

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC17-1978

**STATE OF FLORIDA,**

Petitioner,

vs.

**PETER PERAZA,**

Respondent.

**RESPONDENT'S OBJECTION TO PETITIONER'S**  
**MOTION TO RECALL AND STAY MANDATE PENDING REVIEW**

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Respondent, Deputy Peter Peraza, by and through undersigned counsel, moves this court to deny the Petitioner's motion to recall and stay mandate pending review as it applies to the Respondent, Deputy Peter Peraza, and as grounds therefore states the following:

1. On August 30, 2016 the Fourth District Court of Appeal issued an opinion affirming Deputy Peraza's order of dismissal pursuant to a stand your ground motion which was issued in the Seventeenth Judicial Circuit in Broward County.
2. In affirming the Seventeenth Judicial Circuit's dismissal of Deputy Peraza's charges, the Fourth District Court of Appeal held the following: "The circuit court's most significant finding of fact is that the officer was responding to an emergency and investigating a disturbance, **but was not making an arrest.** That finding of fact is significant because, if true, it eliminates section 776.05's application to this case and distinguishes this case from Caamano, where three officers already had detained the suspect before Officer Caamano used unnecessary force against the suspect. **While we conclude the finding of fact here that the officer was responding to an emergency and investigating a disturbance was supported by competent substantial**

**evidence,** we also recognize an argument could be made that the officer here was in fact making an arrest.”

3. The Fourth District Court of Appeal went on to hold that even if Deputy Peraza was in fact making an arrest, Deputy Peraza should still be able to avail himself of a Stand Your Ground defense. The Fourth District Court of Appeal then expressly disagreed with the Second District Court of Appeal’s holding in Caamano and held that when a law enforcement officer, who while making a lawful arrest, uses deadly force which he or she reasonably believes is necessary to prevent imminent death or great bodily harm to himself for or herself or another or to prevent the imminent commission of a forcible felony, is not limited to invoking a defense under section 776.05(1), but is also permitted to seek immunity from criminal prosecution under sections 776.012(1) and 776.032(1).

4. The Fourth District Court of Appeal then certified the following as a question of great public importance: “Whether a law enforcement officer, who while making a lawful arrest, uses deadly force which he or she reasonably believes 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, is limited to invoking a defense under

section 776.05(1), or is also permitted to seek immunity from criminal prosecution under sections 776.012(1) and 776.032(1), Florida Statutes (2013), more commonly known as Florida's "Stand Your Ground" Law."

5. This Honorable Court accepted jurisdiction on February 1, 2018. On February 2, 2018 the Petitioner filed a motion in the Fourth District Court of Appeal with similar content and the same title as the motion at bar. Deputy Peraza, through undersigned counsel, filed an objection to the Petitioner's Motion to Recall and Stay mandate in the Fourth District Court of Appeal on February 9, 2018. On February 12, 2018, the Fourth District Court of Appeal issued an order that the Petitioner's motion to recall and stay mandate pending review was denied. The Petitioner then filed another motion to recall and stay mandate in this Honorable Court on February 12, 2018.

6. In the Petitioner's motion to recall and stay the mandate, the Petitioner cites State v. Roberts, 661 So.2d 821, 822 (Fla. 1995). In Roberts, the Defendant was convicted of aggravated assault with a deadly weapon. (Id. 821) The Defendant appealed. (Id.) The District Court of appeal reversed the conviction. (Id.) The State filed a notice to invoke discretionary jurisdiction of the Supreme Court and filed a motion to recall mandate

with the District Court of Appeal. The District Court of Appeal denied the motion on the ground that the motion to recall mandate should have been filed with the Supreme Court. (Id.) The State then filed a motion with the Supreme Court seeking stay and requiring the District Court of Appeal to withdraw its mandate. (Id.) The Supreme Court ultimately held that the motion for stay and to recall mandate may be filed in either the Supreme Court or the District Court of Appeal. (Id.) In so doing, this Honorable Court went on to hold that the fact that a notice to invoke the discretionary jurisdiction of this Court has already been filed **does not deprive the district court of appeal of jurisdiction to rule upon the motion.** (Id. 822). Additionally, this Honorable Court added: "Generally speaking, this Court prefers that the motion for stay be filed in the district court of appeal because at that stage of the case the district court ordinarily will be better informed concerning the case and thereby better able to predict the likelihood of this Court's accepting jurisdiction. (Id.)

