FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2838

JAMES DWIGHT EDWARDS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition for Writ of Prohibition—Original Jurisdiction.

November 21, 2022

ROWE, C.J.

James Dwight Edwards petitions for a writ of prohibition seeking to quash the trial court's order denying his motion to dismiss a charge of manslaughter after an evidentiary hearing. Edwards asserts that he is immune from criminal prosecution under section 776.032(1), Florida Statutes (2019), because he was acting in self-defense when he shot and killed his stepson.[1]

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[1] Although not legally his stepson, Edwards clearly thought of the victim as such. After the shooting, Edwards told the 911 operator, "I was attacked by my stepson." And the in-car video of one of the police officers who responded to the scene captured Edwards telling a police officer, "I shot my stepson." And so, we

Because competent, substantial evidence supports the trial court's factual findings and because the State presented clear and convincing evidence to overcome Edwards' self-defense claim, we deny the petition on the merits.

Facts

Edwards shot and killed the victim, his stepson. Just before the shooting, Edwards and the victim had a physical and verbal altercation on the porch of the trailer where Edwards lived with the victim's mother, Marisa Knight. Edwards discovered that the victim crashed Edwards' car and left the scene of the accident. Knight witnessed a scuffle between Edwards and the victim on the porch. Knight saw the men pushing each other, but she saw neither throw punches. When the men moved from the porch and entered the trailer, Knight lost sight of them for ten to fifteen seconds.

The next time Knight saw the men was when she entered the trailer and walked toward the master bedroom. Both men were in the bedroom. Knight saw the victim punch Edwards in the head, but she could not see Edwards' hands. Knight continued to walk toward the men. When she reached for her son's shirt to pull him away from Edwards, Knight realized that her son had been shot. Edwards exclaimed, "Oh, God. I shot him." Edwards was a surgical nurse. But at no point after the shooting did Edwards try to render aid to the victim.

Instead, Edwards called 911 and gave a false version of events. Contrary to Knight's report to police that Edwards and the victim were fighting on the porch of the trailer before the shooting, Edwards told the 911 operator that he was sound asleep when he woke up to the victim on top of him and beating him. Edwards repeated this story to the EMT who examined him at the scene.

One of the officers who responded to the scene observed a mark on Edwards' head. But he did not see a "big goose egg." The

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characterize the relationship between Edwards and the victim just as Edwards did.

emergency room doctor who examined Edwards that evening testified that Edwards had mild, localized bruising.

The victim did not survive the shooting. The medical examiner concluded that the victim died from a gunshot wound to the upper mid abdomen. He explained that the gun was fired while in contact with the victim's skin or clothing.

The State charged Edwards with manslaughter. Edwards moved to dismiss the charge on grounds that he was acting in self-defense when he shot the victim. Edwards alleged that the victim took his cell phone before following Edwards into the trailer. He claimed that the victim threatened to kill him, punched him in the head, and placed a hand over his mouth to prevent him from breathing. Edwards alleged that he shot the victim because he was in fear for his life. Based on these allegations, the trial court conducted an evidentiary hearing. The court considered testimony from multiple witnesses and denied Edwards' motion to dismiss.

Procedural Posture

First, a few words about the posture of this case. There are two paths for a criminal defendant to seek review of a trial court's order denying a motion to dismiss claiming self-defense immunity. When raising a substantive challenge to a trial court's ruling on a self-defense immunity claim, a defendant may seek relief by petitioning for a writ of prohibition.[2] *See Boston v. State*, 326 So.

[2] Some nonfinal orders denying immunity claims are reviewable by appeal under Florida Rule of Appellate Procedure 9.130(a)(3) (e.g., orders denying a motion to dismiss based on worker's compensation immunity or sovereign immunity), but a ruling on a self-defense immunity claim is not. *See Boston*, 326 So. 3d at 677. In 2014, when the supreme court considered amendments to rule 9.130(a), it authorized review by appeal of nonfinal orders denying sovereign immunity, but it did not expand review to nonfinal orders denying other types of immunity claims. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, 151 So. 3d 1217, 1217–19 (Fla. 2014). The court explained that it had "concerns that claims pertaining to immunity as a

3d 673, 677 (Fla. 2021) ("[A] defendant who avails him or herself to a *pretrial* immunity hearing and who believes legal error was committed at the *pretrial* immunity hearing may still seek relief by filing a petition for writ of prohibition.").

When a defendant seeks to challenge the procedure used by the trial court in considering a self-defense immunity claim, he may petition for a writ of certiorari. *See Rogers v. State*, 301 So. 3d 1083 (Fla. 1st DCA 2020) (considering by certiorari petition argument that the trial court erroneously required petitioner to present evidence in support of his immunity claim); *see also Corbett v. State*, 47 Fla. L. Weekly D1069 (Fla. 5th DCA May 13, 2022) (explaining that if the petitioner's challenge to a ruling on an immunity claim "is procedural, e.g., whether the trial court applied the correct evidentiary burden, rather than substantive, e.g., where the [petitioner] is entitled to immunity, then prohibition is not the appropriate remedy").

Edwards challenges the trial court's order denying his motion to dismiss on procedural and substantive grounds. He argues an

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whole may be too broad" an expansion of the orders reviewable by appeal. *Id*. at 1217.

Even so, it remains unclear whether a petition for writ of prohibition is an appropriate means for a defendant to challenge a trial court's order denying a self-defense immunity claim. Prohibition is "very narrow in scope, to be employed with great caution and utilized only in emergencies. . . . It is preventive and not corrective in that it commands the [the lower tribunal] not to do the thing which the supervisory court is informed the lower tribunal is about to do." *Sarasota Cnty. Pub. Hosp. Dist. v. Venice HMA, LLC*, 325 So. 3d 334, 340 (Fla. 2d DCA 2021) (quoting *English v. McCrary*, 348 So. 2d 293, 296 (Fla. 1977)). "Prohibition was never meant to be a substitute for appellate review." *Id.* "In other words, '[p]rohibition lies to prevent an inferior tribunal from acting in excess of jurisdiction but not to prevent an erroneous exercise of jurisdiction.'" *Id.* (quoting *English*, 348 So. 2d at 297).

error in the procedure applied by the trial court—asserting that the court misapprehended the burden of proof and shifted the burden to him. This claim is reviewable by certiorari.

Edwards also challenges the trial court's order on substantive grounds, asserting that the State did not meet its burden to overcome his immunity claim by clear and convincing evidence. We review this aspect of Edward's challenge by prohibition. S*ee Morris v. State*, 325 So. 3d 1009, 1011 (Fla. 1st DCA 2021) (holding that a defendant may challenge the denial of a motion to dismiss on self-defense immunity by petition for writ of prohibition); *Jefferson v. State*, 264 So. 3d 1019, 1023 (Fla. 2d DCA 2018) (explaining that prohibition is the appropriate remedy to raise substantive claims because the trial court lacks authority to proceed against a defendant entitled to statutory immunity under section 776.032). As explained below, we find no merit in Edwards' procedural challenge to the trial court's ruling. And we deny on the merits Edwards' substantive challenge to the trial court's order denying his motion to dismiss.

Edwards' Procedural Challenge

Edwards argues that the trial court misapprehended the burden of proof and shifted the burden to him. Treating Edwards' petition for writ of prohibition as a petition for writ of certiorari, we hold that Edwards failed to show that the trial court misapprehended or shifted the burden of proof or otherwise departed from the essential requirements of the law. *See* Art. V, § 2(a), Fla. Const. (requiring the supreme court to adopt rules requiring that "no cause shall be dismissed because an improper remedy has been sought"); Fla. R. App. P. 9.040(c) ("If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.").

"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. . . ." § 776.032(4), Fla. Stat. The trial court's oral pronouncement at the

pretrial immunity hearing shows that it understood that the State had the burden to disprove by clear and convincing evidence Edwards' claim that he was acting in self-defense, and he reasonably believed that deadly force was necessary to defend himself.

