

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-5272

CYNTHIA LYNN CRAVEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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CORRECTION IS UNDERLINED IN RED
MAILED: December 9, 2019
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Petition for Writ of Prohibition—Original Jurisdiction.

November 22, 2019

B.L. THOMAS, J.

Petitioner seeks a writ of prohibition to reverse the trial court's order denying her motion for immunity under sections 776.032(1), 776.012, and 776.013, Florida Statutes, arguing that Petitioner was justified in using force against the victim, because she reasonably believed such force was necessary to defend herself from the victim's imminent use of unlawful force. We deny the writ.

Facts

The trial court conducted a hearing where witnesses testified as to what occurred and security footage of the incident was played. The incident occurred at a country music festival that the victim, Petitioner, and Petitioner's husband attended. The victim

knew Petitioner and her husband prior to the night of the altercation. The altercation began in the venue parking lot after the concert when the victim approached a golf cart Petitioner was sitting on. The victim sat down next to Petitioner and their initial conversation was amicable. However, when the victim mentioned an incident from eight years earlier that involved the victim's then-husband and Petitioner, Petitioner's whole attitude changed.

Petitioner shattered a beer bottle she was holding to create a sharp-edged weapon and grabbed the victim by the throat with her free hand. Petitioner struck the victim in the arm with the shattered bottle, and the victim backed up and put her arms up to block Petitioner. The victim held Petitioner and fought back while Petitioner stabbed her with the broken bottle and said, "You want some of this? You want to try me? You want some of this b----?"

During the altercation, Petitioner's husband came up behind the victim, grabbed her, and threw her to the ground, laid on top of her and said, "You f---ing b----, you'll never hit my wife again." Petitioner began striking the victim in her face and the victim felt "burning and stinging." Petitioner's husband stopped hitting the victim when a woman told him to stop; Petitioner then began to walk away, saying "We got to go. She's bleeding real bad."

After the altercation, the victim spent four days in the hospital. Hospital employees told her that she lost four or five liters of blood. She had plastic surgery to repair her face, ear, and throat. Some of her facial nerves had been cut. She had two surgeries to repair her vocal cords, and one still does not work. She has scars on her face, ear, neck, chest, and shoulder.

After the hearing, the trial court entered an order denying Petitioner's "Motion for Determination of Immunity for Prosecution." The court found that based on witness testimony and the security footage, the victim did not present a reasonable threat of imminent death or great bodily harm or the commission of a forcible felony, therefore, Petitioner was not justified in her use of force against the victim.

Analysis

"Florida's Stand Your Ground law confers immunity from

prosecution if an individual uses deadly force in accordance with section 776.012(2), Florida Statutes.” *Fletcher v. State*, 273 So. 3d 1187, 1189 (Fla. 1st DCA 2019); § 776.032(1), Fla. Stat. (2018). Section 776.012(2), allows an individual to use or threaten to use deadly force “if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.”

When a defendant files a motion to dismiss under section 776.012(2), the trial court must conduct an evidentiary hearing and weigh the factual evidence presented. *Dennis v. State*, 51 So. 3d 456, 458 (Fla. 2010). “[O]nce a criminal defendant raises ‘a prima facie claim of self-defense immunity,’ then ‘the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity.’” *Hicks v. State*, 277 So. 3d 153, 154 (Fla. 1st DCA 2019) (quoting § 776.032(4), Fla. Stat. (2018)).* Under the appellate court’s standard of review, the trial court’s factual findings are “presumed correct and can be reversed only if they are not supported by competent substantial evidence, while the trial court’s legal conclusions are reviewed de novo.” *Mobley v. State*, 132 So. 3d 1160, 1162 (Fla. 3d DCA 2014).

The State presented clear and convincing evidence that Petitioner was not entitled to immunity from prosecution. The trial court found, based on its own viewing of the security footage, that Petitioner made the “initial strike.” There is evidence that Petitioner broke the beer bottle and used the shattered bottle on the victim. The security footage shows Petitioner reach her arm away from her body and against a nearby vehicle before bringing it back towards the victim. Additionally, the victim’s injuries were consistent with being struck with glass. The security footage also shows Petitioner grabbing the victim by the throat and striking the victim multiple times while the victim attempts to back away. The State met its burden by presenting clear and convincing evidence that Petitioner was not entitled to immunity from criminal prosecution.

* The Legislature adopted this altered burden of proof in 2017.

The trial court's findings that the victim did not present a reasonable threat of the imminent use of unlawful force against Petitioner are supported by competent, substantial evidence. Therefore, the trial court did not err in denying Petitioner's "Motion for Determination of Immunity from Prosecution and Motion to Dismiss." This Court denies Petitioner's writ of prohibition to reverse the trial court's order.

DENIED.

LEWIS and ROWE, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Rocco Joseph Carbone III, St. Augustine; Sonya Rudenstine, Gainesville; for Petitioner.

Ashley Moody, Attorney General, Steven Edward Woods, Assistant Attorney General, Tallahassee; Sheena H. Rickerson, Assistant State Attorney, Live Oak; for Respondent.