

No. 2D15-1073

**IN THE SECOND DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA**

STATE OF FLORIDA,

Appellant,

v.

JOSEPH AMORE,

Appellee.

On Appeal from the Circuit Court of the Thirteenth Judicial Circuit
in and for Hillsborough County, Florida
L.T. No. 13-CF-11622, Hon. Gregory P. Holder

**ANSWER BRIEF OF
JOSEPH AMORE**

Thomas A. Burns (FBN 12535)
BURNS, P.A.
301 West Platt Street, Suite 137
Tampa, FL 33606
(813) 642-6350 T
(813) 642-6350 F
tburns@burnslawpa.com

Counsel for Joseph Amore

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STATEMENT OF THE CASE AND FACTS

Statement Of The Case

At 2:37 A.M. on Saturday, August 16, 2013 in Ybor City, Appellant Joseph Amore was knocked unconscious for 20 or 30 seconds by a sucker punch. R. 79. While Mr. Amore was still woozy, the same group attacked him again a few minutes later, and he defended himself with his pocketknife. R. 82-83. Mr. Amore stabbed two of his attackers, and one died. R. 84. By information, the State charged Mr. Amore with second degree murder in violation of § 782.04(2) and § 775.087(1), *Fla. Stat.* (2013), and attempted second degree murder in violation of § 782.04(2), § 777.04(1), and § 775.087(1), *Fla. Stat.* (2013). R. 29-31.

After discovery, Mr. Amore moved for Stand Your Ground immunity pursuant to § 776.032, *Fla. Stat.* (2013). R. 76-238. To resolve it, the trial court convened two full days of evidentiary hearings. R. 513-802, 803-1045. After the evidentiary hearings, Mr. Amore submitted a legal memorandum (R. 419-452), the State opposed (R. 453-471), and Mr. Amore replied (R. 472-488). In a meticulous 12-page order, the trial court granted the motion and dismissed all charges. R. 489-500.

The State appealed (R. 1238) and raises only one argument: i.e., that there was no competent, substantial evidence presented—despite two days of evidentiary

hearings—to support the factual finding that Mr. Amore reasonably believed it was necessary to use deadly force to prevent imminent death or great bodily harm.

Statement Of The Facts

A. The Stand Your Ground Motion

In Mr. Amore’s Stand Your Ground motion, he explained he went to Ybor City that night with his friends, Shawn Hogue, Cassandra Bivens, and Tiffany Gries (“the Lakeland group”). R. 77. That same night, a group of five men also went to Ybor City: victim Joshua Rankin, victim William Medeiros, Corey Bailey, Nathan Stasio, and Kirk Kelly (“the Port Tampa group”). R. 76.

Before arriving in Ybor City, two members of the Port Tampa group (Mr. Rankin and Mr. Bailey) were under the influence of alcohol. R. 77. Additionally, Mr. Rankin was under the influence of methyldone (commonly known as bath salts), which is a synthetic stimulant that causes users to be agitated and aggressive. R. 77. Throughout the evening, the Port Tampa group went to several bars and clubs and stayed until closing time. R. 77.

At some point during the evening, Mr. Stasio of the Port Tampa group spoke to Ms. Bivens of the Lakeland group. R.77. During this first conversation, neither Mr. Amore nor Mr. Hogue did anything aggressive or provocative. R. 77.

When the bars and clubs closed around 2:00 A.M., Mr. Stasio again spoke to Ms. Bivens behind a Buffalo Wild Wings. R. 78. Mr. Amore jumped down from a

platform behind Ms. Bivens, and the Port Tampa group formed a semicircle around Ms. Bivens and Mr. Amore. R. 78. When Mr. Amore made a joke about Mr. Bailey's mother, Mr. Rankin surprised everyone by sucker-punching Mr. Amore and rendering him unconscious. R. 78-79. This punch sounded like two pieces of wood slapping together. R. 79. Incidentally, Mr. Rankin stood 6'3 and weighed over 200 pounds, while Mr. Amore stood 5'8-1/2 and weighed considerably less. R. 78. Video showed that Mr. Amore lay unconscious for 20-30 seconds. R. 79. As a result, Mr. Amore suffered a grade 3 concussion (the most severe kind). R. 78-79.

After Mr. Rankin delivered the knockout punch, the Port Tampa group scattered. R. 79. Mr. Amore struggled to regain his consciousness and stand. R. 79. At this point, he was "real[ly] bobble-headed." R. 79.

When the Port Tampa group reassembled, they all wanted to leave, except for Mr. Rankin. R. 79. The Port Tampa group had walked about 100 yards ahead of the Lakeland group. R. 79. Mr. Amore continued to struggle, and one or both his friends tried to hold him upright. R. 80. The Port Tampa group and Mr. Hogue exchanged some words at a distance, during which Mr. Rankin was "hyped up" and wanted to fight Mr. Amore "real quick." R. 80. But Mr. Amore was still semi-conscious and pretty dazed. R. 80. Even though Mr. Bailey and Mr. Kelly urged Mr. Rankin to "drop it" and go home, Mr. Rankin ignored them. R. 80. Then, the Port Tampa group walked back toward the Lakeland group. R. 80.

Mr. Stasio walked ahead of the Port Tampa group and tried to calm Mr. Hogue. R. 81. But Mr. Hogue let go of Mr. Amore and took a short swing at Mr. Stasio. R. 81. Mr. Stasio retreated, and the groups continued to exchange words. R. 81. During this exchange, Mr. Amore did not speak one word because he was still “out of it.” R. 81.

Then, Mr. Rankin attacked Mr. Amore. R. 81. Mr. Hogue tried to run up to Mr. Rankin and Mr. Amore, but Mr. Medeiros grabbed Mr. Hogue and pushed him out of the way. R. 82. Then Mr. Hogue ran away. R. 82. Mr. Medeiros then pushed Mr. Amore onto a car, and Mr. Bailey began punching Mr. Amore in the face and hitting his head off the car hood. R. 82. During this fracas, Mr. Amore stabbed Mr. Rankin and Mr. Medeiros. R. 82-83.