When making its oral ruling, the trial court stated: "[T]he State has met its burden of proving by clear and convincing evidence that the [petitioner] did not reasonably believe that his use of force was necessary to defend himself from the alleged victim, specifically." The trial court also stated that it found "the credible evidence and testimony shows by clear and convincing evidence that the [petitioner] was not acting in self-defense at the time of the charged offense." Besides holding the State to its burden to disprove Edwards' self-defense claim by clear and convincing evidence, the trial court construed the evidence in a light most favorable to Edwards.

And contrary to Edwards' claim, the trial court never shifted the burden to him. It is true that the trial court expressed interest in hearing Edwards' version of events at the pretrial hearing. But there was nothing improper in the trial court's expression of interest in hearing from Edwards. A trial court may inquire whether a criminal defendant wishes to present evidence or testimony at a pretrial immunity hearing. Despite the burden being on the State to come forward with clear and convincing evidence to overcome the petitioner's prima facie claim, a petitioner asserting self-defense immunity must raise his prima facie claim "at a pretrial immunity hearing." § 776.032(4), Fla. Stat. In raising such a claim, the defendant may choose to present evidence or testimony in support of his prima facie claim. *See Langel v. State*, 255 So. 3d 359, 363 (Fla. 4th DCA 2018) (holding that a party asserting self-defense immunity must ordinarily "testify or to otherwise present or point to evidence from which the elements for justifiable use of force can be inferred"); *but see Jefferson*, 264 So. 3d at 1027 ("[T]here is no evidentiary burden upon the person seeking Stand Your Ground immunity.").

Here, while ensuring that Edwards understood it was his decision whether to testify, the trial court explained how Edwards' testimony could help resolve conflicts in the evidence. The trial

court explained that Edwards' exculpatory hearsay statements to the paramedics, for example, would not be considered by the court based on its ruling to not allow those statements to be admitted into evidence. The court also informed Edwards that it would not consider as relevant testimony that the victim had once struck his mother because there was no testimony that Edwards was aware of that incident.

But despite its desire to hear more about what happened on the night of the shooting, the trial court never stated that Edwards needed to testify. And there is no indication in the trial court's oral or written findings that it held against Edwards his decision to not testify.

Based on the trial court's findings and statements at the immunity hearing, the trial court understood that the State had the burden to prove by clear and convincing evidence that Edwards was not acting in self-defense. And thus, Edwards failed to show any procedural error by the trial court or any departure by the trial court from the essential requirements of the law.

Edwards' Substantive Challenge

Edwards also claims that the trial court committed a legal error in evaluating his immunity claim. He argues that the trial court should have granted his motion to dismiss because the State did not meet its burden under section 776.032(4) to prove by clear and convincing evidence that he did not have an objectively reasonable belief that he was in imminent danger of great bodily harm or death when he shot his stepson. Edwards contends that "no evidence exists, except as found in [his] Motion to Dismiss, regarding how Mr. Edwards was acting at the time of the shooting." We disagree.

To begin with, the burden shifts to the State to overcome a defendant's self-defense immunity claim by clear and convincing evidence, only after "a prima facie claim of self-defense immunity from criminal prosecution has been raised *by the defendant at a pretrial immunity hearing*." § 776.032(4), Fla. Stat. (emphasis supplied).

To raise a prima facie claim of self-defense, a defendant must show that the elements of justifiable force are met. *State v. Moore*, 337 So. 3d 876, 880–81 (Fla. 3d DCA 2022). Section 776.012(1), Florida Statutes (2019), provides,

> A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.

A conclusory allegation that the defendant acted in self-defense is not enough. *Moore*, 337 So. 3d at 882. Rather, the defendant must allege specific facts that show or tended to show that he (1) used deadly force; (2) reasonably believed deadly force was necessary to prevent imminent death or great bodily harm to himself or another; (3) used such deadly force while resisting the victim's attempt to murder him, to commit a forcible felony on him, or to commit a forcible felony on or in Edwards' dwelling; and (4) was not otherwise engaged in criminal activity and was in place he had a right to be. *See* Fla. Std. J. Instr. (Crim.) 3.6(f).

And so, here, Edwards needed to point to facts that showed or tended to show that: he used deadly force; he reasonably believed deadly force was necessary to prevent imminent death or great bodily harm to himself or another; he used deadly force while resisting the victim's attempt to murder him, to commit a forcible felony on him, or to commit a forcible felony on or in Edwards' dwelling; and Edwards was not engaged in criminal activity and was in a place he had the right to be. *Id.*

Edwards did not present any evidence in support of his motion to dismiss. And the unsworn allegations in Edwards' motion lack evidentiary value. *See MTGLQ Invs., L.P. v. Merrill*, 312 So. 3d 986, 993 (Fla. 1st DCA 2021) (holding that unsworn representations of counsel about factual matters are not competent evidence absent a stipulation). Thus, it is questionable whether Edwards "raised" a prima facie claim of self-defense immunity sufficient to shift the burden to the State under section 776.032.

But see Riggens v. State, 344 So. 3d 625, 626 (Fla. 2d DCA 2022) (explaining that "an accused must simply allege a facially sufficient prima facie claim of justifiable use of force under chapter 776 in a motion to dismiss . . . and present argument in support of that motion at a pretrial immunity hearing" (quoting *Jefferson*, 264 So. 3d at 1028–29); *see also Casanova v. State*, 335 So. 3d 1231, 1232 (Fla. 3d DCA 2021) (holding that a motion to dismiss can raise a facially sufficiently claim of immunity "even though the motion to dismiss is not sworn to by someone with personal knowledge or supported by evidence or testimony establishing the facts in the motion to dismiss").

Even so, the State does not challenge whether Edwards raised a prima facie claim of self-defense immunity at the pretrial hearing. And thus, we leave for another day what is required for a defendant to "raise" a prima facie claim of immunity at "a pretrial immunity hearing" under section 776.032. Instead, we consider only Edwards' argument that the State did not meet its burden to overcome his self-defense claim by clear and convincing evidence.

Standard of Review

When reviewing a trial court's ruling on a motion seeking dismissal on grounds of self-defense immunity, this Court (1) considers whether competent, substantial evidence supports the trial court's factual findings, and (2) reviews de novo whether the State proved by clear and convincing evidence that the petitioner did not have an objectively reasonable belief that he faced an imminent threat of great bodily harm or death. *See Fletcher v. State*, 273 So. 3d 1187, 1189 (Fla. 1st DCA 2019) ("A trial court's denial of pre-trial self-defense immunity involves a mixed standard of review."); *Bouie v. State*, 292 So. 3d 471, 479–80 (Fla. 2d DCA 2020) (explaining that a mixed standard is applied to the trial court's denial of a motion seeking dismissal on self-defense immunity grounds); *State v. Marrero*, 299 So. 3d 489, 490 (Fla. 3d DCA 2020) (same); *State v. Peraza*, 226 So. 3d 937, 946 (Fla. 4th DCA 2017) (same).

The first question requires deference to the trial court's factual findings and credibility determinations. We must presume that those findings are correct and disregard them only if they are

not supported by competent, substantial evidence. *See Swift v. State*, 342 So. 3d 852, 854 (Fla. 1st DCA 2022) ("On appeal, the trial court's findings of fact carry a presumption of correctness and may only be reversed if they are not supported by competent, substantial evidence."); *see also Craven v. State*, 285 So. 3d 992, 993 (Fla. 1st DCA 2019); *Hart v. State*, 308 So. 3d 655, 657 (Fla. 4th DCA 2020). "Substantial evidence" is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion" and evidence is "competent" if it is "sufficiently relevant and material." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

The second question can be answered only by examining the credible testimony and evidence presented at the immunity hearing to determine whether there was competent, substantial evidence from which this Court can determine whether the State overcame the petitioner's immunity claim by clear and convincing evidence. *Bouie*, 292 So. 3d at 480 ("[W]e should review a trial court's ultimate conclusion that the defendant did not reasonably believe that the use of force was necessary to prevent imminent death or great bodily harm under the de novo standard."). Put differently, there must be a corpus of competent, substantial evidence **formed from the trial court's findings and credibility determinations** for the appellate court to draw on to reach the legal conclusion that the evidence was clear and convincing that the petitioner was not acting in self-defense. In determining whether such a corpus of evidence exists, this Court does not reweigh the evidence or revisit the trial court's credibility determinations.

