

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

KENNETH BURKE ROBERTS, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 5D17-3638

Opinion filed December 20, 2019.

Appeal from the Circuit Court for Volusia  
County; James R. Clayton, Judge.

James S. Purdy, Public Defender, and  
Kevin Holtz, Assistant Public Defender,  
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Lori N. Hagan, Assistant  
Attorney General, Daytona Beach, for  
Appellee.

PER CURIAM.

Kenneth Burke Roberts appeals his conviction and sentence for attempted  
first-degree murder. We reverse and remand pursuant to Fuller v. State, 257 So. 3d  
521 (Fla. 5th DCA 2018). As to Roberts' remaining claims, we affirm without comment.

The circuit court denied Roberts' motion to dismiss in which he claimed immunity from prosecution under Florida's Stand Your Ground law, section 776.032, Florida Statutes (2015). Roberts correctly argues on appeal that he is entitled to a new immunity hearing because section 776.032 was amended in 2017 to change the applicable burden of proof and this court has held that the 2017 amendment applies retroactively to pending cases. See Fuller, 257 So. 3d at 537.

Accordingly, we reverse Roberts' judgment and sentence and remand for a new immunity hearing where the State will bear the burden of proof. See Tate v. State, 44 Fla. L. Weekly D1818, D1818 (Fla. 5th DCA July 12, 2019). If the trial court determines following the hearing that Roberts is entitled to statutory immunity, it shall enter an order to that effect and dismiss the information with prejudice. See id. However, if the court determines that Roberts is not entitled to immunity, it shall enter an order with its findings and reinstate Roberts' conviction and sentence. See id.

Recognizing that the Third and Fourth District Courts of Appeal have held that the 2017 amendment to section 776.032 does not apply retroactively to pending cases, we again certify conflict with Love v. State, 247 So. 3d 609 (Fla. 3d DCA 2018), review granted, No. SC18-747, 2018 WL 3147946 (Fla. June 26, 2018); Hight v. State, 253 So. 3d 1137 (Fla. 4th DCA 2018), review pending, No. SC18-1653; and Langel v. State, 255 So. 3d 359, 364 (Fla. 4th DCA 2018).

Reversed and remanded with instructions; conflict recertified.

KHOUZAM, NELLY N., KELLY, PATRICIA J., and ATKINSON, J. ANDREW, Associate Judges, Concur.