After the fight, Mr. Amore was confused and panicked. R. 83. He found some police officers and attempted to explain what happened. R. 83. During the conversation, Mr. Amore was respectful and cooperative. R. 83. Eventually, the officers found the pocketknife in Mr. Amore’s pants. R. 83.

Mr. Rankin died of his wounds, while Mr. Medeiros was treated at Tampa General Hospital and released later that morning. R. 84.

B. The Evidentiary Hearings

The trial court convened two full days of evidentiary hearings. R. 513-802, 803-1045.

1. Stipulation

At the outset, Mr. Amore and the State stipulated, among other things, that Mr. Rankin delivered his knockout punch at 2:37 A.M., and that 911 was called at 2:45 A.M. R. 519.

2. Dr. Robert Martinez

Dr. Robert Martinez, a neurologist, opined that Mr. Amore suffered a grade 3 concussion,¹ which is the worst kind.² R. 527-28. Dr. Martinez explained how a person who, like Mr. Amore, had suffered a grade 3 concussion would behave:

So, in a concussion, particularly for the first, let's say, 15, 30 minutes or so, what's going on is that the forebrain kind of is not functioning very well. The forebrain is the one that does all of your thinking, your judgment, your awareness, kind of separates us from the lower animals, you're more functioning kind of on a brain stem level. By that I mean, reflex, things you might respond from things you already know. You may answer things that you already know, but you quickly forget them, and you are sort of starting all over again.

¹ As it happens, the trial judge had considerable experience with grade 3 concussions:

[F]or the record, I've suffered a grade 3 concussion. I'm very familiar with both the medical as well as the psychological effects of such an injury. And that very injury is the reason I'm not an Air Force pilot today or wasn't an Air Force pilot during my 29-year military career. So I have a [great] deal of experience in this area, both scientifically and medically.

R. 605.

² Dr. Martinez reviewed medical records and surveillance footage of the first knockout punch, and spoke with Mr. Amore's trial counsel. R. 527, 545. He did not interview Mr. Amore. R. 543. Indeed, he did not believe an interview would have helped him form his opinions. R. 543.

So you are really sort of more functioning on a reflex level than you are on a conscious, intelligent level. And again that starts to get better after 10, 15, 30 minutes, then it starts to clear up, but that's usually what's happening for those first 15 to 30 minutes. It's more of a brainstem function, reflex function, but forgetting everything. And they call that retrograde and then antegrade amnesia.

R. 530-31.

Dr. Martinez further opined that if someone suffered a grade 3 concussion, then was in a second altercation 10 to 15 minutes later, during which he was repeatedly struck in the face but did not again lose consciousness, it would "aggravate the original concussion." R. 533. For that reason, someone who suffered a grade 3 concussion "would not necessarily know that he has been punched in the face" because he "may know it for a second, but then he forgets it." R. 533-34. Moreover, he would not necessarily experience headaches or other pains until the next day. R. 534. Additionally, he may never regain memories of what happened in the initial 15 minutes after the concussion, although about six weeks later he may start to regain some memories "in bits and pieces." R. 534. Finally, Dr. Martinez explained that alcohol would aggravate a concussion. R. 535.

On redirect, Dr. Martinez also explained how an individual who has suffered a grade 3 concussion might rely on logic and attempt to come up with some plausible scenarios to explain what had just happened:

Q. . . . Let's assume all the things you know about this case and Mr. Amore had been punched in the head, rendered unconscious for 20 to 30 seconds. Let's assume in this hypothetical that there is a

second altercation that takes place within ten minutes, a second physical altercation where there is evidence that Mr. Amore is hit in the head yet again a second time.

A. Yes, sir.

Q. Assume further that Mr. Amore manages to run and find a police officer.

Now, in those circumstances when he's being questioned by the police in this state of confusion, would you expect an individual suffering from a grade 3 concussion under those facts to attempt to piece together what has just happened.

A. Yes, sir.

Q. And does it surprise you that some individual not being able to recollect, would try to sort of rely on logic and try to come up with some plausible ideas of what may have just happened?

A. Doesn't surprise me.

R. 547-48.

3. Dr. Michael Gamache

Dr. Michael Gamache also opined about Mr. Amore. He reviewed discovery, witness statements, surveillance footage, and medical records, in addition to interviewing Mr. Amore for 8 hours. R. 551-52. After interviewing Mr. Amore, Dr. Gamache concluded he was not malingering (i.e., faking his answers). R. 552. Instead, Mr. Amore "seemed to be responding candidly and honestly." R. 552. Based on his review, Dr. Gamache opined that immediately after the first knockout punch, Mr. Amore was in an "acute confusional state" and suffered from postcon-

cussive symptoms for several months thereafter. R. 553-54. Dr. Gamache explained the symptoms someone in an acute confusional state might experience:

Q. Okay. This acute confusional state that Mr. Amore suffered on the early morning hours of August the 17th of 2013, would you describe to the Court how someone suffering such an acute con[fusion]al state how they might behave, let's say, for the first 15 minutes after suffering that concussion?

A. Sure. Depending on the severity of the concussion and individual variables, their health, their mental status prior to the concussion, their nutrition, their prior medical history, any prior history of concussions, all of those things that can factor into some individual variability in terms of how they will respond, but in general there are four categories of effect on behavior, thinking, and emotions following a concussion or during the acute confusional stage.

One of those is typical physical signs and symptoms. So individuals who have suffered a concussion may experience, although it's typically delayed, they may experience an immediate headache, they may have difficulties walking, standing or with balance.

From a cognitive standpoint, thinking-related standpoint, they may not think quickly. They may feel confused. They may experience amnesia or difficulty remembering things. They may be disoriented. They may describe feeling foggy or not being able to think clearly.

From an emotional standpoint, the typical characteristics would be irritability, sadness or nervousness, and anxiety.

And then, also, if they are attempting to sleep within the 24 hours after this happens, there's typically dysregulation of sleep. They may have difficulty sleeping or they may have difficulty remaining asleep.

So those are the four categories of problem areas that are associated with a concussion resulting in acute confusional state, but there are specific ways that are more distinctive in which that kind of change in the brain affects thinking, judgment and reasoning.