Then, assuming there is a corpus of competent, substantial evidence to draw from, we must then determine whether the evidence is clear and convincing. Clear and convincing evidence has both qualitative and quantitative aspects.

Clear and convincing evidence has been quantified as an intermediate level of proof that falls between proof by a preponderance of the evidence and proof beyond a reasonable doubt. *See Edwards v. State*, 257 So. 3d 586, 588 (Fla. 1st DCA 2018). Preponderance of evidence requires a greater weight of the evidence or "more than a fifty percent likelihood of guilt." *See In re*

Forfeiture of 1987 Chevrolet Corvette, 571 So. 2d 594, 595 (Fla. 2d DCA 1990). And proof beyond a reasonable doubt requires "an abiding conviction of guilt." Fla. Std. Jury Instr. (Crim.) 3.7. It is hard to pinpoint exactly where on the spectrum between the other two standards of proof clear and convincing proof falls. *See N.L. v. Dep't of Child. & Fam. Servs.*, 843 So. 2d 996, 999 (Fla. 1st DCA 2003). Suffice it to say that clear and convincing evidence is a higher evidentiary burden than proof by a preponderance of evidence, but lower than proof beyond a reasonable doubt.

As to the qualitative aspect of the clear and convincing standard, evidence is clear and convincing when the truth of the facts asserted is highly probable. *See Cummings v. State*, 310 So. 3d 155, 158–59 (Fla. 2d DCA 2021). Or when the evidence is credible, the witnesses distinctly remember the facts, and the testimony is precise and explicit. *See Inquiry Concerning Davey*, 645 So. 2d 398, 404 (Fla. 1994). Courts have also found evidence to be clear and convincing when "the sum total of the evidence [is] of sufficient weight to convince the trier of fact without hesitancy." *Edwards*, 257 So. 3d at 588 (quoting *N.L.*, 843 So. 2d at 999).

Even so, clear and convincing does not mean that there are no inconsistencies in the evidence. *In re Petition for Judicial Waiver of Parental Notice & Consent or Consent Only to Termination of Pregnancy*, 333 So. 3d 265, 273 (Fla. 2d DCA 2022) ("It is possible for the evidence in such a case to be clear and convincing, even though some evidence may be inconsistent. Likewise, it is possible for the evidence to be uncontroverted, and yet not be clear and convincing." (quoting *In re Guardianship of Browning*, 543 So. 2d 258, 273 (Fla. 2d DCA 1989))). If there are inconsistencies, it is not for the appellate court to resolve them; only the trial court may resolve conflicts in the evidence. *In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 967 (Fla. 1995) ("[O]ur task on review is not to conduct a *de novo* proceeding, reweigh the testimony and evidence given at the trial court, or substitute our judgment for that of the trier of fact."). An appellate court also may not reweigh the evidence or substitute its judgment for that of the trier of fact. *Edwards*, 257 So. 3d at 588.

Here, our task is to determine, based on the trial court's factual findings and credibility determinations about the

testimony and evidence presented at the immunity hearing, whether there is a corpus of competent, substantial evidence to support the legal conclusion that the evidence was clear and convincing enough to overcome Edwards' immunity claim. In so doing, we do not reweigh the evidence on appeal. *See Swift*, 342 So. 3d at 855.

Based on the testimony and evidence presented at the pretrial hearing, we hold that there is competent, substantial evidence to support the trial court's factual findings and credibility determinations. And from that competent, substantial evidence, we hold that the State met its burden to overcome Edwards' immunity claim by clear and convincing evidence. Stated differently, the State met its burden to show that it was not objectively reasonable for Edwards to believe that he was in imminent danger of great bodily harm or death when he shot his stepson.

Evidence Missing from the Appendices Supporting the Petition

Before beginning our examination of the trial court's credibility findings on the testimony and evidence presented at the pretrial hearing, we pause to explain what is lacking in Edwards' presentation to this Court. Edwards submitted several appendices in support of his petition. Those appendices included his unsworn motion to dismiss, the transcript of the evidentiary hearing, the transcript of the court's oral pronouncement, and the written order denying the motion to dismiss. But several critical pieces of evidence considered by the trial court when it denied the motion to dismiss are missing. That evidence includes:

- Photographs of the layout of the trailer where the shooting occurred. Those photographs would have informed the trial court's determination of how much time it took Edwards and his stepson to move from the porch, through the trailer to the master bedroom, where Edwards shot his stepson.

- Photographs depicting the location of the nightstand in Edwards' bedroom, the gun, and the gun safe, which would also have informed the trial court's determination

of the timing of the shooting and whether there was time for Edwards to walk to the bedroom, remove the gun from the gun safe, and fire it at his stepson before Knight entered the bedroom.

- Photographs depicting Edwards' injuries right after the shooting, as well as photographs depicting Edwards' injuries at the hospital, which would have informed the court's view on the severity of the injuries to Edwards.

- Photographs depicting the stepson after the shooting, which would have revealed the placement and position of his body when discovered.

- An audio recording of the 911 call Edwards made right after shooting, during which Edwards stated that he was attacked by his stepson, that his stepson was beating up Edwards, that Edwards shot his stepson in the chest, and that Edwards was sound asleep when his stepson just started beating on Edwards. Edwards also stated that he "fucked up."

- A recording from the in-car audio and video system of the patrol car driven by the first deputy to arrive on the scene after the shooting. The recording includes Edwards' statement: "I shot my stepson."

These critical pieces of evidence contributed to the trial court's factual findings and credibility determinations. But despite these omissions, in the appendices that Edwards did choose to submit, there is competent, substantial evidence supporting the trial court's factual findings and credibility determinations from which we can determine that the State met its burden to overcome Edwards' immunity claim by clear and convincing evidence.

Testimonial Evidence Presented at the Immunity Hearing

The appendices to Edwards' petition include a transcript of the pretrial immunity hearing. The trial court heard testimony from Marissa Knight, two witnesses from the medical examiner's office, two police officers, two crime scene investigators, a doctor

who examined Edwards the night of the shooting, and a paramedic. The court found that the testimony presented by these witnesses was credible. And the trial court made the following factual findings:

- Edwards viewed the victim as his son/stepson.

- But the relationship between Edwards and his stepson deteriorated. In the days before the shooting, Edwards left several degrading messages for his stepson.

- The degrading messages hurt his stepson's feelings, and Edwards laughed at this reaction. Edwards' reaction showed he was not afraid of his stepson.

- Before the shooting, Edwards and his stepson had both been drinking.

- On the day of the shooting, the stepson wrecked Edwards' car and left the scene of the accident. Edwards was irate and furious with his stepson about these actions.

- After the wreck, the stepson arrived at Edwards' trailer where Edwards lived with Knight. A physical altercation between Edwards and his stepson broke out on the porch. While on the porch, Edwards and his stepson grabbed and pulled each other.

- Starting on the porch, Edwards was engaged in mutual combat with his stepson.

- After the altercation began, Edwards went inside the trailer and his stepson followed.

- Edwards kept his gun in a locked case in a nightstand by the bed in his bedroom in the trailer.

- "[D]uring a physical altercation where the alleged victim struck the [petitioner] with his hands, the [petitioner] responded by shooting his stepson at point blank range."

- Edwards and his stepson were inside the trailer for ten to fifteen seconds between the time Knight saw them tussling on the porch and when she saw them again upon entering the trailer and walking to the bedroom.

- Knight never heard a gunshot.

- Knight never heard any calls for help or demands to cease before the gun was fired.

- As Knight walked toward the bedroom, she saw her son punch Edwards in the head more than once.

