IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502019AP000106AXXXMB
L.T. NO.: 502018MM011164AXXXMB

MARIE WILDA BROOKS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.
_____/

Opinion filed: March 26, 2020

Petition for Writ of Prohibition from the County Court in and for Palm Beach County, Judge Debra Moses Stephens.

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WEISS, J.

Petitioner filed a Petition for Writ of Prohibition asserting that the trial court erred in denying her motion to dismiss a criminal charge based on section 776.032, Florida Statutes (2019), also known as Florida's "Stand Your Ground" law. Specifically, Petitioner argues that the trial court erred when it ruled that Petitioner was required to present evidence in support of her motion

and, based on that ruling, denied Petitioner's motion after Petitioner announced she was not presenting any evidence. We disagree and deny the Petition.

Background

Petitioner was charged with domestic battery following a physical altercation with her husband. Petitioner claimed that she acted in self-defense because her husband pushed her and, based on this claim, moved to dismiss the charge against her, arguing that she was immune from charges under the Stand Your Ground law.

The trial court granted a hearing on the Stand Your Ground motion, but Petitioner refused to present any evidence at the hearing. Petitioner argued that she did not have to testify, nor put forth any physical evidence, because the Second District Court of Appeal recently established that merely pleading immunity was enough to put the burden on the prosecution. Relying on a Fourth District Court of Appeal case, the State countered that some evidence is required to establish a prima facie claim in the Stand Your Ground context. Petitioner in turn argued that the Fourth District case was not controlling because its discussion on the issue was dicta. The trial court ruled that "a prima facie case requires evidence" and denied the motion based on Petitioner's failure to present evidence.

Jurisdiction for Review

Prohibition is the appropriate vehicle for an appellate court to review the trial court's denial of a Stand Your Ground motion to dismiss on the merits. *Jefferson v. State*, 264 So. 3d 1019, 1023 (Fla. 2d DCA 2018); *Little v. State*, 111 So. 3d 214 (Fla. 2d DCA 2013). However, when a petitioner challenges the procedure utilized in a Stand Your Ground proceeding as opposed to a ruling on the merits, certiorari is the appropriate vehicle for appellate review because the appellate court "cannot discern whether petitioner is entitled to immunity on the merits." *Jefferson*, 264 So.

3d at 1023. Because Petitioner challenges the procedure of the hearing and not the merits of her immunity claim, the issue falls more appropriately under the scope of a certiorari review rather than prohibition. Accordingly, we review Petitioner's claim as a petition for writ of certiorari. *See* Fla. R. App. P. 9.040(c) ("If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.").

Discussion

Where a criminal defendant files a motion to dismiss on the basis of the Stand Your Ground law, the trial court should conduct a pretrial evidentiary hearing to decide the factual question of the applicability of the statutory immunity. *Dennis v. State*, 51 So. 3d 456, 463 (Fla. 2010). Prior to 2017, the defendant bore the burden at that hearing of establishing that he or she was entitled to immunity by a preponderance of the evidence. *Bretherick v. State*, 170 So. 3d 766, 775 (Fla. 2015). However, in 2017, the Legislature amended the Stand Your Ground law to clarify that a defendant no longer bears the burden of establishing self-defense immunity by a preponderance of the evidence. Instead, the law now provides that "[i]n 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." Ch. 2017-72, § 1, Laws of Fla. (amending Fla. Stat. § 776.032 (2014)).

The Fourth District Court of Appeal addressed the amended statute in *Langel v. State*, 255 So. 3d 359 (Fla. 4th DCA 2018). There, a defendant charged with a crime before the 2017 amendment to the Stand Your Ground law took effect argued that the trial court erred by not applying the amended version of the statute retroactively to his Stand Your Ground hearing. On

this issue, the Fourth District held that the 2017 amendment was substantive and, therefore, did not apply retroactively. *Id.* at 361.[1]

Alternatively, the Fourth District opined that "even if the 2017 amendment were applied, [defendant] failed to state a 'prima facie claim' for immunity, so the burden would not have shifted to the state to disprove the claim." *Id.* at 363. The court explained that to raise a prima facie claim of immunity from prosecution, "a defendant must *show* that the elements for the justifiable use of force are met." *Id.* at 362 (emphasis added). The court elaborated: "[o]rdinarily, this will require the defendant to testify or to otherwise present or point to evidence from which the elements for justifiable use of force can be inferred." *Id.* at 362-63. It concluded that only after that showing will the burden shift to the State to overcome the self-defense claim by clear and convincing evidence. *Id.* at 363. Examining the case before it, the court held that the petitioner did not raise a prima facie case because his claim was "speculative" and "based upon equivocal circumstantial evidence." *Id.*