R. 554-55.

Additionally, Dr. Gamache opined that Mr. Amore in fact experienced these aspects of acute confusional state:

Q. In your review of the records and your interview of Mr. Amore, did you find evidence that he experienced those things that you typically find in an acute confusional state, particularly during the first, let's say, half hour from—since receiving the blow to the head?

A. Yes. And just to be clear, the basis for my opinion about that is, first of all, I interviewed Mr. Amore at length about exactly what happened, what he remembered happening for a 24-hour period beginning the day before this incident, and continuing through all of the events that transpired on this particular day, including his arrest and detainment and what he remembered about that. So I interviewed him at length to determine his personal recollection of the experiences and memories that he had for what happened and how it happened.

Secondly, I considered the statements from witnesses who had observed his behavior. While they may not be able to get inside his brain and tell me what he was thinking, they can certainly describe how he was acting so that I'm able to make some correlation between their observations and what he described to me as his condition or remembered as his condition at that particular point in time.

I also, of course, observed the video and considered the transcript of the police interrogation of Mr. Amore, what they documented observing, what he said and how he responded to their questions at the time. And I considered all of those things in formulating an opinion about what his condition was at the time.

Q. And that is—the opinion is that he was in this acute confusional state during that period of time?

A. That is correct.

R. 556-57. Dr. Gamache further opined that “[m]ultiple concussions tend to be cumulative in terms of their impact on cognitive functioning.” R. 558.

With respect to the inconsistent statements Mr. Amore gave to law enforcement immediately after the events, Dr. Gamache explained that Mr. Amore was not malingering because, among other things, his recollections reflected what he described as a “Swiss cheese” memory:

Many people expect that if you have a concussion and it affects your memory that you have a total inability to recall the events that transpired, that is not characteristic of concussion and the amnesia associated with a concussion, instead they tend to have Swiss cheese memory. They are able to remember bits and pieces, but struggle to put together a complete narrative.

The findings in Mr. Amore’s case were that, indeed, he had this type of Swiss cheese memory. At no point did he try to represent to me that he was completely unable to recall anything that happened, but instead I think he characterized it as a frame-by-frame type of memory or mischaracterized it as frame-by-frame. What he was implying was that he didn’t really remember everything, but he could tell me bits and pieces here and there; that finding was consistent.

R. 559.

Dr. Gamache opined that the presence of this Swiss cheese memory explained why Mr. Amore would have offered law enforcement different explanations of what happened:

Q. Addressing for a moment the Swiss cheese memory phenomena. If an individual who is in this acute confusional state is asked to describe what just happened, and he’s got this Swiss cheese memory, as you described it, would you find it unusual for such an individual to try and sort of from past experience from life experience to piece together perhaps things that may logically fit in and sort of plug in the holes in the Swiss cheese so they can try to explain, for example, to law enforcement what they think may have happened?

A. In fact, that's a very common response. There's a psychological term we use to refer to that, confabulation. There's a natural pull as a human being to try and make sense of the things that have happened to you. When you're suffering from this kind of memory impairment, you're still struggling to try and make sense of what happened, to make sense of these bits and pieces of recall that you have, and to make them sensible to others.

I would add that the fact—the mere fact that some of the statements that he made, whether true or confabulation, constructions that he thinks might have happened, just because those statements suggest or could be interpreted to be statements that are minimizing his culpability is not evidence of guilty knowledge. People that are guilty will make statements to minimize their culpability. People that are not guilty will make statements to minimize their culpability. It's not dispositive of whether somebody has guilty knowledge.

R. 562-63.

On cross-examination, Dr. Gamache explained that Mr. Amore could not differentiate the first episode from the second. R. 569-70. Moreover, Dr. Gamache rejected the prosecutor's hypothesis that Mr. Amore's statements to law enforcement 23 minutes after the knockout punch (R. 614-15) demonstrated that he was not in an acute confusional state:

Q. So does somebody saying that they are 100 percent sure of something sound like there's somebody that's confused or doesn't know what's going on?

A. No. I think that all of these statements make sense to me in terms of an acute confusional state. This is an individual who is trying to make sense of something very serious that happened that he does not remember clearly. And he may be confabulating or imagining or thinking that these are viable explanations for what happened without being able to recall for certain.

R. 591.

4. Dr. Julia Pearson

Dr. Julia Pearson testified about the effects of methylone (which Mr. Rankin and Mr. Bailey ingested). R. 627. Dr. Pearson opined that methylone caused individuals who ingested methylone to experience agitation and aggression. R. 630.

5. Cassie Bivens

Cassie Bivens knew Mr. Amore from high school and Future Farmers of America. R. 637. As one of Mr. Amore's friends, Ms. Bivens knew he always carried a pocketknife on his person. R. 638. Ms. Bivens explained this was a common habit for the "outdoor kids" in Lakeland. R. 638.

Ms. Bivens explained that the Lakeland group and a few others gathered at Mr. Hogue's house late in the evening. R. 639. They had a few drinks, but did not smoke marijuana or take any other drugs. R. 642. Then, they went to Ybor City. R. 643. They arrived around midnight. R. 645. Ms. Bivens clarified that she and Mr. Amore were just friends and had no romantic interest in each other. R. 645.

While in one of the Ybor clubs, Ms. Bivens and Ms. Gries encountered "the five boys" from the Port Tampa group, who were acting "a little aggressive." R. 648. After Ms. Bivens and Ms. Gries passed them on a staircase, Mr. Stasio approached. R. 649. He was "a little bit nicer" and "not as aggressive." R. 649. In any event, Mr. Stasio invited Ms. Bivens and Ms. Gries to a party. R. 649. Ms. Bivens

told him she would think about it and got his number. R. 649. Then, the Lakeland group left around 2:00 A.M. when the club was closing. R. 650.

