FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-90

KARDEL K. SNOW,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition for Writ of Prohibition—Original Jurisdiction.

December 12, 2022

WINOKUR, J.

In this case, we address the persistent issue of protracted delay between the filing of an order in the trial court denying self-defense immunity to a defendant and the filing of a petition for writ of prohibition in this Court meant to challenge that order. We find that the delay involved here was long enough that it serves as an independent basis for denying the petition. But even if we did not deny this petition on this ground, we would deny the petition on the merits because we find no error in the trial court's order denying Snow's motion to dismiss.

I

A

Kardel K. Snow was charged with aggravated battery with a firearm causing great bodily harm. Snow filed a motion to dismiss the information, claiming immunity from prosecution under section 776.032(1), Florida Statutes. Following an evidentiary hearing, the trial court denied Snow's motion by order rendered August 13, 2021.

On January 11, 2022, Snow filed this petition for writ of prohibition in this Court as an "emergency." As of that date, Snow's jury trial was scheduled for January 24. On January 13, we issued a show cause order to the State, automatically staying all proceedings below. *See* Fla. R. App. P. 9.100(h). But because we were concerned that Snow's petition seeks review of an order rendered five months earlier, we also directed the parties to address the effect of Snow's delay in filing the prohibition petition, citing *Carr v. Miner*, 375 So. 2d 64, 65 (Fla. 1st DCA 1979), which initially denied an emergency prohibition petition filed six weeks after rendition of the order under review but only three days before trial. *See also Lewis v. State*, 251 So. 3d 310, 311 (Fla. 2d DCA 2018) (commenting on three-month delay in filing a prohibition petition seeking self-defense immunity, noting potential for abuse of judicial process).

In its response, the State noted that the five-month delay in filing the prohibition petition was far greater than the delay at issue in *Carr* (six weeks) and *Lewis* (three months). The State also noted that Snow's five-month delay shows a possible lack of diligence and causes possible prejudice to the State, and recounted the possible difficulties resulting from late-filed self-defense immunity prohibition petitions identified by the court in *Lewis*.

In reply, Snow noted that he retained counsel specifically to file this petition and described delay in obtaining a transcript of the hearing. Snow hired counsel for this petition on September 14, 2021, and was finally able to obtain the transcript on November 16. Snow argued that there was no inordinate delay because prohibition is the functional equivalent of an appeal from a motion

to dismiss and asserts that the timeline here generally follows the timeline for appeals.

Snow also argued that he did not engage in last-minute surprise filings like those causing concern in *Carr* and *Lewis*. Unlike those cases, the trial in this case did not have to be cancelled at the last minute, and there was no "significant hardship on the parties, witnesses, and the trial court." *Lewis*, 251 So. 3d at 311. Instead, Snow argues that he filed a notice of appearance within thirty days, explicitly placing all parties on notice that a prohibition petition would be filed. And the subsequent delay was due to obtaining the funds for transcription and then waiting on transcription. Thus, Snow's counsel argues that the delay was reasonable and not inordinate. And he states that, had there been additional timing rules, he certainly would have abided by them.

B

Section 776.032, Florida Statutes, provides that a person using force in self-defense, as permitted in other statutes, "is immune from criminal prosecution and civil action for the use of such force."[1] A defendant may file a motion to dismiss the information on this ground, and the court must conduct a pretrial evidentiary hearing on it. *Dennis v. State*, 51 So. 3d 456 (Fla. 2010). This court has held explicitly that the proper vehicle to challenge denial of a motion to dismiss based on self-defense immunity is a petition for writ of prohibition in the district court of appeal. *Rice v. State*, 90 So. 3d 929, 930 (Fla. 1st DCA 2012). Other district courts of appeal have likewise ruled that a petition for writ of prohibition should be used to challenge an order denying self-defense immunity. *Mocio v. State*, 98 So. 3d 601, 603 (Fla. 2d DCA 2012); *Mobley v. State*, 132 So. 3d 1160, 1161 (Fla. 3d DCA 2014); *Joseph v. State*, 103 So. 3d 227 (Fla. 4th DCA 2012); *Bretherick v. State*, 135 So. 3d 337, 339 (Fla. 5th DCA 2013), *approved*, 170 So. 3d 766 (Fla. 2015).

