

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D18-5270

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RICHARD ALAN CRAVEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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**CORRECTED PAGE: pg 1**  
**CORRECTION IS UNDERLINED IN RED**  
**MAILED: December 9, 2019**  
**BY: FTA**

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 his motion for immunity from prosecution under sections 776.032(1), 776.012, and 776.013, Florida Statutes, arguing that Petitioner was justified in using force against the victim because he reasonably believed such force was necessary to defend his wife against 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 wife attended. The victim knew

Petitioner and his wife prior to the night of the altercation. Petitioner's wife and the victim got into an altercation over something the victim said to the Petitioner's wife. Petitioner's wife shattered a beer bottle she was holding and began striking the victim.

During the altercation, Petitioner 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's wife then began striking the victim in her face. Petitioner stopped hitting the victim when a woman told him to stop; Petitioner's wife then began to walk away, saying "We got to go. She's bleeding real bad."

As a result of 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.

The trial court entered an order denying Petitioner's "Motion for Determination of Immunity from Prosecution." The trial court found, based on witness testimony and the security footage, that Petitioner was not entitled to use force against the victim; the court found that the evidence did not support Petitioner's argument that he was entitled to use force to prevent injury to his wife.

### *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 a reasonable person in Petitioner’s position would not have used the same force as Petitioner. Based on its own viewing of the security footage, the trial court found that Petitioner observed his wife and the victim fighting but did not immediately move to break them up. The trial court found that Petitioner followed the fighting women behind an SUV and watched them for a short time before he actually intervened. This finding of fact is supported by competent, substantial evidence, including witness testimony and the security footage. Additionally, according to testimony from the victim and a witness, Petitioner struck the victim multiple times after he threw her to the ground.

Because the State met its burden by presenting clear and convincing evidence that a reasonable person in Petitioner’s position would not have used the same force as Petitioner, the trial court’s findings were supported by competent substantial evidence. 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.

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

LEWIS and ROWE, JJ., concur.

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

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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.