The Lakeland group got separated outside, so Ms. Bivens ended up standing outside with Mr. Amore to the side of a Buffalo Wild Wings. R. 652. There, she encountered the Port Tampa group. R. 654. Mr. Stasio again invited Ms. Bivens to the party. R. 654. At that point, Mr. Amore made a “your mama” joke, and “someone” took exception and punched Mr. Amore. R. 654. During the punch, Ms. Bivens fell down. R. 655. She did not see who punched Mr. Amore because she was facing Mr. Amore, and the punch came from behind her. R. 655. She was “shocked” and “[p]retty upset” that someone had punched Mr. Amore. R. 656. It was a “very hard” hit, and Mr. Amore lost consciousness for about 20 or 30 seconds. R. 656, 658. When Mr. Amore regained consciousness, he was “confused,” “kind of wobbling,” “kind of out of it,” and “[n]ot really walking too straight.” R. 658. The two groups separated and walked in different directions. R. 658.

Then, Ms. Bivens and Mr. Amore met up with Mr. Hogue. R. 659. When Mr. Hogue observed Mr. Amore’s bloody chin, Ms. Bivens explained, ““Yeah, these dudes just sucker punched”” Mr. Amore. R. 659. Mr. Hogue became upset and walked in the direction of the Port Tampa group. R. 659. Mr. Hogue was leading, Ms. Bivens was behind him, and Mr. Amore was behind of her, “still kind of out of it.” R. 661.

When they turned the corner, Ms. Bivens saw Mr. Stasio again at a distance. R. 662. Mr. Stasio got their attention, and Mr. Hogue asked him, ““Hey, are you the dude that hit my friend?”” R. 662. At this time, Mr. Amore was “definitely out of it.” R. 664. At any rate, Mr. Stasio asked Ms. Bivens if she still wanted to go to the party, which she thought was a “weird” question to ask after one of his friends had knocked Mr. Amore out. R. 664. Mr. Stasio retreated to his friends, and Mr. Hogue figured out that they were the same people who hit Mr. Amore. R. 665. Then, both groups started walking toward each other. R. 665.

The groups exchanged words across the railroad tracks. R. 665. Eventually, one member of the Port Tampa group tore his shirt off, and Mr. Hogue began fighting with one of Mr. Stasio’s friends. R. 665. Up to that point, Mr. Amore had not spoken a word to the Port Tampa group. R. 666, 704. In fact, the last words that Mr. Amore exchanged with the Port Tampa group was the “your mama” joke. R. 674. Then, while Ms. Bivens was talking to Mr. Stasio, two or three men walked quickly behind Ms. Bivens toward Mr. Amore, and it sounded like they began fighting. R. 667. At this point, Mr. Amore was still out of it. R. 668. Although Ms. Bivens saw Mr. Hogue fighting with only one person, she never saw the fight with Mr. Amore. R. 672. Shortly thereafter, Ms. Bivens saw Mr. Rankin bleeding very badly. R. 669. Ms. Bivens attempted to help Mr. Rankin, and Mr. Amore left. R. 671. Then, Mr. Hogue grabbed Ms. Bivens to run away. R. 671-72.

6. Shawn Hogue

Shawn Hogue went to high school with Mr. Amore since 9th grade. R. 711. Mr. Hogue knew that Mr. Amore normally carried a pocketknife. R. 712.

Mr. Hogue explained that about seven people gathered at his house for an hour or two, then five people went to Ybor City. R. 713, 716. During the evening, Mr. Hogue drank some alcohol. R. 715, 719-21. Eventually, the Lakeland group ended up at a nightclub called Levels. R. 722. Everybody was in a good mood and had no problems with anybody, including the Port Tampa group. R. 722.

By the time the clubs closed, however, Mr. Hogue was “really drunk.” R. 722. The next thing he remembered was seeing Mr. Amore bleeding. R. 723. Mr. Hogue asked Mr. Amore what happened, and Mr. Amore responded he did not know. R. 723. Ms. Bivens told Mr. Hogue what happened. R. 723. Mr. Hogue became angry and followed Ms. Bivens’s general direction where the Port Tampa group went. R. 724. At that point, Mr. Amore was “out of it,” “[not] really there,” and “conscious but not conscious.” R. 724.

Mr. Hogue “stepped up to one of them” and asked why they punched Mr. Amore. R. 725. That member of the Port Tampa group then stepped back and yelled to the rest of his friends. R. 725. Then, “that’s when they all come rushing towards us, taking their shirts off and stuff.” R. 726. Mr. Hogue backed up and looked at Mr. Amore. R. 726. Mr. Amore “was still out of it, still looking off into

space, like he don't know what's going on." R. 726. "And that's when stuff started happening." R. 726.

One man approached Mr. Hogue, and they began to fight. R. 727. Mr. Hogue did not know who that was. R. 726. At the time, Mr. Amore was a couple feet behind Mr. Hogue. R. 727. Mr. Hogue thought the remaining four men in the Port Tampa group went quickly toward Mr. Amore, although he did not see all four of them jump on Mr. Amore. R. 727-28. Mr. Hogue did not see an actual fight with Mr. Amore. R. 728. About 15 or 20 seconds later, Mr. Hogue heard and saw screaming and running. R. 727. Up until that moment, Mr. Hogue had not heard Mr. Amore utter a single word to the Port Tampa group. R. 728. When Mr. Hogue heard the screaming and saw people running, he grabbed Ms. Bivens and got her out of there. R. 730. At that time, Mr. Hogue did not see Mr. Amore or know where Mr. Amore was. R. 730.

Mr. Hogue agreed it was a "[v]ery bad idea" for him to follow the Port Tampa group after the knockout punch, and he clarified that Mr. Amore had never encouraged him to do so. R. 732.

7. Corey Bailey

Before the Port Tampa group went out that night, Corey Bailey and Mr. Rankin each took a Xanax pill around 6:00 P.M. and some Molly (i.e., ecstasy) between 8:00 and 9:00 P.M. R. 744-47. Mr. Bailey believed there were bath salts

(methylone) in the Molly. R. 747-48. Additionally, before they arrived in Ybor City, Mr. Bailey and Mr. Rankin split a fifth of Captain Morgan rum (i.e., 750ml). R. 749.