- It was unlikely that the gunshot occurred while Knight was in the bedroom based on the time it took her to enter the home, her position behind her son, and the location of the gun.

- The evidence showed it was more likely that the shot occurred before Knight entered the room.

- The description of the location of Edwards and the victim at the end of the altercation in the bedroom near Knight suggested that Edwards retrieved the gun close to the time when he entered the bedroom—before the punching occurred.

- Edwards' demeanor during the 911 call and when the police arrived on scene was "wholly inconsistent with someone who had acted in self-defense in shooting and killing their son or stepson."

- Edwards, a hospital surgical nurse, rendered no first-aid even though he knew that his stepson was dying.

- There was no history of violence between Edwards and his stepson.

- The victim was significantly smaller than Edwards. Edwards was over 300 pounds—his stepson weighed 160 pounds.

- The stepson was not "particularly physically fit" and had no prior fighting experience.

- The stepson injured his shoulder when he wrecked Edwards' car, hours before the shooting.

- Edwards had an injured hand at the time of the altercation.

The court considered these facts, as well as the relationship between Edwards and the victim. In evaluating the self-defense immunity claim, the court questioned "whether or not a reasonable and prudent stepfather or father, situated in the same circumstances as the [petitioner] and his stepson or son, would have felt deadly force had to be used to prevent great bodily harm or death." The court found that there was no reasonable interpretation of the facts to support Edwards' claim that he had an objectively reasonable belief that he was in imminent danger of great bodily harm or death.

Other Evidence Supporting the Trial Court's Factual Findings

In assessing whether there is competent, substantial evidence to support the trial court's findings and credibility determinations, we also consider the trial court's implicit findings and other credible evidence presented at the pretrial hearing.

Implicit in the court's credibility finding in favor of the testifying witnesses is a rejection of Edwards' version of the facts—alleged in the motion to dismiss and expressed in his hearsay and other statements Edwards made in the minutes and hours after the shooting. In his motion to dismiss, Edwards alleged that he fired the gun while his stepson was punching him and blocking his airway. Edwards also alleged that his stepson placed his hand over Edwards's mouth to prevent him from breathing.

At the pretrial hearing, the State presented testimony that Edwards told a 911 operator and a paramedic that he was asleep when his stepson started beating him. He also told the 911

operator that he was lying on the bed with his stepson on top of him when he shot his stepson.

But to find Edwards' version of the facts credible, the court would have needed to discount Knight's description of the events just before the shooting about the fight between Edwards and her son on the porch. Knight testified that the men were fighting on the porch for fewer than fifteen seconds from the time she lost sight of them until she discovered her son shot in the bedroom. This testimony conflicts with Edwards' assertion that he was asleep when the fighting began.

Further, if Edwards shot his stepson while or after being smothered on the bed, then how was it that both managed to return to a standing position **before Knight approached them and before the stepson delivered three blows to Edwards' head**? When Knight encountered the two in the bedroom, she testified that her son was punching Edwards and the two of them were standing on their feet. It is unclear whether the three punches Knight saw occurred before, simultaneously with, or after the shooting. The trial court concluded that "it appears from the evidence that the shot more likely occurred prior to [Knight] even making it to the room."

No witness testified about the precise sequence of events that happened inside the home during the ten to fifteen seconds it took Knight to leave the porch and follow the men inside the home. But based on the evidence and testimony before it, the trial court found that these things occurred: Edwards went to his bedroom, he opened his nightstand, he opened his gun safe, and retrieved his gun. The trial court also found that the stepson punched Edwards in the head, Edwards shot his stepson, and Knight grabbed her son while he was still standing, but after he was shot.

Competent, substantial evidence supports the trial court's view of the evidence and conclusion that Edwards shot his stepson before Knight entered the room and before the stepson struck

Edwards in the head.[3] To reach this conclusion, the trial court relied on Knight's testimony, pictures of the crime scene, and the medical examiner's testimony:

[3] The dissent contends this is a mischaracterization of the trial court's ruling. (Dis. Op. at 11.) But this statement on the evidence is drawn directly from the trial court's oral pronouncement. The dissent is correct that after referring to "a mutual physical altercation that began on the porch," the trial court later finds that "during a physical altercation where the alleged victim struck the defendant with his hands, the defendant responded by shooting his stepson at point blank range." But the trial court **never** made a finding that the punches that Knight testified that she saw the victim deliver were thrown **before** Edwards shot the victim. Nor is there any testimony or physical evidence that the victim punched Edwards in the bedroom before Edwards shot the victim.

When the trial court refers to the "physical altercation where the alleged victim struck the defendant with his hands," we conclude the trial court is referring to the "physical altercation that began on the porch" that the trial court described in its oral pronouncement as "grabbing or tussling, pulling each other." This reading of the trial court's oral pronouncement harmonizes the trial court's earlier finding that the defendant retrieved his gun and shot the victim **before** Knight saw the victim punch Edwards in the bedroom.

alleged victim -- it seems highly unlikely that the shot occurred while she would have been in the room in that position, but, rather, it appears from the evidence that the shot more likely occurred prior to her even making it into the room. Additionally, that's also based upon the -- based upon the testimony concerning the physical location of the gun. The gun was testified as being kept in a locked case on the nightstand by the bed. The Court saw pictures of that. There was a description of the location of the defendant and alleged victim at the conclusion of that altercation in the bedroom by Ms. Knight, and it certainly seems to suggest the gun had to be retrieved close to the time that the defendant was initially entering that bedroom and not during the actual physical altercation.

So it being entered prior to -- or being retrieved prior to the punches that Ms. Knight observed -- the alleged victim -- striking the defendant with. There -- the testimony and evidence was that there were at no tim, any recognizable calls for any help or assistance of any kind heard by Ms. Knight, no other, sort of, demands to cease before any deadly force was used. I do find that relevant in the sense that from the evidence it seems that at least starting on the porch, the defendant was engaged in a mutual combat situation with his stepson, and I think that's an important factor to note.

First, Knight testified that she did not hear a gunshot and that the men were standing when she entered the bedroom. And she explained that the gun was in a locked case on the nightstand by the bed. Second, the trial court reviewed photographs of the crime scene, which were not provided to this Court, showing the location of the gun in relation to where the stepson was shot. Finally, the medical examiner explained the single bullet to the

stepson's abdomen did not sever his spinal cord, testifying that it was possible that the stepson could have run around the block before collapsing. This evidence supports the trial court's conclusion that it was after the single shot to his abdomen that the stepson struck Edwards in the head.

Edwards' statements that his stepson was beating him to death also conflict with other evidence presented at the pretrial immunity hearing. There was testimony to suggest that the injuries to Edwards' head later observed by the emergency room physician were not sustained during his altercation with his stepson. The first deputy to arrive on the scene after the shooting observed only a "mark" on Edwards' head; he never saw a "goose egg" on Edwards' forehead. Although the medical examiner never examined Edwards, he testified that generally that a "goose egg" "show[s] up pretty fast." The medical examiner explained that a "goose egg" could be formed by a "moving body striking a firm surface."

Edwards' assertions that he was severely beaten also conflict with other physical evidence suggesting that the bruising to Edwards' head was minor. Dr. Acri, the doctor who examined Edwards the night of the shooting, did not consider Edwards to be significantly injured. He described Edwards' bruising as mild and localized. Edwards was alert, was not dizzy or nauseous when he presented to Dr. Acri, nor did he report any of those symptoms—even though earlier he told the paramedic who responded to the scene of the shooting that he was experiencing those same symptoms.

Even so, Dr. Acri agreed that when he examined Edwards at the hospital after the shooting, Edwards then had a "goose egg" on his forehead and three other bruises. When asked how the "goose egg" might have been caused, Dr. Acri testified that it "would take a punch . . . or a hit by an object." It was defense counsel who characterized the bruises on Edwards' head as "five distinct injuries." Dr. Acri testified to four. Additionally, when Edwards reported to Dr. Acri that he had been beaten, he did not report the alleged smothering to him.