[1] Section 776.032 contains exceptions not applicable here.

Before proceeding further, we discuss the various methods available to review pretrial orders. A writ of certiorari may be sought for review of pretrial orders. *See* Fla. R. App. P. 9.030(b)(2)(A). A petition for writ of certiorari must be filed within thirty days of rendition of the order to be reviewed. Fla. R. App. P. 9.100(c)(1). Similarly, district courts of appeal may review certain specified orders by interlocutory appeal. *See* Fla. R. App. P. 9.130. This includes orders denying several types of immunity from suit. *See* Fla. R. App. P. 9.130(a)(3)(C)(v), (a)(3)(F) (permitting review of orders denying workers' compensation immunity, absolute or qualified immunity, immunity under section 768.28(9), Florida Statutes, and sovereign immunity). A notice of this type of appeal must be filed within thirty days of rendition of the order to be reviewed, and the initial brief must be filed within fifteen days after the notice of appeal. Fla. R. App. P. 9.130(b), (e). In short, both petitions for writ of certiorari and interlocutory appeals are used to review certain pretrial orders, and both require a brief or petition from the challenger within at most forty-five days following the order to be reviewed.

But as stated, district courts have ruled that a petition for writ of prohibition is the proper method to review an order denying self-defense immunity. This view seems problematic because prohibition is an extraordinary writ "by which a superior court, having appellate and supervisory jurisdiction over an inferior court . . . may prevent such inferior court or tribunal from exceeding jurisdiction or usurping jurisdiction over matters not within its jurisdiction." *English v. McCrary*, 348 So. 2d 293, 296 (Fla. 1977). The writ is "preventive and not corrective." *Id*. at 296-97. "It issues only to prevent the commission of an act, and is not an appropriate remedy to revoke an order already issued." *State ex rel. Harris v. McCauley*, 297 So. 2d 825, 828 (Fla. 1974). In other words, by its nature prohibition is not a vehicle to seek review of a specific order, but to prevent improper exercise of jurisdiction.[2] *See*

[2] In contrast, certiorari is meant to remedy action in excess of jurisdiction, rather than preventing the court from future action. *See State ex rel. Wainwright v. Booth*, 291 So. 2d 74, 76 (Fla. 2d DCA) ("Prohibition is to prevent a tribunal from taking action in

also Mintz Truppman, P.A. v. Cozen O'Connor, PLC, 346 So. 3d 577 (Fla. 2022) (holding that a writ of prohibition that simply "undid" the trial court's exercise of jurisdiction in denying motions to dismiss was improper).

Most of the cases cited above holding that prohibition is proper to review self-defense immunity claims cite *Tsavaris v. Scruggs*, 360 So. 2d 745 (Fla. 1977), to support that holding. *Tsavaris* holds that a refusal to recognize immunity means "the further action of that court in prosecuting the cause would amount to an excess of jurisdiction which then would be subject to restraint by prohibition." *Id.* at 747. This rule seems to conflict with the Supreme Court's decisions regarding civil immunity from suit, which explicitly state that prohibition is *not* appropriate to review the denial of immunity. *See Citizens Prop. Ins. Corp. v. San Perdido Ass'n, Inc.*, 104 So. 3d 344, 349–51 (Fla. 2012); *Mandico v. Taos Constr., Inc.*, 605 So. 2d 850, 853–54 (Fla. 1992). To the extent that interlocutory appeal is not available for this review, these and other cases note that certiorari is appropriate to review denial of immunity claims. *See*, *e.g.*, *Fuller v. Truncale*, 50 So. 3d 25, 27–28 (Fla. 1st DCA 2010) (explaining that judicial immunity should be reviewed through the district court's certiorari jurisdiction); *Qadri v. Rivera-Mercado*, 303 So. 3d 250, 257 (Fla. 5th DCA 2020) ("Prosecutorial immunity from suit rests on the same footing as the immunity conferred upon judges and grand juries."); *James v. Leigh*, 145 So. 3d 1006, 1007–08 (Fla. 1st DCA 2014) (explaining that certiorari review is proper when a trial court denies a motion to dismiss based on absolute litigation immunity).[3] The Florida