8. William Medeiros

William Medeiros testified that when the night was wrapping up, he and Mr. Rankin found Mr. Stasio speaking to Ms. Bivens near the Buffalo Wild Wings. R. 759. The Port Tampa group “crowded around” behind Mr. Stasio. R. 759-60. Then, Mr. Medeiros heard Mr. Amore make a “your mama” joke to Mr. Bailey. R. 760. That is when Mr. Rankin punched Mr. Amore. R. 761. Mr. Rankin swung with his right hand—around Ms. Bivens—and connected with the left side of Mr. Amore’s face. R. 761. The “shocking” and “inappropriate” punch “surprised” Mr. Medeiros. R. 762. It was a “pretty hard” hit that sounded like “two pieces of two-by four smacking together real quick.” R. 764. In any event, Mr. Amore was knocked out and fell to the ground. R. 762. The Port Tampa group then scattered, regrouped, and walked away. R. 764-65.

When Mr. Medeiros looked back, he saw Ms. Bivens help Mr. Amore get up. R. 766. At that point, Mr. Amore was “bobble-headed.” R. 766-67. Shortly thereafter, Mr. Medeiros looked back again and saw Mr. Hogue, Ms. Bivens, and Mr. Amore following. R. 767. Mr. Medeiros then remarked to his friends that the

Lakeland group was following. R. 767. Again, at this point, Mr. Amore still “looked a little unconscious.” R. 768.

When the Port Tampa group got near their car, however, they did not go that direction. R. 768. “To be honest, I don’t know why we didn’t just go back to the car. I think about it every day.” R. 768. Instead, they turned in a different direction. R. 768. As it happened, however, Mr. Medeiros recalled that Mr. Rankin wanted to fight Mr. Amore again—even though Mr. Amore “at that time was still semiconscious.” R. 768-69. In fact, Mr. Rankin “said something to the effect that he wanted to fight [Mr. Amore] real quick and get it over with.” R. 769. Despite the Port Tampa group’s protestations to let it be and go home, Mr. Rankin turned back and approached the Lakeland group. R. 769. By this action, Mr. Medeiros understood that Mr. Rankin “wanted to go back and hit this guy that was already semi-conscious.” R. 770.

When the groups were near each other, Mr. Stasio walked across the railroad tracks to meet the Lakeland group. R. 772. Mr. Amore was not talking to anybody; instead, only Mr. Hogue, Ms. Bivens, and Mr. Stasio were speaking. R. 773. When Mr. Hogue took a swing at Mr. Stasio, Mr. Amore was still “dazed,” “b[obble] headed,” and “out of it.” R. 773-74. Mr. Kelly stepped forward and pointed out that they should not fight because the Port Tampa group had a numerical advantage. R. 774. Mr. Amore did not respond. R. 774. Instead, Mr. Hogue repeatedly respond-

ed, “Step up, motherfucker.” R. 775. Then, Mr. Rankin moved toward Mr. Amore and attacked, even though Mr. Amore still had not said a word. R. 776. Although Mr. Medeiros saw no punches, he assumed they were fighting. R. 776.

Then, Mr. Hogue went toward Mr. Rankin to help Mr. Amore. R. 779. Mr. Medeiros grabbed Mr. Hogue and pushed him off Mr. Rankin. R. 779. When he turned around, Mr. Medeiros grabbed Mr. Amore (who was not coming toward him) and threw him against a car. R. 779-80. Mr. Bailey came behind Mr. Medeiros and started punching Mr. Amore in the face. R. 780. While Mr. Bailey was punching Mr. Amore in the face, the back of his head was hitting the hood of the car. R. 781. At that moment, everything “seemed kind of still, like something was wrong,” and Mr. Medeiros saw Mr. Rankin kneeling and holding his throat. R. 781. Until this moment, Mr. Amore had not said a word to anybody in the Port Tampa group and continued to look “dazed, confused, and out of it.” R. 781-82. Everyone scattered. R. 782.

9. Nathan Stasio

Nathan Stasio had known Mr. Rankin since middle school. R. 807. They were friends, but not best friends. R. 808. Mr. Stasio was a closer friend to Mr. Medeiros. R. 808-09. Mr. Stasio drove everyone to Ybor City. R. 811. During the drive, the Port Tampa group lit a marijuana pipe and passed it around several times. R. 811.

Mr. Stasio encountered Ms. Bivens, Ms. Gries, and Mr. Amore in a nightclub called Levels or Level III. R. 816-17. Inside the club, nothing noteworthy occurred between Mr. Stasio and Mr. Amore. R. 817. When the nightclub closed, Mr. Stasio invited Ms. Bivens to another party and exchanged phone numbers with her. R. 817. Ms. Bivens indicated she needed to check with her friends. R. 817.

A short distance away, Mr. Stasio again encountered Ms. Bivens to the side of a Buffalo Wild Wings. R. 819. While Mr. Stasio was speaking with Ms. Bivens, Mr. Amore made a “your mama” joke. R. 821. Then, Mr. Rankin punched Mr. Amore, and the Port Tampa group scattered. R. 822. The punch “took all of us by surprise.” R. 822. While Mr. Amore was unconscious, Mr. Stasio stayed behind and attempted to apologize to Ms. Bivens. R. 823-24. But she was in shock. R. 824. Mr. Stasio then caught up with his friends. R. 824.

At some point, Mr. Stasio noticed that Mr. Hogue, Ms. Bivens, and Mr. Amore were following. R. 825. Mr. Stasio anticipated that there might be trouble, so he walked back toward the Lakeland group to apologize again. R. 826-27. At that point, Mr. Stasio did not even know whether the Lakeland group had seen them. R. 829-30. Mr. Stasio did not recall inviting Ms. Bivens to the party again, but he did recall apologizing and suggesting that the groups part ways. R. 830-31. During this encounter, Mr. Stasio thought Mr. Amore looked dazed, confused, and

out of it, like he was not even on this planet. R. 831. Mr. Stasio surmised that this was likely because Mr. Amore had just been knocked out. R. 833.

During this encounter, it was Mr. Hogue—not Mr. Amore—who was the aggressor. R. 831. Mr. Hogue inquired, “Is this the motherfucker who hit you?” R. 831. Ms. Bivens—not Mr. Amore—responded it was not Mr. Stasio. R. 831-32. When Mr. Stasio realized Mr. Hogue might hit him, he backed up, turned around to his friends, and hollered for them to come.³ R. 833-34.