The State Overcame Edwards' Self-Defense Claim with Clear and Convincing Evidence

Based on the circumstances as they appeared to Edwards at the time of the altercation, we hold that the State met its burden to show by clear and convincing evidence that a reasonably prudent person in the same position would not believe that the use of deadly force was necessary to prevent imminent death or great bodily harm.

Despite the testimony on the "goose egg" observed on Edwards' head and Knight's testimony that her son landed three punches to Edwards' head, not every blow to the head is deadly. And not every fist fight justifies defending oneself with deadly force. Context matters. *See Bouie*, 292 So. 3d at 481 ("The question under this objective evaluation of a defendant's conduct is whether, based on the circumstances as they appeared to the defendant at the time of the altercation, a reasonable and prudent person in the same position as the defendant would believe that the use of deadly force is necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony.").

His stepson was no stranger to Edwards. His stepson had a key and free access to Edwards' trailer. Their interaction was frequent. Edwards knew his stepson's behaviors and tendencies. Even so, Edwards shot his stepson, who was half his size, who had no history of violence as far as Edwards knew, who had never threatened Edwards, who did not have specialized fighting knowledge, and who had just injured his shoulder in a motor vehicle accident.

In the days before the shooting, Edwards had been aggressive toward his stepson. He left explicit, degrading messages for his stepson to find. When he learned that those messages hurt his stepson's feelings, Edwards laughed.

The relationship between Edwards and his stepson, the testimony on the minor nature of Edwards' injuries, along with all the testimony and evidence at the hearing, provides the context to evaluate whether it was objectively reasonable for Edwards to

believe he was in imminent danger of great bodily harm or death when he shot his stepson at point-blank range.

Deferring to the trial court's credibility findings and based on our review of the testimony and evidence presented at the evidentiary hearing, we hold that there was a corpus of competent, substantial evidence from which we can conclude that the State met its burden to show by clear and convincing evidence that it was not objectively reasonable for Edwards to believe that he was in imminent danger of great bodily harm or death when he shot his stepson. For these reasons, we deny the petition for writ of prohibition on the merits.

DENIED.

OSTERHAUS, J., concurs with opinion; B.L. THOMAS, J., dissents with opinion.

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

OSTERHAUS, J., concurring.

I concur in the majority opinion and agree that the State showed Appellant's actions to have nothing to do with defending himself. Specifically, the immunity hearing evidence demonstrated that Appellant was "irate" and "furious" with the inebriated victim (with whom he lived and considered his stepson) because the victim had just wrecked Appellant's car and fled the accident scene without reporting it to police or insurance. When Appellant confronted the victim about it on the front porch, the victim's responded belligerently. The two men had a history of conflict over Appellant's car because the victim would drive it without asking for permission. Things on the porch escalated quickly between Appellant and the victim to pushing and grabbing at each other and knocking furniture around (that the victim was

drinking and Appellant had imbibed two or three fireball shots probably didn't help matters). Anyway, the evidence shows that Appellant then left the porch to retrieve his handgun from the locked bedroom safe. Within 10-15 seconds later Appellant: had reached his bedroom, opened the safe, retrieved the gun, turned the gun on the victim, and fired the shot that killed the victim who had followed Appellant into the house.

Like the trial court, I see little evidence supporting Appellant's claim that he got his gun and shot the victim to prevent death or great bodily harm. The two men had been "tussling" on the porch where they lived. But the victim was half Appellant's weight, had no discernable fighting history or skills, and had just injured his arm in a car accident. Instead, the evidence indicates that Appellant's raw anger at his pugnacious "stepson" motivated him to leave the porch, retrieve the gun, and fire the fatal shot. The only evidence supportive of a self-defense theory is that the victim responded to the gun-draw and shot by punching Appellant's head before falling to the ground and dying on the bedroom floor. But Appellant's injuries from any punches were mild and not serious. Nor was the detective witness even sure about the origin of the abrasions on Appellant's head.

With this evidence, the State met its burden at the immunity hearing and demonstrated that Appellant was not acting in self-defense. Indeed, Appellant himself seemed to realize from the start the weakness of his self-defense theory. Appellant was in full cover-up mode when alerting 911 of the shooting and in reporting what happened to a responding EMT. He fabricated to them a sympathetic story about being beaten while sound asleep in his bed.

In the final analysis, I see no problem with the trial court's ruling here. The State produced convincing evidence at the hearing that Appellant shot the victim not because of any objectively reasonable threat to his life or body, but because he was furious about a wrecked car and the victim's non-contrite, belligerent response towards him on the front porch of their home.

B.L. THOMAS, J., dissenting.

I dissent.

The majority opinion reads as though the Legislature never amended section 776.032, Florida Statutes,[1] to place the burden on the State to prove by clear and convincing evidence that a defendant is not entitled to self-defense immunity. Furthermore, while the majority purports to accept all of the trial court's factual findings as supported by competent, substantial evidence, the majority opinion and the concurrence mischaracterize these factual findings; the trial court's factual findings actually support Petitioner's claim of self-defense. Thus, the motion to dismiss should have been granted.

The majority emphasizes—as did the trial court—the fact that Petitioner had a stepfather-like relationship with the decedent. However, this finding is only important to the ultimate decision on entitlement to immunity if, in determining whether Petitioner had a reasonable belief of imminent death or great bodily harm, the court applies a heightened standard to Petitioner because his "stepson" was his attacker. There is no support in the statute for this heightened standard. The key dispositive fact in this case, as specifically found by the trial court—and as I discuss in more detail below—is that the decedent repeatedly punched Petitioner in the head in Petitioner's bedroom, and Petitioner shot him in response at point-blank range. Therefore, based on the factual findings, Petitioner is entitled to immunity.

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[1] Before 2017, the burden was on the *defendant* asserting self-defense immunity to prove entitlement to immunity by a preponderance of the evidence. *See Bretherick v. State*, 170 So. 3d 766, 768 (Fla. 2015). In 2017, the Legislature amended section 776.032 to add subsection (4), which provides that "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." *See* Ch. 2017-72, Laws of Fla.

Petitioner is an obese 61-year-old man with a hip replacement, increased blood pressure, sleep apnea, hyperlipidemia, and a hand injury, which required surgery. He had a clear legal right under sections 776.012(2) and 776.013(1), Florida Statutes, to shoot the decedent at contact range, to defend himself from the infliction of great bodily harm or death. When Petitioner was in his own bedroom, the decedent repeatedly punched and struck Petitioner's head in a vicious and criminal attack.

The decedent was a 24-year-old man almost forty years younger than Petitioner. Petitioner never struck the decedent. The decedent's repeated blows to Petitioner's head resulted in visible injuries. These injuries required Petitioner to be cleared for his unlawful arrest and incarceration by an emergency-room physician who ordered a CT scan to ensure that Petitioner did not suffer an internal brain injury from the decedent's criminal actions.

It is critical to note that the 24-year-old decedent punched the 61-year-old Petitioner multiple times in the head and face. But even one such punch could have inflicted a serious brain injury, especially on an older person with multiple medical conditions. *See, e.g.*, *McKnight v. State,* 492 So. 2d 450, 451 (Fla. 4th DCA 1986) ("Although only a single blow was struck, the medical witness concluded that the punch resulted in [an] extremely serious brain injury to the seventy year old victim."). Under the majority opinion, although the applicable statutes grant the substantive right to Petitioner to use *deadly force* to protect himself from imminent death or great bodily harm, Petitioner had no such right. And as there is no question that Petitioner was in his own home, he did not have a duty to retreat. The majority can only reach its holding by disregarding the potentially deadly physical attack of the 24-year-old decedent on the 61-year-old Petitioner and by disregarding the plain text of Florida's statutes.

Florida's self-defense immunity statute unambiguously permitted Petitioner, who was present in a place he had a right to be, to use deadly force. Section 776.012(2), Florida Statutes (2019), states:

> A person is justified in using . . . deadly force if he or she reasonably believes that using . . . 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.

