Third District Court of Appeal

State of Florida

Opinion filed July 8, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1500
Lower Tribunal No. 15-12893

Brendan Sexton,
Petitioner,

vs.

The State of Florida, et al.,
Respondents.

A Case of Original Jurisdiction—Prohibition.

Carlos J. Martinez, Public Defender, and Susan S. Lerner, Assistant Public Defender, for petitioner.

Ashley Moody, Attorney General, and David Llanes, Assistant Attorney General; Patricia Gladson, General Counsel, and Gabriela Jimenez Salomon, Assistant General Counsel, for respondents.

Before SALTER, FERNANDEZ and SCALES, JJ.

PER CURIAM.

This case is before us on remand from the Florida Supreme Court, which quashed this Court's opinion in Sexton v. State, 254 So. 3d 1096 (Fla. 3d DCA 2018) ("Sexton I") and remanded for reconsideration upon application of the Florida Supreme Court's decision in Love v. State, 286 So. 3d 177 (Fla. 2019) ("Love II"). We now grant Brendan Sexton's petition for writ of prohibition[1] and remand for a new Stand Your Ground immunity hearing.

The State charged Sexton by information with attempted first degree murder for a shooting that occurred on June 23, 2015. On January 28, 2018, Sexton filed a motion in the lower court claiming that he was immune from prosecution under Florida's Stand Your Ground Law, section 776.032 of the Florida Statutes. On May 22 and 23, 2018, the trial court conducted an immunity hearing on Sexton's Stand Your Ground motion. Applying the version of section 776.032 in effect when the shooting occurred (on June 23, 2015), the trial court entered a June 7, 2018 order finding that Sexton had failed to meet his burden of demonstrating, by a

[1] "The appellate courts of Florida have concluded that a petition for prohibition is the appropriate vehicle for consideration of a trial court's order denying [Stand Your Ground] immunity following a defendant's motion and an evidentiary hearing." Rodriguez v. State, 239 So. 3d 147, 150 (Fla. 3d DCA 2018).

preponderance of the evidence, that he was entitled to immunity from criminal prosecution.

On August 29, 2018, this Court, relying on our decision in Love v. State, 247 So. 3d 609 (Fla. 3d DCA 2018) ("Love I"), denied Sexton's July 24, 2018 petition for writ of prohibition. See Sexton I, 254 So. 3d at 1097-98. In Love II, however, the Florida Supreme Court determined that section 776.032(4) of the Florida Statutes (2017) applies to those Stand Your Ground immunity hearings, including in pending cases, that take place on or after the statute's effective date. See Love II, 286 So. 3d at 188.[2] In accordance with Love II, because section 776.032(4) was in effect at the time of Sexton's May 22-23, 2018 immunity hearing, we are compelled to grant Sexton's petition, quash the trial court's June 7, 2018 order denying Sexton's Stand Your Ground motion, and remand for the trial court to conduct a new immunity hearing, pursuant to, and consistent with, section 776.032(4).

Prohibition granted; order quashed with instructions.

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[2] The Florida Legislature amended section 776.032, effective June 9, 2017, by adding subsection (4), which states:

> 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 provided in subsection (1).

§ 776.032(4), Fla. Stat. (2017); Ch. 2017-72, § 1, Laws of Fla.