

IN THE SUPREME COURT OF FLORIDA

TASHARA LOVE,

Petitioner,

v.

Case No. SC18-747

STATE OF FLORIDA,

Respondent.

_____ /

**MOTION FOR LEAVE TO FILE AMICUS BRIEF
BY THE LEAGUE OF PROSECUTORS – FLORIDA AND REQUEST TO
FILE BRIEF 10 DAYS AFTER THE RESPONSE BY THE STATE IS FILED**

The League of Prosecutors – Florida (“LOP”), pursuant of Fla. R. App. P. Rule 9.370(a), hereby requests permission from this Court to file an amicus brief on the merits both in support of the Respondent’s position regarding the retroactive application of § 776.032(4), Fla. Stat. (2017), and in opposition to both parties’ position regarding the constitutionality of § 776.032(4), Fla. Stat. (2017). Due to the issues that LOP will be addressing, it is requesting that this Court, pursuant to Rule 9.370(c), permit it to file its amicus brief 10 days after the response by the State is filed.

The League of Prosecutors – Florida is an organization that “consists of current and former Florida prosecutors who are dedicated to educating the public about critical issues in the justice system and promoting excellence in the judiciary.” *See* leagueofprosecutors.org. LOP hosts CLE forums on criminal law issues and

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closely monitors issues that affect the legal profession. This Court accepted jurisdiction in this case on June 26, 2018. There were three issues raised in the Petitioner’s Notice to Invoke Discretionary Jurisdiction. The issues surrounding the self-defense statutes in our criminal laws, in particular the “Stand Your Ground” sections, are of great interest to the criminal justice system.

The issue of the constitutionality of § 776.032(4), Fla. Stat. (2017) was raised in various trial courts in Miami-Dade County by the State, through the Miami-Dade State Attorney’s Office. The trial court in the present case, as well as another trial court, found the statute unconstitutional. *See State v. Omar Rodriguez*, No. F15-012785, (Fla. 11th Jud. Cir. Ct. July 3, 2017).¹ One trial court found it constitutional. *State v. Rene C. Torian*, No. F15-000836 (Fla. 11th Jud. Cir. Ct. July 6, 2017). Beside the present case, other appeals were filed in the Third District regarding the constitutionality of the statute. *See, e.g., Rodriguez v. State*, 239 So. 3d 147 (Fla. 3d DCA 2018). The issue was also briefed by different amicus in the Third District in *Rodriguez*. 239 So. 3d at 150 n. 6. Although the Third District was aware of other cases pending before it, *id.*, it only reached the issue of the constitutionality of the statute in the present case which is now before this Court.²

¹ The same circuit court found the statute unconstitutional in a companion case, *State v. Liletha Rutherford*, No. F16-12827 (Fla. 11th Jud. Cir. Ct. July 3, 2017).

² In *Bailey v. State*, 43 Fla.L.Weekly D1153 n. 2 (Fla. 3d DCA May 23, 2018), the Third District noted that neither party contended that the 2017 amendment to §

In addition, the Second District in *Martin v. State*, 43 Fla.L.Weekly D1016 *2 n. 5 (Fla. 2d DCA May 4, 2018), which is in conflict with the present case on the issue of the retroactivity of the amendment to § 776.032(4), noted that the separate constitutional question of whether the amendment could constitute a violation of article V, section 2(a) of the Florida Constitution was not argued in that appeal. One trial court in Hillsborough County, although noting the trial court opinions in the Eleventh Judicial Circuit, rejected the State Attorney's argument that the amendment was unconstitutional. See *State v. Alton Demetrius Smith*, No. 16-CF-007477 (Fla. 13th Jud. Cir. Ct. August 16, 2017).

In all of the cases which were before the district courts, the Attorney General, representing the State, did not argue that the statute was unconstitutional, and in fact took the position that the statute was constitutional. Thus, there will be no legal arguments made by the State in this Court to uphold the two circuit court judges' orders finding the statute unconstitutional. LOP believes that it can assist this Court by providing legal arguments regarding whether § 776.032(4), Fla. Stat. (2017) is constitutional.

776.032(4) was unconstitutional. However, it should be noted that the trial court's order rendered in that case occurred in December of 2016, before the amendment had been passed. *Id.* at *1.

LOP also believes that it can assist this Court, if it finds that § 776.032(4), Fla. Stat. (2017) is constitutional, in determining whether the statute should be applied retroactively to cases where the crimes occurred prior to the effective date of the statutory amendment. LOP would support the arguments of the Respondent and provide insight as to how the retroactive application of the statute has affected the ability of the State to go forward on these cases where self-defense is raised under the statute.

The undersigned has received consent from counsel of record for both the Petitioner and Respondent to file an amicus brief.

Wherefore, the League of Prosecutors – Florida respectfully requests that this Court grant its Motion for Leave to File Amicus Brief and to file its amicus brief 10 days after the response filed by the State.

Respectfully submitted,

/s/ Penny H. Brill

PENNY H. BRILL

Florida Bar No. 0305073

Theodore F. Brill, PA

8201 Peters Road, Suite 1000

Plantation, FL 33324

(954) 370-0800

penny.brillpa@gmail.com

Counsel for League of Prosecutors – Florida

CERTIFICATE OF SERVICE

Undersigned counsel certifies that a true and correct copy of the Motion for Leave to File Amicus Brief was emailed to the following on this 9th day of July, 2018:

Amit Agarwal
Solicitor General
Amit.agarwal@myfloridalegal.com
Edward M. Wenger
Chief Deputy Solicitor General
Edward.wenger@myfloridalegal.com
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399

Marlon Weiss
Assistant Attorney General
crimappmia@myfloridalegal.com
marlon.weiss@myfloridalegal.com
Criminal Appeals Bureau
Office of the Attorney General
One SE Third Avenue, Suite 900
Miami, FL 33131

Jeffrey Paul DeSousa
Assistant Public Defender
appellatedefender@pdmiami.com
jdesousa@pdmiami.com
Public Defender
Eleventh Judicial Circuit of Florida
1320 NW 14th Street
Miami, FL 33125