Then, the fight began, but Mr. Stasio was not sure exactly how it began. R. 835. While the fighting began, Ms. Bivens was in the middle of it. R. 837. Mr. Stasio’s first reaction was to get her out of harm’s way. R. 837. Then, Mr. Medeiros and Mr. Bailey threw Mr. Amore on the hood of a car and began hitting him in the face. R. 837. Next, Mr. Rankin ran off, holding his neck and yelling something. R. 838. Everyone scattered, and Mr. Stasio called 911. R. 858.

10. Dr. Elise Arbefeville

Dr. Elise Arbefeville performed the autopsy on Mr. Rankin. R. 888. She concluded he was stabbed to death. R. 889. The stab wounds were several inches deep. R. 891. Mr. Rankin did not suffer defensive wounds. R. 893. Dr. Arbefeville could not opine whether Mr. Rankin was acting defensively or aggressively when

³ Mr. Stasio claimed Mr. Amore said something during this encounter, but could not recall what it was. R. 919.

he was stabbed. R. 895. Mr. Rankin did have a bite wound on his hand, which suggested he may have previously struck someone in the mouth with his fist. R. 894.

11. Officer David Barton

Officer David Barton interviewed Mr. Amore. R. Officer Barton claimed Mr. Amore was “fairly oriented” to what had happened. R. 908. During the interview, Mr. Amore was respectful at all times. R. 916.

12. Tia Nicholson

Tia Nicholson was an emergency medical technician (“EMT”). R. 925. She treated Mr. Amore’s injuries. R. 927. Ms. Nicholson thought Mr. Amore “seemed coherent and aware.” R. 928. Ms. Nicholson was not aware that Mr. Amore had been knocked unconscious. R. 931.

13. Dr. Donald Taylor

Dr. Donald Taylor interviewed Mr. Amore for two hours. R. 938. Unlike Dr. Gamache, Dr. Taylor opined that Mr. Amore was malingering to minimize his culpability rather than suffering from concussion-induced “Swiss cheese” memory impairments. R. 948. Nevertheless, Dr. Taylor conceded it was “theoretically possible” that individuals who suffered a grade 3 concussion would attempt to “fill in portions of these events that they’re unable to recall.” R. 949.

14. Detective Kenneth Nightlinger

Detective Kenneth Nightlinger testified that Mr. Amore told him, “I fucked up.” R. 965. During his interview, Mr. Amore appeared to be lucid and somewhat subdued. R. 965. Nevertheless, Mr. Amore “had a difficult time recounting the events in detail.” R. 968. Mr. Amore complained about being dazed or woozy and that his head still hurt. R. 981. Mr. Amore told Detective Nightlinger, “yeah, I could have defended myself with my blade. I mean, I was outnumbered. I felt, I mean, I was in danger for my life. I had no clue where I am.” R. 985.

15. Corey Bailey (Recalled)

Mr. Bailey was Mr. Rankin’s closest friend. *See* R. 991, 1,017. Around 6:00 P.M., Mr. Bailey and Mr. Rankin consumed one pill each of Xanax. R. 993. Then, Mr. Bailey and Mr. Rankin consumed one rock each of Molly. R. 993. Around 8:45 P.M., they left for Ybor City. R. 993-94. On the way, Mr. Bailey and Mr. Rankin consumed a fifth of Captain Morgan. R. 994.

After the clubs let out, and while Mr. Stasio was speaking with Ms. Bivens, Mr. Bailey claimed Mr. Amore began to make crude comments about how he had “fucked” his mother. R. 998. In fact, contrary to all the other witnesses, Mr. Bailey claimed Mr. Amore “got in my face and started running his mouth more,” and “next thing I know, Josh came behind me and knocked him out.” R. 999.

Again, contrary to all the other witnesses, when the groups encountered each other a few minutes later, Mr. Bailey claimed Mr. Amore was walking “fine” and “straight.” R. 1,004, 1,033-34. Contrary to all the other witnesses, Mr. Bailey claimed both Mr. Hogue and Mr. Amore told the Port Tampa group to “step up.” R. 1,005. *But see* R. 1,034-35. Contrary to all the other witnesses, Mr. Bailey claimed Mr. Amore was “acting aggressively,” while Mr. Hogue was just “[s]tanding there.” R. 1,006. Contrary to the video, Mr. Hogue claimed a male, not Ms. Bivens, helped Mr. Amore get up after he was knocked out. R. 1,025-26. Contrary to Mr. Stasio’s testimony, Mr. Bailey claimed the Port Tampa group did not double back to the Lakeland group. R. 1,028-29.

C. Written Closing Arguments

Mr. Amore and the State submitted written closing arguments. R. 419-452, 453-71, 472-88.

D. The Order On Appeal

In a meticulous 12-page order, the trial court granted the motion and dismissed all charges. R. 489-500. In doing so, the trial court made many credibility determinations and findings of fact. *See* R. 490-96.

In general, the trial court found “the defense witnesses provided more detailed and consistent testimony regarding the events.” R. 490. For example, the trial court found “Mr. Bailey’s testimony to be less credible, as he admittedly was the

only other member of the Port Tampa group, besides Mr. Rankin, to have taken a combination of alcohol, methylone, Xanax, and marijuana.” R. 490 n.1.

Before the evening began, the trial court found Mr. Rankin had ingested alcohol, methylone, Xanax, and marijuana. R. 490. The trial court explained how Dr. Pearson had testified that methylone (i.e., bath salts) can cause users to experience extreme paranoia, hallucinations, and delusions, and can cause them to become extremely agitated, irritated, and violent. R. 490.

During the first encounter, the trial court found Mr. Amore merely made a “your momma” joke, not the crude comment Mr. Bailey claimed. R. 491. Then, the trial court found Mr. Rankin surprised everyone when he punched Mr. Amore in the face and knocked him unconscious. R. 491.