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excess of its power while certiorari is to remedy the consequent evils of such action."), *cert. discharged*, 300 So. 2d 257 (Fla. 1974).

[3] As stated above, orders denying some types of immunity from suit are now reviewable by interlocutory appeal. Cases permitting certiorari review of such orders predate the amendments to the rules of appellate procedure that permit interlocutory appeal. *See In re Amends. to Fla. Rule of App. Proc. 9.130*, 151 So. 3d 1217 (Fla. 2014); *Amends. to the Fla. Rules of App. Proc.*, 696 So. 2d 1103 (Fla. 1996); *In re Amends. to Fla. Rules of App. Proc.*, 609 So. 2d 516, 517 (Fla. 1992).

Supreme Court has never explained why prohibition is available to "review" orders denying immunity from criminal prosecution but not available to address immunity from suit.[4]

But regardless of the propriety of the use of prohibition to challenge orders denying self-defense immunity, existing case law compels this practice. Accordingly, we then turn to the correctness of the petition itself.

C

One of the practical differences between certiorari and prohibition manifests itself in this case. As stated above, a petition for writ of certiorari (as well as a notice of interlocutory appeal) must be filed within thirty days of rendition of the order to be reviewed. Because prohibition is not intended to review an order, the rules of procedure impose no deadline for petitioning for writ of prohibition that is based on the filing of some order. As such, a defendant may conclude that he is free to seek review of an order denying self-defense immunity nearly five months after the order was filed, as Snow did here.

While the rules of procedure set no deadline for a prohibition petition, Florida courts have long held that a petition for writ of prohibition, given its discretionary nature, may be denied if it has been unreasonably delayed. For example, in *Carr*, this Court initially denied a prohibition petition seeking review of an order denying a speedy-trial discharge because the filing of the petition, on its face, appeared to be unreasonably delayed, a factor that "influenced against intervention." 375 So. 2d at 65. In that case,

[4] We recognize that the Florida Supreme Court has also ruled that prohibition is appropriate to challenge an order denying a motion to disqualify the judge and an order denying discharge under the speedy-trial rule. *See Sutton v. State*, 975 So. 2d 1073 (Fla. 2008) (motion to disqualify); *Sherrod v. Franza*, 427 So. 2d 161, 163 (Fla. 1983) (motion to discharge under speedy-trial rule).

the petition was filed six weeks after the order denying discharge was rendered and only three days before trial was set to begin. *Id*.[5]

Carr has been relied on in cases where the petitioner delayed filing a prohibition petition to challenge an order denying a motion to disqualify the lower court judge and has been cited in support of the general "timeliness rule" in such cases, which holds that a petitioner must act "as soon as practicable." *Jackson v. Leon Cnty. Elections Canvassing Bd.*, 214 So. 3d 705, 706 (Fla. 1st DCA 2016) (quoting *People Against Tax Revenue Mismanagement, Inc. v. Reynolds*, 571 So. 2d 493, 496 (Fla. 1st DCA 1990)).

