IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION "X"

CASE NO.: 2016CF005507AXX

STATE OF FLORIDA

v.

NOUMAN KHAN RAJA,
Defendant.
_____/

MOTION FOR JUDGMENT OF ACQUITTAL AS TO BOTH COUNTS

The defendant Nouman Raja moves for a judgment of acquittal, stating as follows:

1. Jeopardy and merger preclude both counts from going to the jury. The state has filed a two count Amended Information charging:

> COUNT 1: NOUMAN RAJA on or about October 18, 2015, in the County of Palm Beach, Florida, did unlawfully and by his own act, procurement or culpable negligence, kill COREY JONES, a human being, by shooting him with a firearm, without lawful justification and under circumstances not constituting excusable homicide or murder and in the course of committing the offence, NOUMAN RAJA did carry, display, use threaten, or attempt to use a firearm as defined in Section 790.001(6), contrary to Florida Statutes 775.087(1) and 782.07. (1 DEG FEL)
>
> COUNT 2: NOUMAN RAJA on or about October 18, 2015, in the County of Palm Beach and State of Florida, did unlawfully attempt to commit First Degree Murder, an offense prohibited by law, and in such attempt did an act toward the commission of such offense by shooting COREY JONES, a human being, but NORMAN RAJA failed in the perpetration or was intercepted or prevented in the execution of said offense, and during the commission or attempt to commit any offense listed in Florida Statute 775.087(2)(a)1, NOUMAN RAJA actually possessed a firearm or destructive device as those terms are defined in section 790.001, Florida Statutes, and further during the course of committing or attempting to commit any offense listed in Florida Statute 775.087(2)(a)1, NOUMAN RAJA discharged a firearm or destructive device as defined in section 790.001, Florida Statutes, and, as the result of the discharge, death or great bodily harm was inflicted upon COREY JONES, contrary to Florida Statutes 775.087(1) and (2), 777.04(1), and 782.04(1)(a)1. (LIFE FEL)

Amended Information. In its Amended Information, the state seeks to divide the single episode into a manslaughter and an attempted murder. The facts at trial show this was a single episode. The constitutional prohibition of former jeopardy, and the related principle of merger, preclude convictions for both of the charged offenses.[1] This Court should strike one of the counts.

2. Jeopardy precludes more than one theory of manslaughter from going to the jury.

3. The state did not rebut the *prima facie* showing of justifiable use of deadly force, where the defendant's sworn walk-through testimony was presented during its case in chief.

4. On the manslaughter count, the state has not shown Officer Raja could have known any of his actions would cause him to know or reasonably believe were likely to cause death or serious bodily injury.

MEMORANDUM OF LAW

Applicable Standard.

Facts and conclusions that may be reasonably inferred are interpreted in the light most favorable to the state. *Turner v. State*, 29 So.3d 361, 364 (Fla. 4th DCA 2010). Judgment of acquittal is appropriate where "the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law." *Lynch v. State*, 293 So.2d 44, 45 (Fla.1974). "If, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction." *Pagan v. State*, 830 So.2d 792, 803 (Fla.2002).

[1] Article 1, section 9, of the Florida Constitution provides in pertinent part: "No person shall ... be twice put in jeopardy for the same offense." Art. I, § 9, *Fla. Const.* The Fifth Amendment to the United States Constitution provides that no person shall be "subject for the same offence to be twice put in jeopardy of life or limb." *U.S. Const. amend. V.*

1. **Judgment of Acquittal must be granted as to one of the counts.**

Under settled Florida law, "only one homicide conviction and sentence may be imposed for a single death." *Houser v. State*, 474 So. 2d 1193, 1196 (Fla.1985). "[T]he single homicide rule … affords a second tier of double jeopardy protection." *McCullough v. State*, 230 So. 3d 586, 592 (Fla. 2d DCA 2017). It applies both to attempts and completed killings, and an injury merges with the death: "The single homicide rule 'is based on notions of fundamental fairness which recognize the inequity that inheres in multiple punishments for a singular killing.' *Gordon v. State*, 780 So. 2d 17, 25 (Fla. 2001), *receded from on other grounds by Valdes v. State*, 3 So. 3d 1067 (Fla. 2009). "[P]hysical injury and physical injury causing death, merge into one and it is rationally defensible to conclude that the legislature did not intend to impose cumulative punishments." *Id.* (*quoting Carawan v. State*, 515 So. 2d 161, 173 (Fla. 1987) (Shaw, J., dissenting))." *Marsh v. State*, 253 So. 3d 674, 677 (Fla. 2d DCA 2018).

