

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JULIAN RIVERA,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D17-496

Opinion filed May 1, 2020.

Appeal from the Circuit Court for Lee
County; Thomas S. Reese and Joseph
C. Fuller, Judges.

Christopher H. Brown of Brown, Suarez,
Rios & Weinberg, P.A., Fort Myers,
for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and C. Suzanne Bechard
and Katie Salemi Ashby, Assistant
Attorneys General, Tampa, for
Appellee.

ON REMAND FROM THE SUPREME COURT OF FLORIDA

ATKINSON, Judge.

This matter is before us on remand from the Florida Supreme Court for reconsideration based on its decision in Love v. State, 286 So. 3d 177 (Fla. 2019). Julian Rivera appealed his judgment and sentence for aggravated battery with a deadly weapon. See § 784.045(1)(a), Fla. Stat. (2015). Prior to trial, Rivera filed a motion to dismiss the charge based on immunity from prosecution pursuant to Florida's "Stand Your Ground" law. See § 776.032, Fla. Stat. (2016). After conducting an evidentiary hearing, the trial court denied the motion using the burden of proof in effect at the time, which required the defendant to demonstrate by a preponderance of the evidence that he or she was immune from prosecution. See Bretherick v. State, 170 So. 3d 766, 779 (Fla. 2015). Subsequently, the legislature amended section 776.032, placing the burden on the State to overcome a facially sufficient claim of self-defense immunity by clear and convincing evidence. See § 776.032(4), Fla. Stat. (2017).

This court reversed Rivera's judgment and sentence and remanded for a new immunity hearing under the amended statute in light of our holding in Martin v. State, 43 Fla. L. Weekly D1016, D1018 (Fla. 2d DCA May 4, 2018) (holding that the 2017 amendment is procedural in nature, applied retroactively, and warranted remand for a new immunity hearing), disapproved of by Love, 286 So. 3d at 190 (disapproving Martin's decision to order a new immunity hearing). On remand from the Florida Supreme Court, we now conclude that Rivera is not entitled to a new immunity hearing, because his immunity hearing occurred before the amended statute's effective date and thus it was not error to have conducted it under the standard enunciated in Bretherick. See Love, 286 So. 3d at 190 ("Section 776.032(4) is a procedural change in the law and

applies to all Stand Your Ground immunity hearings conducted on or after the statute's effective date."). Accordingly, we affirm Rivera's judgment and sentence.

Affirmed.

NORTHCUTT and VILLANTI, JJ., Concur.