(emphasis added). Section 776.013(1), Florida Statutes (2019), states:

> A person who is in a dwelling or residence in which the person has a right to be *has no duty to retreat and has the right to stand his or her ground* and use or threaten to use:
>
> . . . .
>
> (b) *Deadly force* if he or she reasonably believes that using . . . such force is necessary to prevent imminent death or great bodily harm to himself or herself . . . .

(emphasis added).

Both statutes provide complete legal immunity to Petitioner from arrest or prosecution. § 776.032(1), Fla. Stat. (2019) (stating that a person who uses force as permitted in section 776.012 and 776.013 "is justified in such conduct *and is immune from criminal prosecution*," which includes "arresting, detaining in custody, and charging or prosecuting the defendant" (emphasis added)).

Under the majority's view, a person must apparently wait until great bodily harm or death is actually *inflicted before* a person is allowed to use deadly force to defend herself. Such a view is obviously contrary to the statutory right to use self-defense under sections 776.012(2) and 776.013(1), Florida Statutes. And despite the majority opinion's repeated references to the decedent as the "victim" in this case, it is Petitioner who was the victim of the decedent's criminal violence against Petitioner who was in his own bedroom. The State violated section 776.032(1), Florida Statutes, with the arrest and prosecution of Petitioner, who was entitled to self-defense immunity under these statutes and section 776.032(4), Florida Statutes.

Most significantly here, the *State refused to call its own homicide detective* to testify at the hearing, forcing Petitioner to call this witness, despite section 776.032(4) imposing the burden of persuasion on the State to present clear and convincing evidence *disproving* self-defense immunity. The homicide detective, along with the decedent's mother, who was the only eyewitness, established that the State could not and did not present clear and convincing evidence to overcome Petitioner's entitlement to self-defense immunity as required by section 776.032(4), Florida Statutes.

The initial burden is on the defendant to raise a prima facie claim of self-defense, but once that is presented, the evidentiary burden is on the State. And as the majority opinion ultimately concedes despite its extensive discussion of the requirements of such a claim, the State has *never argued* that Petitioner did not present a prima facie case of self-defense immunity, and the majority opinion cannot conclude otherwise here based on the relevant facts. It is a credit to the State that it did not attempt to make a meritless argument to the contrary under these facts.

Section 776.032(4), states in unequivocal and direct language that:

> 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* . . . .

(emphasis added).

But the majority opinion, like the trial court ruling, places the burden of persuasion on Petitioner, in direct contradiction of the Legislature's explicit declaration in section 776.032(4), that to overcome a prima facie assertion of self-defense immunity, it is the *State's burden.* Unlike the majority opinion and the trial court ruling, section 776.032(4), Florida Statutes, requires the State to *disprove* self-defense immunity, not the contrary.

In this regard, it must be noted that the majority opinion repeatedly states in the text of the opinion that the decedent was Petitioner's "stepson," as if this were legally relevant, which it is not. No one has the legal right to criminally attack anyone in their own bedroom, including their own family members, under sections 784.011, 784.03, and 784.045, Florida Statutes. This state long ago rejected the false premise that domestic violence was not a crime. *See generally* § 741.2901(2), Fla. Stat. (stating the explicit legislative intent for "domestic violence [to] be treated as a criminal act rather than a private matter"); Ch. 91-201, Laws of Fla.

And although legally irrelevant, the decedent was *not* Petitioner's stepson, as Petitioner was not married to the decedent's mother, which the majority opinion concedes, not in its text, but in its footnote. At most, the fact that Petitioner referred to the decedent as his "stepson" merely reflects Petitioner's generous character in allowing the decedent to reside with him for some time despite the decedent's undisputed abuse of this generosity, which generated hostility between both men and resulted in the decedent's tragic but not unlawful death. It is unclear why the majority opinion in its text would repeatedly assert that the decedent was Petitioner's "stepson," which is both legally irrelevant and inaccurate, other than to bolster the absence of clear and convincing evidence that disproves Petitioner's prima facie claim of self-defense immunity.

And regardless of the legal and emotional relationship of Petitioner and the decedent, the relevant statutes do not exclude self-defense immunity on the basis of a purported "special relationship," upon which the trial court and the majority opinion inexplicably rely. And the statutes do not exclude persons who may have previously insulted the criminal aggressor.

Just as legally irrelevant is the majority's opinion and the trial court's ruling that Petitioner did not "try to render aid" to the decedent. The decedent attempted to kill or inflict great bodily harm on Petitioner, who was lawfully permitted to use self-defense, including deadly force, to stop this criminal attack; Petitioner was under no legal obligation to "aid" the criminal perpetrator who had just attempted to inflict great bodily harm or

death on Petitioner. Petitioner immediately called 911, reported that he shot the decedent, and followed instructions; he was not legally or morally obligated to do more, given the decedent's criminal actions meant to inflict great bodily harm on Petitioner. *See generally L.A. Fitness Int'l, LLC, v. Mayer,* 980 So. 2d 550, 558 (Fla. 4th DCA 2008) (finding that business owners are under no legal duty to provide CPR-trained employees on duty to aid invitees suffering life-threatening conditions). No one has a legal duty to render aid to a criminal aggressor who attempts to kill or inflict great bodily harm forcing a person to lawfully use deadly force to prevent or mitigate the great bodily harm or their own death.

The relevant facts here supported by competent, substantial evidence do not support a de novo holding that the State overcame Petitioner's prima facie claim of self-defense immunity.

Petitioner was engaged, not married, to Marisa Knight, the decedent's mother. As noted, she was the only eyewitness to the incident. She had been living with Petitioner at Petitioner's home for a year. Her 24-year-old son, the decedent, lived in an RV located on the property. The decedent had a history of taking Petitioner's car without permission and also taking his cigarette lighters. This behavior irritated Petitioner, and Petitioner wrote degrading messages directed at the decedent on the cigarette lighters. But there had never been any physical altercation between the two men before.

On the night of the incident, the decedent took Petitioner's car without permission. When he returned to Petitioner's home, he told his mother that he had left the scene of an accident without reporting it. The decedent's autopsy showed that he had a blood alcohol level of *almost three times the legal limit* for operating a motor vehicle.

Petitioner came out onto the porch to discuss the hit-and-run. Petitioner wanted to call the police and the insurance company to notify them about the accident, but the decedent objected. The two men got into a "tussle" on the porch. They grabbed and pulled at each other, but the decedent's mother acknowledged that no punches were thrown.

Petitioner then went inside his home, and the decedent followed him. Ms. Knight remained on the porch for ten to fifteen seconds. During that time, she did not hear the two men say anything. When she entered the bedroom, she saw the decedent striking Petitioner with both hands in the face and head. She did not see Petitioner's hands. She grabbed the decedent by the back of his shirt to try to pull him away and saw that he had been shot. The decedent then fell back and died.

Petitioner left the room and called 911. He told the 911 operator that he had been asleep on the bed when his stepson attacked him, and that he ended up shooting his stepson. Petitioner told a similar story in the back of the ambulance on the way to the hospital.

The officers who responded to the scene testified that Petitioner had bruising or red marks on his face and a "goose egg" on the right side of his head. Petitioner complained of being dizzy, nauseated, and light-headed. One officer testified that Petitioner was very distraught over having shot the decedent and said that the decedent had beat him up. Petitioner told his emergency room physician that he had been punched numerous times in the face and complained of pain in the forehead, temples, and jaw. He also said he had been drinking a small amount that night. Based on Petitioner's injuries and his symptoms of headache and nausea, the emergency room physician ordered a CT scan to ensure Petitioner did not have a brain injury before he was "cleared" for jail.

The decedent's autopsy showed that he had been shot at close range due to a muzzle stamp, which indicated the gun was in loose contact with the decedent. Ms. Knight testified that she never heard a gunshot. Based on this testimony, the trial court found that it was highly unlikely that the shot occurred while she was in the room. Testimony and evidence established that the gun was kept in a locked case on a nightstand. The trial court noted that the evidence suggested that the gun was retrieved close to the time that Petitioner initially entered the bedroom and not during the actual physical altercation. *The court found that the decedent punched Petitioner in the head more than once.* The court

concluded that Petitioner responded to being punched by shooting the decedent at point blank range.