In *Williams v. State*, 90 So. 3d 931 (Fla. 1st DCA 2012), the Court found improper convictions for both attempted premeditated and attempted felony murder. In *Williams*, an argument led to the appellant shooting three times at the complainant as he ran away, pausing, then pursuing him and firing four or five more shots, one of which struck him in the back. The Court reversed the conviction for attempted felony murder, finding the dual convictions precluded by the doctrine of merger, even if not by double jeopardy. It first found the event was a single episode, even though there was a pause between volleys, and rejected the state argument that each bullet fired was a distinct act. So it is with the case at bar.

"To determine whether the offenses occurred in one criminal episode, a court must consider 'whether there are multiple victims, whether the offenses occurred in multiple locations, and whether there has been a 'temporal break' between offenses." *Williams*, 90 So. 3d at 933

(cleaned up). The shooting in this case involved a single decedent, in a single location, without a sufficient temporal break between the charged offenses. As in *Williams*, here there was a brief pause between two volleys, and as in *Williams*, the shooting in this case is a single episode for jeopardy and merger purposes. The *Williams* Court also found each count did not result from a distinct act: "To determine whether acts are "distinct," factors to consider include whether there was: 1) a temporal break between the acts; 2) intervening acts; 3) a change in location between the acts; or 4) whether a new criminal intent was formed." *Ibid.* Again, neither the pause between volleys nor the continued pursuit qualified as distinct acts.

The state charging an attempt – first degree murder – and a completed act – manslaughter- does not avoid the jeopardy, merger, and single homicide rules. The attempt merges into the completed act, and cannot form the basis of a second count in a homicide prosecution. One of the counts is due to be the subject of an acquittal.

2. **Only one theory of manslaughter is permitted to go to the jury.**

The state is not permitted to proceed on more than one theory of manslaughter. *See Barnes v. State*, 528 So.2d 69 (Fla. 4th DCA 1988)(defendant could not be convicted for both manslaughter by intoxicated motorist and manslaughter by culpable negligence where only single death occurred).

3. Acquittal on both counts must be granted where the state failed to rebut a prima facie case of self defense.

During its case in chief, the state introduced Officer Raja's sworn walk-through statement, which unquestionably sets forth a *prima facie* case of justifiable use of deadly force. The state failed to rebut the defense, so acquittal must be granted. While the appellate caselaw is necessarily a review after the renewed judgment of acquittal and after a defendant's testimony, the same principles apply here, where the sworn defense version of the facts was presented by the state

during its case in chief. As the Florida Supreme Court recently recounted in Williams v. State, -- So. 3d -- , No. SC16-2170, 2019 WL 336900 (Fla. Jan 4, 2019):

> In order to establish a prima facie case of self-defense, a defendant must show that he (1) was attacked in a place where he had a right to be, (2) was not engaged in any unlawful activity, and (3) reasonably believed it was necessary to use force to prevent death or great bodily harm. *See Leasure v. State*, 105 So.3d 5, 13 (Fla. 2d DCA 2012) (citing § 776.013(3), *Fla. Stat.* (2008)). However, the jury is not required to accept the defendant's version of the facts and in fact "must consider the probability or improbability of the defendant's credibility in light of the circumstances established by other evidence." *Leasure*, 105 So.3d at 14 (*citing Darty v. State*, 161 So.2d 864, 872 (Fla. 2d DCA 1964); *Teague v. State*, 390 So.2d 405, 406-07 (Fla. 5th DCA 1980)).

Slip op. at 3. All of these factors were established in Officer Raja's sworn walk-through statement. And, once Raja "presented a prima facie case of self-defense, it was necessary for the State to refute his claim beyond a reasonable doubt." *Ibid. Accord*, *Fowler v. State*, 921 So.2d 708, 711 (Fla. 4th DCA 2006))(reversing denial of self defense motion for judgment of acquittal: "We recognize that the question of whether a defendant committed a homicide in justifiable self-defense is ordinarily one for the jury. *Id.* However, when the State's evidence is legally insufficient to rebut the defendant's testimony establishing self-defense, the court must grant a motion for judgment of acquittal."). Since the state did not rebut the sworn defense explanation, it has failed to show an absence of self defense beyond a reasonable doubt, and the motion for judgment of acquittal must be granted.

4. Lack of proof of an essential element of manslaughter by act or culpable negligence.

To prove manslaughter under either standard, the state must show "[t]he negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury."

Florida Standard Jury Instructions in Criminal Cases 7.7 **Manslaughter.** The state's proof does not meet this element.

Denial of this motion would violate the defendant's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, section 9, 16, 17 and 22 of the Florida Constitution and Florida law.

Wherefore, this Court should grant the motion for judgment of acquittal and discharge Mr. Raja.

I HEREBY CERTIFY that a true copy hereof has been electronically provided to **BRIAN FERNANDES, ESQ.**, (bfernandes@sa15.org), Office of the State Attorney and **ADRIENNE ELLIS, ESQ.**, (aellis@sa15.org), Office of the State Attorney, 401 North Dixie Highway, West Palm Beach, FL 33401 on this 4th day of March, 2019.

Respectfully submitted,

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