Immediately thereafter, the trial court found the Port Tampa group initially scattered and walked away, but then turned back toward the Lakeland group. R. 491. When Mr. Stasio initiated contact, the trial court concluded it was Mr. Hogue who was acting aggressively, while Mr. Amore did not say anything and looked dazed, confused, and out of it. R. 492-93.

When the second fight began, the trial court specifically found Mr. Amore was not the aggressor. R. 495. Rather, it was Mr. Rankin, acting out of character, who again attacked Mr. Amore. R. 495. While Mr. Rankin was attacking Mr. Amore, Mr. Medeiros grabbed Mr. Amore and threw him onto a car. R. 493. Mr.

Bailey began punching Mr. Amore in the face. R. 493. Then, Mr. Rankin dispersed from the group, holding his neck. R. 493. During this fracas, Mr. Rankin and Mr. Medeiros were both stabbed, and Mr. Rankin died. R. 493-94.

Moreover, the trial court rejected Dr. Taylor's opinion that Mr. Amore was malingering and trying to minimize his culpability. *See* R. 495. Instead, the trial court adopted Dr. Martinez's and Dr. Gamache's opinions that Mr. Amore told law enforcement different stories about what had happened because he had just suffered a grade 3 concussion. R. 495.

Based on these facts, the trial court made the ultimate factual finding that Mr. Amore reasonably believed it was necessary to use deadly force to prevent imminent death or great bodily harm:

[Mr. Amore] has demonstrated by a preponderance of credible evidence that when he stabbed both Mr. Rankin and Mr. Medeiros, he was defending himself and attempting to prevent his own death or great bodily harm. Mr. Rankin attacked [Mr. Amore] twice. [Mr. Amore] stated an inappropriate joke; however, Mr. Rankin responded with surprising and unreasonable physical force by punching [Mr. Amore] in the face. After the initial attack, [Mr. Amore] was rendered unconscious and suffered a concussion. [Mr. Amore], after regaining consciousness and getting up, proceeded to follow his friends. [Mr. Amore] did not say much, if anything, and was noticeably injured from the first attack. Despite [Mr. Amore's] condition, Mr. Rankin wanted to fight [Mr. Amore] again. After being called over to [Mr. Amore] and his friends by Mr. Stasio, Mr. Rankin went toward [Mr. Amore]. Mr. Medeiros threw [Mr. Amore] against a car and Mr. Bailey began hitting [Mr. Amore]. *At this point, [Mr. Amore] had been attacked by three people.* During this altercation, [Mr. Amore] stabbed Mr. Rankin and Mr. Medeiros three times each. After considering all of the circumstances, and specifically, given the second attack on [Mr.

Amore] and [Mr. Amore's] state after having already been knocked out once, the Court finds that [Mr. Amore] reasonably believed that the use of deadly force was necessary to prevent imminent death or great bodily harm to himself.

R. 499 (emphasis added). Accordingly, the trial court granted Mr. Amore immunity pursuant to §§ 776.032, 776.012(1), and 776.013(3), *Fla. Stat.* (2013), and dismissed all charges. R. 497, 500.

SUMMARY OF ARGUMENT

The trial court's factual finding that Mr. Amore reasonably believed it was necessary to use deadly force to prevent imminent death or great bodily harm was supported by competent, substantial evidence in the form of eyewitness testimony, expert testimony, and video evidence.

ARGUMENT

I. ISSUE 1: WAS THE TRIAL COURT'S FACTUAL FINDING THAT MR. AMORE REASONABLY BELIEVED IT WAS NECESSARY TO USE DEADLY FORCE TO PREVENT IMMINENT DEATH OR GREAT BODILY HARM SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE?

The trial court's factual finding that Mr. Amore reasonably believed it was necessary to use deadly force to prevent imminent death or great bodily harm was supported by competent, substantial evidence in the form of eyewitness testimony, expert testimony, and video evidence.

Standard Of Review

In reviewing the grant or denial of a motion for Stand Your Ground Immunity, “[w]e review the trial court’s legal findings de novo, and we review the findings of fact for competent, substantial evidence.” *Leasure v. State*, 105 So. 3d 5, 16 (Fla. 2d DCA 2012). Appellate courts “will not reweigh the evidence.” *Joseph v. State*, 103 So. 3d 227, 230 (Fla. 4th DCA 2012) (emphasis in original).

Merits

A. Defendants Are Entitled To Stand Your Ground Immunity If They Can Demonstrate By A Preponderance Of The Evidence That They Reasonably Believed It Was Necessary To Use Deadly Force To Prevent Imminent Death Or Great Bodily Harm

The 2013 version of the Stand Your Ground statute provides that a person is immune from prosecution or civil liability for use of force if he or she is justified in using force permitted by §§ 776.012, 776.013, or 776.031,⁴ *Fla. Stat.* (2013), unless the victim is a law enforcement officer. § 776.032(1), *Fla. Stat.* (2013). Relevant here,

[A] person is justified in the use of deadly force and does not have a duty to retreat if: (1) He or she reasonably believes that 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; or (2) Under those circumstances permitted pursuant to s. 776.013.

§ 776.012, *Fla. Stat.* (2013). Relatedly,

⁴ The trial court did not base its ruling on § 776.031, *Fla. Stat.* (2013) (use of force in defense of others).

A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

§ 776.013(3), *Fla. Stat.* (2013).

When a criminal defendant seeks Stand Your Ground immunity, a trial court must decide the factual question whether immunity applies. *Dennis v. State*, 51 So. 3d 456, 462-63 (Fla. 2010) (approving procedure announced in *Peterson v. State*, 983 So. 2d 27 (Fla. 1st DCA 2008)). Trial courts “must decide the matter by confronting and weighing only factual disputes” and “may not deny a motion simply because factual disputes exist.” *Id.* at 459. The defendant bears the burden of proving entitlement to immunity by a preponderance of the evidence. *Id.* at 460.

B. Substantial, Competent Evidence Supports The Trial Court’s Factual Findings, And This Court Cannot Reweigh The Evidence

The State essentially asks this Court to reweigh the evidence. But the trial court carefully reviewed the evidence, observed the witnesses, heard the testimony, and made credibility determinations. This Court cannot do it again.