The trial court made a legal conclusion that both Petitioner and the decedent had a right to be in the home. Petitioner owned the home and had given the decedent keys and full access to it. The trial court also found that Petitioner was not acting in self-defense when he shot the decedent.

All that is necessary for a defendant to be entitled to self-defense immunity is to "reasonably believe" that such force is necessary to prevent imminent, not actual, great bodily harm or death to himself or herself. §§ 776.012(2), 776.013(1)(b), Fla. Stat. The statutes unambiguously do *not* require Petitioner to have waited until great bodily harm, or death, was actually *inflicted* on him before he had the right to use deadly force to protect himself. Such a proposition would directly contradict the plain and unambiguous meaning of the text and the context of Florida's broad right of self-defense.

Standard of Review

In *Bouie v. State*, the Second District correctly analyzed the issue of what standard of review applies to the ultimate question of whether a defendant "reasonably believe[d]" the use of deadly force was "necessary to prevent imminent death or great bodily harm" as required in section 776.012(2), Florida Statutes:

> And although our court's stand-your-ground cases have not analyzed this question, the governing precedents addressing our review of mixed questions generally have. They say that the application of the law to the facts is reviewed de novo. *See Hurst v. State*, 18 So. 3d 975, 991 (Fla. 2009) (holding, in the context of reviewing the mixed question under *Giglio*, that an appellate court "review[s] the application of the law to the facts de novo"); *P.G. v. E.W.*, 75 So. 3d 777, 780 n.1 (Fla. 2d DCA 2011) ("[W]e review de novo the trial court's application of the statute to those facts."); *see also Davis v. Gilchrist County Sheriff's Office*, 280 So. 3d 524, 529 (Fla. 1st DCA 2019) ("The application of the . . . statute to the facts . . . [is] reviewed de novo."); *Gregory v.*

> *Gregory*, 128 So. 3d 926, 927 (Fla. 5th DCA 2013) (holding that the trial court's determination of whether a former spouse is in a "supportive relationship" under section 61.14(1)(b) is an "application of the law [that] should be reviewed de novo"). We see no reason why we should use a different standard of review to assess a trial court's application of the law to the facts in a stand-your-ground case than we would in any other case involving such an exercise.
>
> . . . .
>
> Consistent with these precedents, then, we should review a trial court's ultimate conclusion that the defendant did not reasonably believe that the use of force was necessary to prevent imminent death or great bodily harm under the de novo standard.

292 So. 3d 471, 480 (Fla. 2d DCA 2020). I agree with this analysis. And here, applying this standard, we should grant the writ of prohibition and order Petitioner's discharge.

Burden-Shifting

This Court has yet to address specifically what is necessary to "raise[]" a prima facie claim of self-defense under section 776.032(4), and need not do so here, as the majority opinion acknowledges.

In this case, Petitioner was not required under section 776.032(4) to put on *any evidence* at the hearing to shift the burden of persuasion to the State to disprove Petitioner's undisputed assertion of a prima facie case of self-defense immunity. Yet, after the State rested its presentation of evidence and the defense asked the court to grant the motion, noting the State's burden, the trial judge declined to rule on the motion until the defense "complete[d] the motion hearing":

> THE COURT: All right. We're back on the record . . . . The State has rested in their presentation of evidence at this hearing.

Counsel?

[Petitioner's counsel]: Judge, I don't know this Court's position. Some judges are different.

At this time, I think we need to move to – that the Government has the burden in this case, and they have all of the burden; so I think the Court has power to grant the motion at this time. If the Court's going to reserve ruling on that, then we're ready to proceed, sir.

THE COURT: Yeah. I'm not – yeah, I think the motion – we *should complete the motion hearing*; so if there's anything you want to present, I would like to hear it.

(emphasis added).

As defense counsel noted, the burden was on the State under section 776.032(4) to bring forth sufficient evidence to rebut the claims made in the motion to dismiss by clear and convincing evidence. While it is understandable that the trial court would have preferred additional information, the court's comments demonstrate that it improperly required additional evidence from Petitioner.

Nonetheless, Petitioner did present evidence at the pretrial immunity hearing. The State began the hearing by presenting evidence and then Petitioner presented evidence. The majority asserts that Petitioner provided no evidence to support his prima facie case, but the trial court never asked Petitioner to present his evidence first and in fact prompted the State to present first:

THE COURT: . . . Let the record reflect that [Petitioner] is present in court, his counsel. The State is present through counsel. We're set for a hearing this afternoon on the defense's motion to dismiss.

Is the State ready to proceed?

[Prosecutor]: The State's ready, Judge.

THE COURT: Is the defense ready to proceed?

[Defense counsel]: Yes, sir.

THE COURT: All right. *State?*

[Prosecutor]: Judge, the State would call Marisa Knight.

(emphasis added).

After the State finished calling its witnesses, the defense called a witness with Alachua Fire and Rescue Department, who testified that he saw a "goose egg" on the side of Petitioner's head at the scene of the shooting and that Petitioner was crying and emotional. The defense also called the lead homicide detective, whom the State had failed to call without explanation. The detective testified that there was no forensic or physical evidence to refute Petitioner's claim of self-defense. At the end of the presentation of evidence, the trial court's comments focused on the missing evidence of what happened in the fifteen seconds before the shooting. The court repeatedly commented on the significance of this time period, as if it was Petitioner's burden to explain this gap in evidence; it was not. The commentary was directed at Petitioner in a clear attempt to convince Petitioner to "fill in the gaps" in the evidence. The trial court lamented that Petitioner was the only one alive who could provide this crucial missing evidence in the *State's* presentation.

De Novo Review

The only legally relevant, dispositive, and undisputed facts are 1) the decedent repeatedly punched Petitioner in the head and face in Petitioner's bedroom; 2) Petitioner shot the decedent in response to the decedent having struck him; 3) the decedent's mother separated the two men after the decedent had been shot; and 4) the decedent died from a contact wound from the gunshot. The majority purports to accept the trial court's factual findings but mischaracterizes them when the majority states that "the trial court's view of the evidence [was] that [Petitioner] shot his stepson before Knight entered the room and before the stepson struck [Petitioner] in the head." Maj. op. at 17–18. On the contrary, at the August 24, 2021, hearing at which the trial court announced its ruling, the trial court made an oral factual finding that "**during a physical altercation where the alleged victim struck the**

defendant with his hands, the defendant responded by shooting his stepson at point blank range." (emphasis added). The trial court specifically found that the decedent "**did punch [Petitioner] in the head on more than one occasion**." (emphasis added). The trial court also found that given the location of the nightstand where the gun was kept in a locked case, "it certainly seems to suggest the gun had to be retrieved close to the time that the defendant was initially entering that bedroom and not during the actual physical altercation." Finally, the trial court found that, based on the location of the gun, the fact that Knight never heard a gunshot, and the timing of when she entered the room, "it appears . . . that the shot more likely occurred prior to her even making it into the room." The trial court also acknowledged that after going into the bedroom, Knight saw the decedent punch Petitioner more than once. In sum, the trial court found that the decedent punched Petitioner in the head more than once, that Petitioner shot him in response to being struck, and that Knight entered the room after the gunshot and saw the decedent strike Petitioner again. All of the above factual findings by the trial court are supported by competent, substantial evidence, and the State has challenged none of them on review.

