla. 2004).

Analyzing “the facts and circumstances as they appeared and were known to” MP, the State cannot prove, by clear and convincing evidence, that MP's fear of great bodily harm was not reasonable: BD threatened to damage her vehicle when he first got out of his car; he acted very irrationally when he abandoned his car in the through lane of travel and entered the Walmart; BD again threatened to “fuck her shit up” before driving away at a high rate of speed; he reapproached MP after the dispute was over rather than just walking into Walmart and tending to his business; BD walked directly to MP when there was no rational reason for him to do so other than to confront her; multiple witnesses describe BD as “visibly angry” and “shaking” as he was standing outside of her car; BD continued to pursue MP even after she produced a firearm when that would cause a rational person to walk away; BD continued to pursue MP even as she backed up into the space created by the departing minivan; BD made aggressive hand gestures while pursuing MP; BD continued to pursue MP around a parked car; BD again threatened, by word and act, to damage MP's vehicle; MP's infant great-niece was in the car; BD again approached MP before she fired one time.

The entirety of what is described above was captured on video. The video does not demonstrate that MP was in the right, rather it demonstrates that the State of Florida cannot overcome her claim that she was in reasonable fear of great bodily harm by clear and convincing evidence. Florida is a Stand Your Ground State. MP did not have to wait to be attacked before resorting to deadly force. She did not have

to retreat as long as her fear was reasonable and no evidence has been presented to disprove that.

See timeline video (no audio except for statement) [here](#).

Stephen J. Zaccor

Stephen J. Zaccor, Esq.
Homicide Trial Unit
Division Chief