The State contends that Mr. Amore used “greater force” than was “objectively compelled” when he stabbed Mr. Rankin and Mr. Medeiros. State Br. at 10 (citing *Viera v. State*, 163 So. 3d 602 (Fla. 3d DCA 2015)). But *Viera* does not support the State’s argument. In *Viera*, the defendant and victim offered conflicting

testimony in which each accused the other of being the aggressor. 163 So. 3d at 605. As such, *Viera* concluded “[c]ompetent substantial evidence supports [the victim’s] testimony and completely contradicts [the defendant’s] version of the events.” *Id.* Accordingly, *Viera* denied the petition for writ of prohibition. *Id.* Here, all witnesses, except Mr. Bailey (whose testimony the trial court rejected), testified that Mr. Rankin was the aggressor in both incidents.

Moreover, the trial court correctly concluded Mr. Amore’s use of deadly force was objectively compelled. The objective 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.” *Id.* at 604. The trial court found Mr. Amore was attacked by three people in two separate incidents—after he had suffered a grade 3 concussion, was dazed, confused, and wobbly, was attacked by a much larger man, and was in the process of having his face repeatedly punched and his head smashed against the roof of a car by two additional grown men—before he stabbed Mr. Rankin and Mr. Medeiros. *See* R. 499 (“At this point, [Mr. Amore] had been attacked by three people.”). This Court cannot reweigh that evidence. *Joseph*, 103 So. 3d at 230. And a reasonable and prudent person in those circumstances would have used deadly force to protect himself. *Mobley v. State*, 132 So. 3d 1160, 1166 (Fla. 3d DCA

2014) (granting petition for writ of prohibition where defendant “found himself in the middle of a violent, unprovoked attack”).

Moreover, the State misreads Mr. Medeiros’s testimony in any event. Mr. Medeiros did not testify that Mr. Amore stabbed Mr. Rankin *before* Mr. Medeiros and Mr. Bailey attacked him. Rather, as the trial court found, there was a mass and confusion of people, and out of that mass and confusion, Mr. Rankin and Mr. Medeiros were stabbed. R. 499. Additionally, that is precisely the order of events to which Mr. Stasio testified. R. 838 (“Q. All right. And as this is happening, right, as Mr. Bailey and [Mr.] Medeiros are hitting [Mr. Amore], the next memory that you have is that [Mr. Rankin] disperses out of that group, running off yelling something; do you remember that? A. Yes.”). Based on Mr. Stasio’s testimony at least, then, there was competent, substantial evidence to support the trial court’s finding of fact that Mr. Amore stabbed Mr. Rankin and Mr. Medeiros *after* he was attacked by three people. *See* R. 499.

And in any case, the State’s point is academic. A reasonable and prudent person who had suffered a grade 3 concussion, was dazed, confused, and wobbly, and was being attacked by a much larger man (6’3 and 200 pounds) in a gang fight in a dark alley between groups of obviously intoxicated and aggressive young men, several of whom had torn their shirts off, most of whom were yelling, and two of whom had ingested bath salts, when he and his friends were outnumbered five to

two (not counting Ms. Bivens) would still have used deadly force to protect himself from an individual attacker. *See Mobley*, 132 So. 3d at 1166.

Indeed, the State's claim that Mr. Amore "had no reason to doubt when he entered into this second altercation that it too would be a brief, one on one fist fight" (State Br. at 12) is both fanciful and factually wrong. It is fanciful because this was a street fight in a dark alley with multiple participants, two of whom had taken bath salts, not a professionally sanctioned and officiated one-on-one boxing match according to Marquis of Queensberry rules. And it is factually wrong because, as it turned out, Mr. Amore's one-on-one fight with Mr. Rankin quickly degenerated into a one-on-three fight with Mr. Rankin, Mr. Medeiros, and Mr. Bailey. R. 499, 838. Accordingly, Mr. Amore had *every* reason to believe that this second altercation would not only be much more dangerous than the first, but it would indeed put him at great risk of imminent death or great bodily harm.

Finally, in responding to the trial court's rejection of Dr. Taylor's opinion and adoption of Dr. Martinez's and Dr. Gamache's opinions, the State engages in belated armchair neurology and neuropsychology when it contends Mr. Amore was "aware of the circumstances surrounding him," had "presence of mind," took actions "inconsistent with a person who is the helpless victim of a concussion," was "clear headed," "lucid," and "coherent." State Br. at 14-16. At best, those arguments merely regurgitate Dr. Taylor's opinions, which the trial court rejected. R.

495. And it fails to address Dr. Martinez’s opinion that, after his concussion, Mr. Amore was functioning at a brain stem level. R. 530-31. Contrary to the State’s arguments, the trial court found Mr. Amore’s “different variations of the events is explained by the contention that [he] suffered a grade three cerebral concussion, as corroborated by the testimony of Dr. Robert Martinez and Dr. Michael Gamache.” R. 495. Ample evidence supported this finding, and this Court cannot and “*will not reweigh the evidence.*” *Joseph*, 103 So. 3d at 230 (emphasis in original).

In short, the trial court’s factual finding that Mr. Amore reasonably believed it was necessary to use deadly force to prevent imminent death or great bodily harm was supported by competent, substantial evidence in the form of eyewitness testimony, expert testimony, and video evidence. This Court must affirm.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment.

Respectfully submitted,

/s/ Thomas Burns

Thomas A. Burns (FBN 12535)

BURNS, P.A.

301 West Platt Street, Suite 137

Tampa, FL 33606

(813) 642-6350 T

(813) 642-6350 F

tburns@burnslawpa.com

Counsel for Joseph Amore

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 20, 2016, I electronically served the following via the Florida e-portal: AAG Cerese Crawford Taylor (cerese.taylor@myfloridalegal.com & crimaptpa@myfloridalegal.com), Office of the Attorney General, 3507 East Frontage Road, Suite 200, Tampa, FL 33607-7013.

January 20, 2016

/s/ Thomas Burns _____
Thomas A. Burns

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

January 20, 2016

/s/ Thomas Burns _____
Thomas A. Burns