More recently, in *Lewis*, the Second District expressed concern about the lack of any time limitation for a prohibition petition challenging an order denying self-defense immunity. The defendant in *Lewis* waited more than a month after the trial court denied the self-defense immunity motion to file a prohibition petition, only four days before trial was set to begin. 251 So. 3d at 311. This motivated the Second District to address potential abuse of the automatic stay that accompanies prohibition petitions:

> Here, the absence of a procedural process or, at a minimum, a jurisdictional timeframe for filing the petition for writ of prohibition resulted in the delay—at the last moment—of a first-degree murder trial. The last minute trial cancellation undoubtedly caused a significant hardship on the parties, witnesses, and the trial court. The fact that neither the Florida Rules of Criminal Procedure nor the Florida Rules of Appellate Procedure address the timing of [self-defense immunity] motions to dismiss or petitions for writ of prohibition means that there is the potential for abuse by virtue of a

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[5] The *Carr* petitioner moved for rehearing, noting that he had moved for rehearing below, which the trial court had only ruled upon shortly before filing the prohibition petition. 251 So. 3d at 65. This Court granted rehearing and reviewed the petition. *Id*. This result does not alter the correctness of this Court's reasons for initially finding the petition untimely.

> defendant seeking what amounts to a last minute continuance.

Id. The Second District encouraged the Florida Bar Appellate and Criminal Rules Committees to consider adding a timeframe for filing a prohibition petition. *Id*. The Appellate Court Rules Committee chose not to recommend establishing a deadline for prohibition petitions reviewing orders denying self-defense immunity, in part because district courts already possess inherent authority to deny prohibition petitions that are unreasonably delayed. *See* App. Ct. Rules Comm., minutes of meeting at 14 (Oct. 18, 2019).[6]

The Florida courts have "inherent powers to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to, or not in conflict with, valid existing laws and constitutional provisions." *Jimenez v. Bondi*, 259 So. 3d 722, 725 (Fla. 2018) (quoting *State ex rel. Davis v. City of Avon Park*, 117 Fla. 565, 158 So. 159, 164 (1934)). This inherent authority includes the authority to prevent an abuse of process. *See, e.g.*, *Ardis v. Ardis*, 130 So. 3d 791, 793 (Fla. 1st DCA 2014).

In this case, Snow's counsel waited thirty-one days to file his "limited appearance" for the purpose of filing a prohibition petition. Even though three months had already passed since the

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[6] The dissent notes that "a need exists to create time standards for when prohibition petitions ought to be filed in this type of case" and that "amendments to the appellate rules should be considered by the appropriate bar committees for this category of cases." Dissenting op. at 16. Perhaps so, but as stated above, the Appellate Court Rules Committee considered this issue in 2019 and chose not to recommend a revision to the rules, noting instead that appellate courts may exercise their inherent authority to deny extraordinary writ petitions as unreasonably delayed, as we do here. In any event, if a deadline were set for this type of challenge, we are confident that the timeframe would be far shorter than the five months it took in this case.

court denied his motion to dismiss by the time he obtained a transcript, Snow took two additional months to file this petition—as an "emergency" no less. Under these circumstances, we find that the filing of this petition was unreasonably delayed and deny the petition on this basis.[7]

We reject Snow's argument that he essentially followed the same timeframes for filing an appeal. If Snow had been permitted to file an interlocutory appeal of the order denying immunity, he would have been required to file a notice of appeal within thirty days of the order and an initial brief within fifteen days of the notice, for a total timeline of forty-five days at most. *See* Fla. R. App. P. 9.130(b), (e). Moreover, the record on appeal need not be transmitted to the district court for interlocutory appeals. Fla. R. App. P. 9.130(d). Instead, the appellant must provide all relevant documents in an appendix to the brief, including any transcripts. Fla. R. App. P. 9.130(e). This timeline is not essentially the same as the five months taken in this case.[8]

Again, even if we were to ignore the two months that it took Snow to obtain a transcript of the hearing, we cannot ignore the

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[7] The dissent makes much of the State's apparent indifference to Snow's delay in its response addressing this matter. But we do not need a respondent's approval before we may exercise our authority to deny an extraordinary writ petition as unreasonably delayed. Nor must we find nefarious conduct on the petitioner's part before we can reach this conclusion. Issuance of a writ of prohibition is discretionary, *Jackson v. State*, 183 So. 3d 1211, 1212 (Fla. 1st DCA 2016), and we exercise our discretion here by declining to issue the writ under the circumstances presented.

