

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1794

LARRY LEE MORRIS, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition for Writ of Prohibition—Original Jurisdiction.
Francis Allman, Judge.

August 4, 2021

LONG, J.

This marks Larry Morris's seventh pretrial pro se writ petition in this case. He now petitions for a writ of prohibition following the denial of his motion to dismiss a charge of aggravated battery with a deadly weapon. Morris argues that he is immune from prosecution under sections 776.032 and 776.012, Florida Statutes (2019). The record before us demonstrates that competent, substantial evidence supported the trial court's determination that Morris was not entitled to immunity. We therefore, again, deny his petition. Below we explain our ruling, but we also warn Morris that his right to file pro se petitions in this Court will be in jeopardy should he continue to abuse the Court's resources with frivolous claims.

The Facts

The trial court held an evidentiary hearing on Morris's motion to dismiss. The victim, Lamario Bentley, testified for the State. Bentley explained that he lived in a house with two roommates, one of whom is Morris. In December 2019, Morris became indebted to Bentley for \$20 in gas money. Morris never paid Bentley. Bentley was angry that he had not been paid and admitted to sending threatening text messages to Morris on December 15, 2019. But shortly after those texts, a third party settled the debt by paying Bentley on behalf of Morris. Bentley explained he considered the debt satisfied and sent no further messages to Morris.

On the night of December 17, 2019, when Bentley returned home to the shared house, he found Morris waiting for him. Morris cut Bentley's neck with a knife. Bentley testified that he was not carrying any weapon or anything that could have been perceived as a weapon, that he had made no aggressive movements towards Morris, and that he did not start an argument or fight.

Bentley, now cut and disoriented, left the house. He moved towards the street with Morris following behind him, still yelling that he would cut him again. In the street, Bentley called his mother who then called the police. After police arrived, Bentley was taken to the hospital. The State admitted a photo of Bentley's injury and presented testimony that he received over 30 stitches to close the nearly fatal cut on his neck.

The State also presented the testimony of the police officer who found Bentley severely injured in the middle of the road. Later the officer spoke with Morris who appeared intoxicated and provided multiple conflicting versions of the incident. In one version, he alleged Bentley had started an altercation downstairs in the home. In another, he alleged the incident began with Bentley trying to kick in Morris's bedroom door upstairs. The officer examined Morris's bedroom door and found no marks or damage. Photographs of the door and Morris's room were also admitted as evidence at the hearing.

Morris then testified. He claimed that he was walking to his room and Bentley followed him. He was concerned about being followed so he turned around and pulled out his knife. He told Bentley he just wanted to be left alone and then swung his knife and cut Bentley. After cutting Bentley, Morris testified that he ran upstairs and Bentley ran outside.

Morris admitted to giving various statements to law enforcement and lying to law enforcement about the claim that Bentley tried to kick down his bedroom door. He also admitted that he did not see any weapons with Bentley and that Bentley did not have anything in his hands.

At the conclusion of the hearing, the trial court ruled on Morris's motion from the bench. The court resolved issues of witness credibility in favor of Bentley, finding that Morris made inconsistent statements and lied to law enforcement. The court reasoned that Morris was not entitled to immunity because his use of deadly force was not necessary to prevent imminent death or great bodily harm. The court denied Morris's motion to dismiss and this petition followed.

The Law

In his prohibition petition, Morris attacks the merits of the trial court's ruling and its findings of fact. He asserts that the trial court improperly resolved issues of witness credibility against him and that the ruling was not based on competent, substantial evidence. When a denial of a motion to dismiss on stand your ground immunity comes before this Court following an evidentiary hearing, "a writ of prohibition is the proper vehicle by which to challenge the denial of the motion." *Rosario v. State*, 165 So. 3d 852, 854 (Fla. 1st DCA 2015) (citing *Mederos v. State*, 102 So. 3d 7, 11 (Fla. 1st DCA 2012)).

Florida law states that a person using force as permitted in section 776.012, is immune from criminal prosecution and civil action. § 776.032(1), Fla. Stat. Section 776.012(2) provides:

A person is justified in using or threatening 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. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

At a hearing to determine whether a defendant is entitled to immunity, the defendant must first present a prima facie claim of immunity, after which the burden of proof shifts to the State to prove by clear and convincing evidence that the defendant is not entitled to immunity. § 776.032(4), Fla. Stat.

The Holding

The record demonstrates that competent, substantial evidence supported the trial court's determination that Morris was not entitled to immunity. In determining whether the trial court's findings of fact are supported by competent, substantial evidence, we must not "reweigh the evidence and substitute our judgment for that of the trial court." *Edwards v. State*, 257 So. 3d 586, 588 (Fla. 1st DCA 2018) (quoting *J.B. v. C.S.*, 186 So. 3d 1142, 1143 (Fla. 1st DCA 2016)).

The court found Bentley's testimony credible that he was not carrying any weapon or anything that could have been perceived as a weapon, that he made no aggressive movements towards Morris, and that he did not start an altercation with Morris. Applying its properly supported findings of fact to the correct law, the trial court reached the eminently reasonable conclusion that "you can't just attack somebody as they walk into their front door and slash their throat with a knife because two days prior they sent you a threatening text message" Indeed, you cannot. Because the trial court found that no imminent threat existed at the time of the incident, Morris was not entitled to immunity for his use of deadly force.

The trial court's findings of fact were supported by competent, substantial evidence, and its conclusions of law were not erroneous. Therefore, we deny Morris's petition for a writ of prohibition.

RAY and TANENBAUM, JJ., concur.

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

Larry Lee Morris, Jr., pro se, Petitioner.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Respondent.