Again, it is important to emphasize that the trial court specifically found that the decedent punched Petitioner more than once before Petitioner shot him in response. The *unrefuted evidence*, supported by the testimony of the State's own witnesses, showed that the decedent died of a contact gunshot wound. The unrefuted evidence also showed that the decedent punched Petitioner in the head multiple times, causing bruising and a "goose egg" to the right side of his head. Deputy Worth observed Petitioner on the night of the shooting and testified that Petitioner had swollen red marks and that Petitioner said he felt he might vomit. Lieutenant Friend, who also responded to the scene of the shooting, testified that Petitioner had a "goose egg" on the right side of his forehead and some bruising around the eye and that Petitioner complained of being lightheaded. This evidence clearly suggests that Petitioner was hit with significant force and responded by shooting his attacker. While "[i]n most cases, a person in a fist fight lacks a sufficient justification to use deadly force," a defendant need not be beaten to death before using such force. *See Jackson v. State*, 253 So. 3d 738, 740 (Fla. 1st DCA

2018). A single punch to the head can kill the victim. *See Starks v. State*, 223 So. 3d 1045, 1049–51 (Fla. 2d DCA 2017); *Hall v. State*, 951 So. 2d 91, 92 (Fla. 2d DCA 2007). Petitioner also had no duty to retreat because he was in his own bedroom. § 776.012(2), Fla. Stat. Applying the de novo standard of review to the question of whether Petitioner reasonably believed that the use of deadly force was necessary to prevent imminent death or great bodily harm, Petitioner's belief was reasonable as a matter of law, and the State failed to prove by clear and convincing evidence that it was not.

Objective Standard

The trial court made a factual finding that Petitioner "viewed [the decedent] as his stepson/son, that type of a relationship." The court considered this an "extraordinarily critical and weighty factor." Ms. Knight testified that Petitioner treated the decedent "like his son," and Petitioner referred to the decedent as his "stepson" in the 911 call. However, this finding is not legally dispositive as noted above, and has little or no evidentiary value, because the decedent had lived in an RV adjacent to Petitioner's home for only one year, did not have free access to Petitioner's vehicle, had previous conflicts with Petitioner, and Petitioner was not married to the decedent's mother.

The trial court incorrectly applied a subjective standard to this case based on this so-called stepson relationship. In its oral pronouncement of its decision on the motion to dismiss, the trial court explicitly redefined the ultimate question as "whether or not a reasonable and prudent *stepfather or father*, situated in the same circumstances as the defendant and his stepson or son, would have felt deadly force had to be used to prevent great bodily harm or death." (emphasis added). In examining whether a person "reasonably believe[d] that using or threatening to use [deadly force was] 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," as required by section 776.012(2), Florida Statutes, the court must apply an *objective*, reasonable person standard. *See Bouie*, 292 So. 3d at 481 ("The question under this *objective* evaluation of a defendant's conduct is whether, based on the circumstances as they appeared to the defendant at the time of the altercation, a *reasonable and prudent person* in the same

position as the defendant would believe that the use of deadly force is necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony." (emphasis added)); Fla. Std. Jury Instr. (Crim.) 3.6(f) ("[T]o justify the [use] [or] [threatened use] of deadly force, the appearance of danger must have been so real that a *reasonably cautious and prudent person* under the same circumstances would have believed that the danger could be avoided only through the use of that [force] [or] [threat of force]." (emphasis added)). By asking instead what a "reasonable and prudent stepfather or father" would believe necessary under the circumstances, the trial court applied a heightened and subjective standard to this case.

Furthermore, the trial court's analysis and the majority opinion impose an increased duty on Petitioner based on a special relationship similar to that applied in tort actions. *See Limones v. Sch. Dist. of Lee Cnty.*, 161 So. 3d 384, 390 (Fla. 2015) ("As a general principle, a party does not have a duty to take affirmative action to protect or aid another unless a special relationship exists which creates such a duty."). There is no basis in Florida law for applying a special relationship standard to self-defense immunity—quite the contrary based on the unambiguous text of section 776.012(2), Florida Statutes.

In addition, the trial court made a finding that Petitioner's "subsequent demeanor after the shooting on the 911 call and initially with the police was also a powerful piece of evidence" that the court considered "wholly inconsistent with someone who had acted in self-defense in shooting and killing their son or stepson." Again, the trial court applied a heightened standard to Petitioner's conduct based on a purported special relationship. It is true that Petitioner lied on the 911 call, saying that he was asleep when he was attacked by the decedent. However, a reasonable person who has just legally shot someone in self-defense may well be afraid of prosecution, without understanding that they acted wholly in compliance with law, and might consequently lie under that duress. And I note that a responding deputy and the lead homicide detective testified that Petitioner was distraught, crying, and emotional because of what had happened. This "demeanor" comports with just having shot someone in self-defense.

Regardless, Petitioner's "demeanor" has little or no relevance as a matter of law in light of the unrefuted evidence regarding the contact wound and the decedent's multiple punches to Petitioner's head and face.

Self-Defense Claim Under Section 776.013

Finally, Petitioner argued in his motion to dismiss that he was also justified in the use of deadly force under section 776.013, Florida Statutes, which provides:

> (1) A person who is in a dwelling or residence in which the person has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use:
>
> . . . .
>
> (b) 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*.
>
> (2) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:
>
> (a) The person against whom the defensive force was used or threatened was *in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle*, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and
>
> (b) The person who uses or threatens to use defensive force knew or had reason to believe

> that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(emphasis added).

The trial court made a legal conclusion that there was no evidence of a burglary. However, I note that once the decedent criminally attacked Petitioner inside his home, the decedent's invitation to Petitioner's home was rescinded.[2] *See Sparre v. State*, 164 So. 3d 1183, 1200–01 (Fla. 2015) (finding that the defendant's invitation to the victim's residence was "effectively rescinded" when he began attacking the victim). Therefore, the decedent was in the commission of a forcible felony, a burglary, and Petitioner was presumed to have reasonable fear of imminent death or great bodily harm. *See* § 776.013(2), Fla. Stat.

But we need not reach this question as Petitioner has correctly argued that he was entitled to self-defense immunity as a matter of law where the decedent was punching him in the head and face in his bedroom and the decedent was shot at point-blank range.

Conclusion

This is a tragic case.

When a person is killed, it is only natural and understandable that a court would be reluctant to discharge prosecution of the

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[2] As the Florida Supreme Court explained in *Bradley v. State*, 33 So. 3d 664, 681 (Fla. 2010), it was once settled law that crimes committed against a host after an initially consensual entry revoked the initial consent. However, the supreme court receded from this rule in *Delgado v. State*, 776 So. 2d 233, 240–41 (Fla. 2000), holding that for a burglary to occur after an initial consensual entry, the defendant had to have remained in the structure surreptitiously. Shortly after the *Delgado* decision, the Legislature enacted section 810.015(1), Florida Statutes (2002), expressly finding that *Delgado* "was decided contrary to legislative intent" and providing that "in order for a burglary to occur, it is not necessary for the licensed or invited person to remain in the dwelling, structure, or conveyance surreptitiously."

person who killed the decedent. But Florida has enacted a strong legal right to self-defense immunity when a person reasonably believes that the use of "deadly force . . . is necessary to prevent imminent death *or* great bodily harm to himself or herself." § 776.012(2), Fla. Stat. (emphasis added). This right is further strengthened when a person is "in a dwelling or residence in which the person has a right to be" and such a person has "no duty to retreat and has the right to stand his or her ground and use . . . [d]eadly force to prevent imminent death or great bodily harm to himself or herself." § 776.013(1), Fla. Stat. It is not within the province of the judiciary to diminish the legal right under the law of such persons to defend themselves when it is clear that they reasonably believe they are in imminent danger of death or great bodily harm.

Here, there is no question that the decedent was repeatedly punching Petitioner in the head when the decedent was shot at point-blank range. Petitioner was entitled to use deadly force to defend himself, not just from the "imminent" danger of great bodily harm, but the *actual infliction* of such harm. Petitioner's prima facie claim of self-defense immunity was never overcome by clear and convincing evidence presented by the State. In fact, the State's evidence was wholly lacking, which no doubt explains why the State did not call its homicide detective.

The trial court erred on the facts and the law in denying the motion to dismiss. The majority errs on the facts and the law in denying the writ of prohibition. The writ of prohibition should be granted with direction to discharge Petitioner from criminal prosecution in this case.

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