[8] And, as stated above, the timeframe would be even shorter if one sought to challenge a denial of immunity by certiorari because an interlocutory appeal is not authorized. A certiorari petitioner must file the petition within thirty days of rendition of the order to be reviewed, and must accompany the petition with an appendix of documents supporting relief. Fla. R. App. P. 9.100(c)(1), (g).

remaining time it took him to file the prohibition petition. Given the short timeframes that attend review of pretrial orders, we cannot say that this petition was filed as soon as practicable. To prevent the issues identified by the Second District in *Lewis*, delays in criminal cases should be minimized. In particular, we expect defendants seeking review of orders denying self-defense immunity to make every effort to act expeditiously.

Accordingly, we hold that the delay between the order denying immunity and the filing of this petition constitutes a sufficient basis to deny the petition. In doing so, we recognize Snow's contention that he would have abided by any time limitations set forth in the rules, especially in light of his claim that the State did not object to his continuance requests. Moreover, we have found no case law denying a prohibition petition to review a self-defense immunity order on the basis that the petitioner did not act as soon as practicable. For this reason, we also hold specifically that we would deny Snow's petition even if it had not been unreasonably delayed.

II

"A trial court's denial of pre-trial self-defense immunity involves a mixed standard of review." *Fletcher v. State*, 273 So. 3d 1187, 1189 (Fla. 1st DCA 2019). "The trial court's factual findings must be supported by competent substantial evidence. Legal conclusions, however, are reviewed de novo." *Id.* (citation omitted).

"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.'" *Morris v. State*, 325 So. 3d 1009, 1011–12 (Fla. 1st DCA 2021) (quoting *Edwards v. State*, 257 So. 3d 586, 588 (Fla. 1st DCA 2018)). "[T]he trial court's decision is 'clothed with a presumption of correctness, and the [appellate] court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling.'" *Early v. State*, 223 So. 3d 1023, 1025 (Fla. 1st DCA 2017) (quoting *Viera v. State*, 163 So. 3d 602, 604 (Fla. 3d DCA 2015)).

In his petition, Snow primarily complains that the trial court's written order contains no factual findings, nor sets forth the trial court's rationale for denying his motion to dismiss. However, "there is no requirement that the trial court make express findings of fact in an order denying a motion to dismiss pursuant to section 776.032." *See Lewis*, 251 So. 3d at 311. Further, factual findings and credibility determinations may be implied from the trial court's ultimate ruling. *See State v. Dorsey*, 991 So. 2d 393, 394 (Fla. 1st DCA 2008) ("A reviewing court is bound by the trial court's findings of fact—even if only implicit—made after a suppression hearing, unless they are clearly erroneous." (quoting *State v. Setzler*, 667 So. 2d 343, 346 (Fla. 1st DCA 1995))).

In this case, by ruling against Snow, the trial court implicitly resolved conflicts in favor of the State's theory, which is supported by competent, substantial evidence. Viewed in a light most favorable to affirming the trial court's ruling and implicit findings, the State's evidence shows that Snow and the victim, Courtney Fairley, engaged in a fight after Fairley disciplined Snow's child without his permission. According to Fairley and the child's mother, Zhana Parker, Snow called to confront them about the reported discipline because he felt disrespected. Later that weekend, Fairley, Parker, and Snow met to exchange custody of the children when Snow used language that indicated an invitation to fight. Fairley stepped out of the vehicle when Snow blindsided him with a punch. The two men tussled and, eventually, Fairley put Snow on the ground on his back. As Snow started to get up, he pulled the firearm out of his pocket and shot Fairley once in the chest.

Snow and Parker each called 911 and the responding deputy recorded his interviews with Snow, Fairley, and Parker with his vehicle dash camera. During the 911 call and vehicle recordings, Snow claimed that he had to shoot Fairley because Fairley blindsided him with a punch then pinned him down with his back to the ground, putting him in fear of his life. Contrary to Snow's testimony at the hearing, at no time did Snow tell the deputy or the 911 dispatcher that Fairley was choking him before he pulled the trigger. Additionally, Parker and the deputy testified that they did not see any injuries to Snow's face or neck, only on his hands.

