

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

CAMERON TREY ROGERS,

Appellant,

v.

Case No. 5D19-1792

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 9, 2020

Appeal from the Circuit Court
for Putnam County,
Howard O. McGillin, Jr., Judge.

James S. Purdy, Public Defender, and
Shawna R. Moyers, Assistant Public
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Whitney Hartless,
Assistant Attorney General, Daytona
Beach, for Appellee.

WALLIS, J.

Appellant appeals the order denying his motion to dismiss filed pursuant to sections 776.012(1) and 776.032, Florida Statutes (2017), commonly known as the Stand Your Ground law. He argues that the trial court erred when it found that he failed to present a prima facie case of self-defense. We agree and reverse.

The charge in this case arose from a confrontation that occurred between Appellant, the victim, and Appellant's girlfriend, Audra. During the Stand Your Ground hearing, witnesses testified that the victim was the aggressor, grabbing Audra by her arm from behind as she walked with Appellant. Appellant testified that he initially asked the victim to release her arm. Although the victim released Audra's arm, the hearing testimony described the victim immediately attempting to punch Appellant two or three times. Appellant responded by punching the victim in the eye once.

In 2017, the Legislature amended the procedure used in criminal cases when a party claims immunity pursuant to section 776.032. The amended language states that:

(4) In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1).

§ 776.032(4), Fla. Stat.

The Second District interpreted this amendment as requiring an accused to "simply allege a facially sufficient prima facie claim of justifiable use of force under chapter 776 in a motion to dismiss filed under rule 3.190(b) and present argument in support of that motion at a pretrial immunity hearing." Jefferson v. State, 264 So. 3d 1019, 1028–29 (Fla. 2d DCA 2018). Because the statute does not define the term "prima facie," the Jefferson court looked to the dictionary, which defines "prima facie" as "[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may be later proved to be untrue." Id. at 1027 (quoting Prima Facie, Black's Law Dictionary (10th ed. 2014)). Our court has followed Jefferson, finding that a defendant's "sole burden at the pretrial immunity hearing was simply to raise

a prima facie claim of self-defense immunity" and that he "was not required to prove his immunity claim at the Stand Your Ground hearing." Derossett v. State, 44 Fla. L. Weekly D2713 (Fla. 5th DCA Nov. 7, 2019).

Here, Appellant alleged in his motion that the victim approached him and Audra and grabbed Audra's arm. The hearing testimony established that the victim was the first party to use force, and that Appellant responded to the victim's actions by punching him. Contrary to the trial court's ruling, the allegations and evidence were sufficient to establish that Appellant presented a prima facie case of self-defense, and that the trial court erred in finding that Appellant did not meet his initial burden. See § 776.012(1), Fla. Stat.; C.M. v. State, 234 So. 3d 837, 839–40 (Fla. 2d DCA 2018) (finding appellant presented prima facie evidence of self-defense where the testimony showed that the victim punched appellant before appellant punched the victim); State v. Rivera, 719 So. 2d 335, 338 (Fla. 5th DCA 1998) (finding that Rivera established a prima facie case of self-defense where the evidence established that he reasonably believed that death or great bodily harm was imminent when he shot at the victim based on the victim's threats to Rivera's life and those around him). Accordingly, we reverse the order denying the motion to dismiss and remand so that the trial court can determine whether the State overcame Appellant's self-defense claim by clear and convincing evidence.

REVERSED AND REMANDED with Instructions.

ORFINGER and HARRIS, JJ., concur.