7. The present case is not analogous to the scenario in Roberts. In the present case, the Petitioner filed a motion to recall and stay mandate in the Appellate Court **after** this Honorable Court accepted jurisdiction. Then,

after the Fourth District Court of Appeal denied the Petitioner's motion, the Petitioner re-filed essentially the same motion before this Honorable Court. Roberts does not stand for the proposition that a Petitioner can file a motion to recall and stay the mandate in the Appellate Court, then file the same motion in the Supreme Court after the Appellate Court denies said motion. Roberts merely stands for the fact that a Petitioner can file a motion to recall and stay an Appellate Court's mandate in the Appellate Court or the Supreme Court.<sup>1</sup>

8. Undersigned Counsel are cognizant that based upon the Fourth District Court of Appeal's holding that a law enforcement officer should be able to avail himself of a "Stand Your Ground" defense is in direct conflict with the Second District Court of Appeal's holding in State v. Caamano, 105 so.3d 18 (Fla. 2d DCA 2012). Law enforcement officers are charged with the unique task of running towards danger as part of their employment obligations. It is imperative that this Honorable court settle the direct conflict that arises between the Fourth District Court of Appeal and the Second District Court of Appeal.

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<sup>1</sup> Which this Honorable Court prefers be filed in the Appellate Court

It would create an untenable situation for law enforcement officers to be able to assert a "Stand Your Ground Defense" in one appellate jurisdiction but not the other.

9. "Stand Your Ground" law has been a hot button topic in recent years. In today's climate, with disadvantaged and minority communities feeling that they are unfairly targeted by the police, and, by the same token, the fear felt by members of law enforcement that they are now being unfairly portrayed, and more susceptible to having charges brought against them for on duty conduct, justified or not, the controversy surrounding "Stand Your Ground Laws" has reached a fever pitch and the issue placed before this Honorable Court clearly constitutes a question of great public importance for this Honorable Court to settle. These conflicts must be resolved as the question of great public importance presented to this Honorable Court by the Fourth District Court of Appeal is bound to repeat itself in the future.

10. While this Honorable Court has jurisdiction to settle the aforementioned legal conflicts, the Fourth District Court of Appeal expressly held that Deputy Peraza was responding to an emergency and investigating a disturbance, **and not making an arrest**, thus the

Petitioner's Motion To Recall and Stay Mandate Pending Review should not be granted. This Honorable Court was aware that when the Fourth District Court of Appeal held that Officers are allowed to use the stand your ground immunity statute during the course of an arrest that there now exists a conflict within legal jurisdictions in the State of Florida. Recalling the Mandate does not change the conflict that now exists within our great state, nor does it change the fact that the issues presented within this case are a matter of great public importance. This issue is capable of repetition yet evading review. This Honorable Court should address and settle the legal conflict as presented and certified by the Fourth District Court of Appeal as there is a direct conflict with the Second District Court of Appeal and a question of great public importance exists. When this Honorable Court accepted jurisdiction, this Court was aware of all of the above-mentioned facts. The Fourth District Court of Appeals' mandate to dismiss the indictment for Manslaughter with a Firearm against Deputy Peraza should remain undisturbed.

WHEREFORE, Respondent respectfully requests that  
Petitioner's motion to recall and stay mandate be denied.

Respectfully submitted,

SCHWARTZREICH & ASSOCIATES, P.A.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing "Respondent's  
Objection to Petitioner's Motion to Recall and Stay Mandate  
Pending Review" has been furnished electronically to Melanie  
Dale Surber on February 14, 2018 to:  
[crimappwpb@myfloridalegal.com](mailto:crimappwpb@myfloridalegal.com).

/s/ Eric T. Schwartzreich  
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Counsel for Respondent