

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC21-651

(L.T. Nos.: 1D20-2193; 37-2020-CA-001011)

CITY OF TALLAHASSEE,  
FLORIDA, et al.,  
Appellants,

vs.

FLORIDA POLICE BENEVOLENT  
ASSOCIATION, INC., et al.,  
Appellees.

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On Review from the First District Court of Appeal

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**Brief of Amicus Curiae Pinellas County  
Sheriff Bob Gualtieri in Support of Appellants**

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**STATEMENT OF IDENTITY OF AMICUS PARTY**  
**AND HIS INTEREST IN THE CASE**

Bob Gualtieri has served as the Sheriff of Pinellas County, Florida, since 2011 and employs over 1,500 deputy sheriffs. Sheriff Gualtieri's interest in this appeal is to ensure that he can speak candidly to uphold the public's trust through transparency and accountability when deputies use force, especially deadly force, in furtherance of their public duties.

## **SUMMARY OF THE ARGUMENT**

Police are not “victims” when they use force. A police officer who shoots and kills another is not a “victim” of that shooting and cannot invoke Marsy’s Law to shroud his shooting in secrecy.

Marsy’s Law leaves undisturbed the public’s right to know the identity of a police officer who uses force under color of law. Nothing in the plain text of Marsy’s Law defines anyone as a “victim” when they use force. Rather, Marsy’s Law is applied using the principles of criminal jurisprudence, where each person’s action is independently analyzed to determine whether it caused another person to suffer physical, psychological, or financial harm. If so, the person who suffered harm is a “victim” under Marsy’s Law. Where, as here, multiple acts cause multiple harms then there are multiple victims: each of the other’s independently analyzed action.

## ARGUMENT

### **I. Marsy's Law Requires That a "Victim" Suffer Harm**

Florida enshrines the rights of crime victims in its constitution. Article I, section 16(b), commonly known as Marsy's Law, expressly states that its purpose is

[t]o preserve and protect the rights of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents  
.....

Among the constitutionally guaranteed rights that crime victims have is the right "to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family," which includes — at least, according to the district court's opinion — the right of the crime victim to prevent the release of his or her name. Fla. Const. art. I, § 16(b)(5); see Florida Police Benevolent Ass'n, Inc. v. City of Tallahassee, 314 So. 3d 796, 804 (Fla. 1st DCA 2021).

The Florida Constitution defines who is a crime victim for the purpose of invoking the rights enumerated in Marsy's Law. A "victim" under Marsy's Law is "a person who suffers direct or threatened

physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed.” Fla. Const. art. I, § 16(e). There is one exclusion from the definition of victim: “The term ‘victim’ does not include the accused.” *Id.*

In the two encounters that gave rise to this case, suspects threatened to kill Tallahassee police officers. Florida Police Benevolent Ass’n, Inc., 314 So. 3d at 797. Undoubtedly, the threatened officers are victims of the suspects’ crimes. Threatening to kill someone and then rushing toward them while waving a large hunting knife is illegal. *Id.* at 798. So is advancing on someone, taking a shooting stance, and then pointing a gun at them. *Id.*

However, whether the threatened officers are victims of those crimes, and whether Marsy’s Law thus affords the officers rights as victims of those crimes, are not the salient questions. Rather, the proper question (and the question the trial court considered) is whether Marsy’s Law bars the release of the officers’ names in connection with their shooting the suspects. *Id.* at 800. Preventing the disclosure of the officers’ names under Marsy’s Law requires not that the officers be victims of the suspects’ threatening conduct, but

rather than the officers be “victims” of their own uses of force — i.e., can an officer who shoots a suspect be a “victim” of his own shooting?

Common sense dictates that the answer is no. So, too, does the plain language of Marsy’s Law and its stated purpose. Someone who shoots a gun is not a “victim” — i.e., a person harmed by the commission or attempted commission of a crime. Fl. Const. art. I, § 16(e). See, e.g., L.T. v. State, 296 So. 3d 490, 499 (Fla. 1st DCA 2020) (declining to interpret Marsy’s Law in a manner resulting in a vast departure from the traditional common law approach absent explicit text directing such a departure).

