FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-5190

ROY P. BOSTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Leon County.
Angela C. Dempsey, Judge.

May 29, 2020

ON REMAND FROM THE SUPREME COURT OF FLORIDA

ROWE, J.

The Florida Supreme Court quashed our decision in *Boston v. State*, 260 So. 3d 445 (Fla. 1st DCA 2018), and remanded for reconsideration upon application of its decision in *Love v. State*, 286 So. 3d 177 (Fla. 2019). *See State v. Boston*, 45 Fla. L. Weekly S134 (Fla. Feb. 28, 2020).

In *Love*, the supreme court ruled that the 2017 amendment to section 776.032(4), Florida Statutes, was procedural and applied to Stand-Your-Ground immunity hearings "conducted on or after the statute's effective date." *Id.* at 190. Boston's immunity hearing took place on November 8, 2017, months after the statute's effective date. Thus, the State had the burden to prove by clear and

convincing evidence that Boston was not entitled to immunity. But the proper burden was not applied when the trial court considered Boston's immunity claim.

Rather than conducting the immunity hearing before trial, and after the trial court concluded that it was Boston's burden to show his entitlement to immunity, the parties stipulated that the trial court could consider the immunity motion at trial. The case went to trial, and Boston presented his claim for self-defense. After the defense rested, the trial court considered Boston's immunity claim. The trial court did not require the State to overcome the immunity claim by clear and convincing evidence. Instead, the court found that Boston had not proved his entitlement to immunity. The trial court then correctly instructed the jury on Boston's self-defense claim using the standard jury instructions. It instructed the jury that if the jury had any reasonable doubt, it should find Boston not guilty. The jury found Boston guilty of the charged offense. Under these facts, Boston is not entitled to a new immunity hearing.

When we first considered Boston's appeal, we did not address whether the jury's finding of guilt beyond a reasonable doubt cured the trial court's failure to apply the correct burden when considering Boston's immunity claim. Months earlier, our Court decided *Aviles-Manfredy v. State*, 44 Fla. L. Weekly D187 (Fla. 1st DCA Jan. 7, 2019). There, we held that the amendment to the Stand-Your-Ground statute applied retroactively. *See id.* When the trial court considered Aviles-Manfredy's immunity claim, it applied the incorrect standard and found that Aviles-Manfredy did not establish entitlement to immunity by a preponderance of evidence. *See id*. Aviles-Manfredy went to trial and presented his self-defense claim. The jury rejected the claim and found Aviles-Manfredy guilty of the charged offense by proof beyond a reasonable doubt. But even though the State overcame Aviles-Manfredy's self-defense claim while bearing a burden of proof heavier than what would have been required of the State at the pretrial immunity hearing, we held that Aviles-Manfredy was still entitled to a new immunity hearing. *See id*.

Almost a year later, the Florida Supreme Court quashed *Aviles-Manfredy* and remanded for reconsideration because of its

decision in *Love*. *State v. Aviles-Manfredy*, 45 Fla. L. Weekly S134 (Fla. Feb. 28, 2020). On remand, our Court withdrew its earlier decision and held that Aviles-Manfredy was not entitled to a new immunity hearing because his hearing took place before the effective date of the amendment to Stand-Your-Ground statute. *See Aviles-Manfredy v. State*, 45 Fla. L. Weekly D682 (Fla. 1st DCA Mar. 24, 2020).

Because the original *Aviles-Manfredy* decision has been quashed and withdrawn, it is no longer binding. Thus, we consider anew whether a defendant convicted at trial by proof beyond a reasonable doubt is entitled to a new immunity hearing if the trial court applies the wrong standard at a hearing conducted after the effective date of the amendment to the Stand-Your-Ground statute. We hold that under those circumstances, a defendant is not entitled to a new immunity hearing.