Thus, the deputy arrested Snow because it appeared that Snow shot Fairley because Fairley was beating him in the fight.

Under these facts, we find no error in the trial court's conclusion that Snow was not entitled to immunity from prosecution. Florida law "confers immunity from prosecution if an individual uses deadly force in accordance with section 776.012(2), Florida Statutes." *Fletcher*, 273 So. 3d at 1189 (citing § 776.032(1), Fla. Stat.). "Section 776.012(2), allows an individual to use or threaten to use deadly force 'if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.'" *Id.* (quoting § 776.012(2), Fla. Stat.). "An individual has no duty to retreat and 'has the right to stand his or her ground,' but only '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.'" *Id*.

Here, regardless of whether Snow was engaged in criminal activity at the time he shot Fairley, the State's evidence establishes that Snow was either the initial aggressor who had a duty to retreat, *see* § 776.041(2), Fla. Stat.,[9] or that he did not have a reasonable belief that shooting Fairley was "necessary to prevent imminent death or great bodily harm to himself," § 776.012(2), Fla. Stat. Thus, we find no error in the trial court's decision not to find Snow immune from prosecution.

Snow suggests that the trial court could not resolve conflicts in favor of the State because he presented competent, substantial evidence of his conflicting version of events. He testified at the hearing that Fairley was the initial aggressor who blindsided him,

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[9] Section 776.041(2) provides that the self-defense justification is "not available" to an individual who "[i]nitially provokes the use or threatened use of force against himself" unless "[s]uch force or threat of force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant[.]"

and the vehicle recording reflects that he also relayed this to the deputy. He further testified at the hearing that he reasonably feared for his life because Fairley had pinned him down and was choking him. However, it does not matter that Snow's version of events may be supported by some evidence that conflicts with the State's evidence. It only matters that the version the trial court believed is supported by competent, substantial evidence. *See, e.g., Mederos v. State*, 102 So. 3d 7, 11 (Fla. 1st DCA 2012) (denying prohibition petition where evidence "contradict[ed] wildly," explaining that "[w]hile there was testimony supporting petitioner's argument . . ., there was also competent, substantial evidence that he was not acting in self-defense or in defense of a forcible felony at the time of the stabbing"). Because the State's evidence is supported by competent, substantial evidence, we will not disturb the trial court's implicit credibility determinations in the State's favor, nor reweigh the evidence.

III

Accordingly, we deny this petition because it was not filed as soon as practicable after the trial court denied Snow's motion to dismiss. But even if we did not deny this petition on this ground, because we find no error in the trial court's order denying Snow's motion to dismiss, we would also deny the petition on the merits.

LONG, J., concurs; MAKAR, J., concurs on the merits, dissents as to dismissal for untimeliness with opinion.

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

MAKAR, J., concurring on the merits, dissenting as to dismissal for untimeliness.

By the panel's sua sponte order, the parties in this self-defense immunity case were required to address whether the prohibition

petition filed in this court was untimely; the State also responded to the merits of the petition. Denial of relief on the merits is warranted, but the conclusion that the petition was untimely under the circumstances is unwarranted. The absence of evidence that the filing of the petition was unreasonably delayed, was for an improper purpose, or caused substantial prejudice—plus the lack of clear guidelines as to timeliness—weigh against the petition being deemed untimely filed.

To begin, no disagreement exists that petitions for prohibition may be filed at any time and are not subject to any fixed time standards or limits. The lack of time parameters has resulted in courts justifiably holding that prohibition remedies must be pursued expeditiously. *See generally* Philip J. Padovano, 2 *Fla. Prac., Appellate Practice* § 30:9 (2022 ed.). Expeditiousness is a flexible term of art; what one judge deems dilatory may be wholly reasonable to another. The question is what amount of delay is unreasonable based on the circumstances of each case.

