

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2010

JAMES PATRICK WONDER,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

No. 4D10-2547

[August 11, 2010]

PER CURIAM.

James Patrick Wonder, the defendant in a criminal prosecution pending in Broward County Circuit Court, seeks certiorari review of an order denying his request for an evidentiary hearing on the issue of immunity from prosecution pursuant to section 776.032, Florida Statutes (2009) (the “Stand Your Ground” law, enacted by chapter 2005-27, section 5, at 202, Laws of Florida).

We deny the petition, because the trial court did not depart from the essential requirements of law by following *Velasquez v. State*, 9 So. 3d 22 (Fla. 4th DCA 2009).

We certify conflict with *Peterson v. State*, 983 So. 2d 27 (Fla. 1st DCA 2008); *Horn v. State*, 17 So. 3d 836 (Fla. 2d DCA 2009); *State v. Yaqubie*, 35 Fla. L. Weekly D1342, 2010 WL 2382583 (Fla. 3d DCA June 16, 2010); and *Gray v. State*, 13 So. 3d 114, 115 (Fla. 5th DCA 2009). We also certify, as a question of great public importance, the following:

WHETHER SECTION 776.032, FLORIDA STATUTES (2009) (THE “STAND YOUR GROUND” LAW), REQUIRES A TRIAL COURT, UPON MOTION TO DISMISS, TO HOLD AN EVIDENTIARY HEARING PRIOR TO TRIAL AND RESOLVE DISPUTED FACTUAL ISSUES TO DETERMINE WHETHER A DEFENDANT HAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE HIS/HER ENTITLEMENT TO STATUTORY IMMUNITY FROM PROSECUTION.

We grant Defendant's motion for stay and direct the trial court on remand to stay his prosecution pending the resolution of this issue by the Florida Supreme Court in *Dennis v. State*, Case No. SC09-941.¹

TAYLOR, GERBER and LEVINE, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Bernard I. Bober, Judge; L.T. Case No. 08-15002CF10A.

Michael J. Entin and Frank A. Maister, Fort Lauderdale, for petitioner.

No response required for respondent.

Not final until disposition of timely filed motion for rehearing.

¹ *Dennis* arose from this court's opinion in *Dennis v. State*, 17 So. 3d 305 (Fla. 4th DCA), *rev. granted*, 29 So. 3d 290 (Fla. 2009) (holding that "a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of fact.").