As cogently explained by Judge Roberts in his concurring opinion in *Mency v. State*, 292 So. 3d 1(Fla. 1st DCA 2019), a criminal defendant is not entitled to another immunity hearing when he goes to trial and his self-defense immunity claim is fully litigated:

> There are two ways for a criminal defendant to vindicate his right to self-defense after he loses his self-defense immunity hearing. First, if the defendant wants to avoid proceeding to trial, he may file a petition for writ of prohibition with the appropriate district court of appeal. Second, the defendant may go to trial and raise his or her self-defense claim.
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> With regard to a writ of prohibition, the district courts of appeal and the Florida Supreme Court have held that a petition for writ of prohibition is the appropriate method to freeze the proceedings in place so a review of the self-defense immunity ruling may be performed. *See Tsavaris v. Scruggs*, 360 So. 2d 745, 747 (Fla. 1977) (appropriate procedure to challenge a trial court's authority to continue prosecution is through a petition for writ of prohibition); *Rosario v. State*, 165 So. 3d 852, 854-55 (Fla. 1st DCA 2015) (Because a writ of

> prohibition stops the trial court from continuing to prosecute a defendant who should be immune from prosecution, it is the preferred method to challenge a denial of motion to dismiss that has occurred after or without an evidentiary hearing.); *Little v. State*, 111 So. 3d 214, 216 n.1 (Fla. 2d DCA 2013) (petition for writ of prohibition is the appropriate mechanism to challenge the denial of a motion to dismiss based on a self-defense immunity statute); *Joseph v. State*, 103 So. 3d 227, 229 (Fla. 4th DCA 2012) (same). A defendant does not lose his right to present his self-defense immunity claim to the jury by filing a petition for writ of prohibition, nor does he lose his right to present the issue to the jury after an unsuccessful petition for writ of prohibition. *State v. Chavers*, 230 So. 3d 35, 39 (Fla. 4th DCA 2017).
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> With regard to presenting the claim of self-defense at trial, the standard has always been that the State is required to prove beyond a reasonable doubt that the defendant, after a showing of a *prima facie* claim of self-defense, did not act in lawful self-defense. At trial, the finder of fact has always applied the correct standard whether our state courts were operating under *Bretherick* or the subsequently enacted section 776.032(4). This presentation of the self-defense claim at trial moots and subsumes any previous error that occurred at the immunity hearing.

Id. at 3–4 (Roberts, J., concurring).

As Judge Roberts observed, to overcome a defendant's self-defense claim at trial, the State must establish the defendant's guilt beyond a reasonable doubt. *See id*. The State's trial burden of overcoming the defendant's self-defense claim by proof beyond reasonable doubt is heavier than its pretrial burden of overcoming the defendant's self-defense immunity claim by clear and convincing evidence. *See Love*, 286 So. 3d at 180 (describing the trial burden of proof beyond a reasonable doubt as more exacting than the clear and convincing burden of proof); *see also Smith v. Dep't of Health & Rehab. Servs.*, 522 So. 2d 956, 958 (Fla. 1st DCA 1988). Thus, a trial court's error in applying the correct burden at

the immunity hearing can be cured if the State establishes the defendant's guilt at trial by proof beyond a reasonable doubt.

Here, the trial court properly instructed the jury on Boston's self-defense claim and the State's burden to prove Boston's guilt beyond a reasonable doubt. The jury found the State met its burden and returned a guilty verdict. Because the State overcame Boston's self-defense claim by meeting the heavier trial burden of proof beyond a reasonable doubt, the trial court's failure to require the State to overcome Boston's immunity claim with clear and convincing evidence was cured. Under these facts, Boston is not entitled to a new immunity hearing. Thus, we affirm his judgment and sentence.

And because we hold that a defendant convicted by jury verdict after raising a self-defense claim is not entitled to a new immunity hearing, even where the trial court applies the incorrect standard under the Stand-Your-Ground statute, we certify conflict with *Nelson v. State*, 45 Fla. L. Weekly D632 (Fla. 2d DCA Mar. 18, 2020).

AFFIRMED; CONFLICT CERTIFIED.

WOLF and LEWIS, JJ., concur.

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

Andy Thomas, Public Defender, and Kasey Lacey, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General; Quentin Humphrey, Assistant Attorney General; Amit Agarwal, Solicitor General; Edward M. Wenger, Chief Deputy Solicitor General; and Christopher J. Baum, Deputy Solicitor General, Tallahassee, for Appellee.