Typically, the basis for expedition and avoiding undue delays is that the *petitioner* may lose the ability to obtain effective relief; cruise ships that sail on time needn't return to pick up laggards. The focal point in this case, however, is not whether effective relief will be lost, but whether the delay in filing the prohibition petition results in sufficient prejudice in the criminal process that relief ought to be denied, effectively as a sanction for dilly-dallying.

Here, the State's legal position on whether Snow's petition was untimely is exceptionally tepid. It points out that the five-month time period between the trial court's ruling and the petition's filing in this court is a *factor* in analyzing whether the petitioner's counsel engaged in undue delay. The mere length of a delay is a factor, but so are the reasons for a delay, the circumstances of the case, and what degree of actual prejudice results.

On this latter point, the State effectively concedes that no prejudice has been shown. It states that the filing of the petition "(a) establishes a *possible* lack of diligence and (b) causes *possible* prejudice to the State. Specifically, any unnecessary delay of the trial *could* result in the State's inability to locate witnesses;

additionally, delay *could* result in faded recollections. It *could* cause scheduling problems or otherwise frustrate the orderliness of the pretrial procedures." (Emphases added). The italicized words reflect that there is no actual prejudice, only the potential for prejudice. Notably, a five-month delay is unlikely to thwart the State's ability to *locate* witnesses (because the State has more time to do so) or cause recollections to fade significantly in that limited time period; these are valid concerns, but they do not establish any actual prejudice in this case. The impact of unduly delayed filings on the orderliness of the pre-trial process is a valid but general concern that applies in every case; again, no showing is made in this case that Snow's filing has unduly disrupted the orderliness of this process.

The State points out that "having no consequences for inordinate delay invites a guaranteed last-second continuance for the defense that could be used for an improper purpose." Agreed. But the delay in this case hasn't been shown to be either inordinate or for an improper purpose. In fact, the State itself recognizes, twice in its legal papers, that a portion of the delay in this case is attributable to legitimate reasons: getting legal counsel and a transcript of the hearing. The State says that "part of the delay may be attributable to [Snow's] hiring independent counsel to file the writ; additionally, [Snow's] appellate counsel had to obtain the transcript of the Stand-Your-Ground hearing." It later reiterates that "part of the delay is attributable to [Snow's] hiring independent counsel to file the writ and having to obtain the transcripts." Plus, Snow's counsel placed the trial judge and the State on notice in September 2021 (a month after the trial court's order) that he had been retained "for purposes of seeking a writ of prohibition in the First District Court of Appeals," dispelling the idea that the petition's filing was a "last-second" surprise.

Given the lack of actual prejudice, the State's acknowledgement that portions of the delay are justifiable, and the absence of any claim that the timing of the petition's filing was for an improper purpose, no basis exists for concluding that the petition should be denied summarily as untimely. Notably, it was the panel, not the State, that raised the timeliness issue; it appears highly doubtful—given the record—that the State would have raised it on its own volition, when its response to the panel's order

pinpoints *nothing*—other than generalities—that justifies a dismissal of the petition as untimely.

In summary, a need exists to create time standards for when prohibition petitions ought to be filed in this type of case. Snow's counsel makes this point ("Had there been jurisdictional and procedural rules in place related to these types of petitions for writ of prohibition, certainly [Snow] would have followed them."). Greater clarity in the form of temporal guideposts is needed to guide practitioners and reduce the potential vagaries of courts divining what is sufficiently expeditious to pass muster; amendments to the appellate rules should be considered by the appropriate bar committees for this category of cases. That said, no basis exists *in this case* to rule that the petitioner's legal counsel acted unreasonably in the timing of the petition's filing when the record is barren of any actual prejudice or improper motive.

Jason Cromey of Cromey Law, P.A., Pensacola, for Petitioner.

Ashley Moody, Attorney General, and Steven E. Woods, Assistant Attorney General, Tallahassee, for Respondent.