Marsy’s Law only applies in criminal cases and the application of basic criminal jurisprudential principles achieves the same result as common sense and respect for the ordinary meaning of plain-text. Because Marsy’s Law defines a “victim” based on “harm,” determining whether someone is a “victim” requires analyzing the acts of each individual who was “harm[ed]” during a given encounter.<sup>1</sup> The plain and ordinary meaning of “harm” is “[t]he

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<sup>1</sup> Negligence actions require apportionment of fault, thereby allowing for meaningful comparison of conduct that results in harm. Comparative negligence does not apply to intentional torts, let alone to criminal liability. See Fla. Stat. § 768.81(1)(c).



existence of loss or detriment . . . of any kind to a person resulting from any cause.” *Harm*, Black’s Law Dictionary (6th ed. 1990); see also *Harm*, The American Heritage Dictionary (2d coll. ed. 1991) (defining harm as “injury or damage”); *Harm*, Webster’s II New Riverside University Dictionary (1984) (same). Accord State v. Brake, 796 So. 2d 522, 528 (Fla. 2001) (“[W]here a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense.”).

Viewing the encounters in this case in total, as the lower court did, fails to account for the unique, individual acts of both the suspects and the police and the resulting “harm” caused by each of those acts. For example, in this case there were two distinct acts, each of which must be separately analyzed: (1) the deadly threats to the officers (resulting in the officers being “harm[ed]” by the threats and thus victims under Marsy’s Law); and (2) the officers shooting the suspects (resulting in the suspects being “harm[ed]” by the shootings and thus victims under Marsy’s Law).

Here, the public records request sought the names of the police officers who shot the suspects. Florida Police Benevolent Ass’n, Inc., 314 So. 3d at 798. The “harm” caused by the shootings was the

suspects' death. Therefore, under Marsy's Law, each suspect is a "victim" and, as noted below, each officer is an "accused." Fla. Const. art. I, § 16(e). There is no constitutional basis for withholding the names of the officers who shot the suspects.

## **II. Marsy's Law Requires That the Harm Suffered Be Caused by a Crime**

Marsy's Law requires that the harm suffered be the result of the commission of a crime and expressly excludes the "accused" from the definition of "victim." Fla. Const. art. I, § 16(e). In this case, the police officers acted in self-defense when they shot the suspects. When asserting a claim of self-defense, the accused admits the commission of the criminal act charged but contends that the act was justified. Martinez v. State, 981 So. 2d 449, 452-53 (Fla. 2008). Justification defenses, like self-defense, negate criminal culpability. Immaterial to a justification defense is whether "harm" resulted from the conduct in question. See, e.g., Kumar v. Patel, 227 So. 3d 557, 560 (Fla. 2017) (acknowledging absence of pre-arrest mechanism for determining immunity under Fla. Stat. § 776.012, Florida's "Stand Your Ground" law).

Accordingly, one who shoots another stands in the position of the “accused” (the person who committed a potentially criminal act) and not the “victim” (the person who suffered a direct physical harm) under Fla. Const. art. I, § 16(e). This is true for police officers just like for everyone else. That a use of force is justified, or that the person using force is a police officer, does not shield the identity of the person using it from public view. Nothing in Marsy’s Law provides for such secrecy. Reversal is required.

### **CONCLUSION**

Because police officers are not victims when they engage in a lawful use of deadly force, they cannot invoke Marsy’s Law to shield their names from public disclosure. The opinion of the court of appeal should be vacated and the case remanded to the trial court for further proceedings consistent with a plain-text application of Marsy’s Law to the public records request in issue.

**CERTIFICATE OF SERVICE**

I certify that on March 11, 2022, I electronically filed this motion with the Clerk of the Court by using the Florida Courts E-Filing Portal and that a true and correct copy of this brief was served by E-Mail on below listed counsel:

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