

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

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| PETER DROSSOS, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Case No. 2D17-280 |
| |) | |
| STATE OF FLORIDA, |) | |
| |) | |
| Appellee. |) | |
| _____ |) | |

Opinion filed December 16, 2020.

Appeal from the Circuit Court for
Hillsborough County; Samantha L.
Ward, Judge.

Howard L. Dimmig, II, Public Defender,
and Nicholas Martino, Special Assistant
Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Elba Caridad Martin,
Assistant Attorney General, Tampa, for
Appellee.

ON REMAND FROM THE FLORIDA SUPREME COURT

ROTHSTEIN-YOUAKIM, Judge.

This case is on remand from the Florida Supreme Court for
reconsideration in light of Love v. State, 286 So. 3d 177 (Fla. 2019), which held that the
amendment to section 776.032 first codified at section 776.032(4), Florida Statutes

(2017), warrants a new immunity hearing only if the defendant was assessed the burden of proof at an immunity hearing that took place after the June 9, 2017, effective date of the amendment.

In June 2016, Peter Drossos filed a pretrial motion pursuant to section 776.032 to dismiss the information charging him with second-degree murder. At the September 2016 evidentiary hearing on the motion, the trial court applied the then-applicable, preamendment version of section 776.032, which required Drossos to prove entitlement to immunity from prosecution by a preponderance of the evidence. See Bretherick v. State, 170 So. 3d 766, 779 (Fla. 2015). The court denied Drossos's motion, and he proceeded to trial, where a jury found him guilty of manslaughter with a weapon.

While Drossos's direct appeal was pending, the legislature amended section 776.032 to place the burden on the State to disprove, by clear and convincing evidence, a facially sufficient claim of self-defense immunity. See § 776.032(4), Fla. Stat. (2017). Relying on its decision in Martin v. State, 43 Fla. L. Weekly D1016, D1018 (Fla. 2d DCA May 4, 2018) (holding that the amendment to section 776.032 is procedural and retroactive in nature and applies to all cases pending on appeal at the time of the amendment's effective date), disapproved of by Love, 286 So. 3d at 190, this court reversed Drossos's judgment and sentence and remanded for a new evidentiary hearing pursuant to the amended statute. See Drossos v. State, 43 Fla. L. Weekly D2764 (Fla. 2d DCA Dec. 14, 2018), decision quashed, 45 Fla. L. Weekly S185 (Fla. May 29, 2020). The State successfully sought both a stay of our mandate and review of our decision in the Florida Supreme Court. This remand to our court followed.

On Drossos's motion, we permitted supplemental briefing on remand.

Drossos argues that his case is not governed by Love. Rather, he argues, he is entitled to a new immunity hearing at which the State bears the burden of proof because he committed his offense before the supreme court in Bretherick held that under the prior version of the statute, the defendant bore the burden of proof. See Bretherick, 170 So. 3d at 768 ("We now make explicit what was implicit in Dennis[v. State, 51 So. 3d 456 (Fla. 2010)]—the defendant bears the burden of proof by a preponderance of the evidence at the pretrial evidentiary hearing."). Drossos argues that "prior to the ruling in Bretherick the State would have been required to carry the burden based on the rules of statutory construction, and the application of the rule of lenity." Because Drossos's immunity hearing occurred *after* Bretherick was decided, he argues that there was "a burden shift while his case was pending" and that he should benefit from application of "the law as it existed at the time of his alleged offense."

Although Drossos couches his argument in terms of why Love should not apply on remand, at its core, it has nothing to do with Love but is an argument that should have been raised, if at all, in his initial brief on appeal. Consequently, it is both waived and outside the scope of the supreme court's remand, and we will not address it further.

In light of the supreme court's holding in Love, Drossos is not entitled to a new immunity hearing because his immunity hearing took place before the effective date of the amendment to section 776.032. We therefore affirm his judgment and sentence.

Affirmed.

LaROSE and BLACK,¹ JJ., Concur.

¹Judge Black has been substituted for Judge Badalamenti, who was on the original panel.