Following *Langel*, the Second District interpreted the 2017 language of section 776.032(4) as <u>not</u> creating an evidentiary burden for a defendant claiming immunity. *Jefferson*, 264 So. 3d at 1026. In *Jefferson*, the petitioner argued that his Stand Your Ground motion to dismiss pled a facially sufficient claim of self-defense immunity and, therefore, raised a prima facie claim of self-defense immunity. *Id.* at 1022. The Second District agreed and held that in a Stand Your ground proceeding: (1) a criminal defendant must raise a claim for immunity from prosecution pursuant to 776.032(4) in a pretrial motion to dismiss; (2) the trial court must then "determine whether, at first glance and assuming all facts as true, the alleged facts set forth in the motion support the

[1] The Florida Supreme Court recently disagreed, holding that the 2017 burden of proof amendment to the Stand Your Ground law is procedural and, therefore, applies retroactively, but only for immunity hearings held on or after the effective date. *Love v. State*, 286 So. 3d 177 (Fla. 2019).

elements of self-defense" in the Stand Your Ground law; and (3) if the trial court finds that the claim satisfies the statute's requirements, the State must then "present clear and convincing evidence to overcome the self-defense claim." *Id.* at 1029. In arriving at its holding, the Second District recognized the Fourth District's interpretation in *Langel*, but also declared it dicta. We disagree with the Second District's characterization of *Langel*.

An alternative holding is binding precedent, and not dicta. *Hitchcock v. Sec'y, Fla. Dep't of Corr.*, 745 F. 3d 476, 484 n.3 (11th Cir. 2014).

> A ruling in a case fully considered and decided by an appellate court is not dictum merely because it was not necessary, on account of one conclusion reached upon one question, to consider another question the decision of which would have controlled the judgment.
>
> Two or more questions properly arising in a case under the pleadings and proof may be determined, even though either one would dispose of the entire case upon its merits, and neither holding is a dictum, so long as it is properly raised, considered, and determined.

Sturdivant v. State, 84 So. 3d 1053, 1060 (Fla. 1st DCA 2010) (Thomas, J. dissenting) (citations and quotations omitted). Unlike dicta, an alternative holding neither contradicts the underlying rationale of the decision, nor is it "a mere 'aside' or 'remark' meant to discuss possible legal theories for academic or scholarly purposes only." *Id.* An alternative holding provides a secondary basis for a court's decision. *Id.*

In *Langel*, the Fourth District held that the 2017 amendment to the Stand Your Ground law did not apply retroactively. However, this was not the entirety of its holding. In the alternative, it held that the defendant failed to raise a prima facie claim for self-defense immunity under the 2017 version of the law. It explained that a defendant filing a motion to dismiss under the 2017 amendment must "show," not merely allege, that the elements of self-defense immunity have been met to raise a prima facie claim. The Fourth District spent more than half of its opinion discussing

this conclusion, ultimately closing the opinion with the following statement: "[u]nder any standard, the trial court did not err in denying petitioner's claim of self-defense immunity based on these facts." *Id.* at 364. Thus, it is apparent that the Fourth District's discussion of the 2017 standards was an alternative holding, not dicta.[2] Accordingly, we are bound by the Fourth District's holding. *State v. Hayes*, 333 So. 2d 51, 53 (Fla. 4th DCA 1976).

In this case, Petitioner solely relied on a motion to dismiss to establish a prima facie claim of Stand Your Ground immunity from prosecution. She argued that she did not need to present testimony or other evidence for the State to carry its evidentiary burden. However, the trial court ruled that "a prima facie case requires evidence." This is entirely consistent with the Fourth District's holding in *Langel*. As a result, the Petition is DENIED.

SCHER, J., concurs.

ARTAU, J., dissents with opinion.

ARTAU, J., dissenting.

Bemoaning the misuse of the "oft-quoted maxim that 'the polestar of statutory construction is legislative intent,'" Florida Supreme Court Justice Lawson employed the "polestar" as a metaphor, to explain that construing a "clear and unambiguous" statute "is like walking a marked path on a clear day—where looking up to ponder unseen stars makes no sense, and could send you stumbling off the marked path." *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 313 (Fla. 2017) (Lawson, J., dissenting in part).

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[2] Noteworthy is the fact that in *Rogers v. State*, 45 Fla. L. Weekly D204, No. 1D18-5207 (Fla. 1st DCA Jan. 27, 2020), the Florida First District Court of Appeals appears to have also adopted the view that the Fourth District's prima facie discussion was an alternative holding. Citing to *Langel*, the First District explained: "the Fourth District **held** that a party asserting Stand Your Ground immunity does bear an evidentiary burden." *Rogers*, No. 1D18-5207 at 3 (emphasis added).

I respectfully dissent because we have stumbled "off the [clearly] marked path" here. But *Jefferson v. State*, 264 So. 3d 1019 (Fla. 2d DCA 2018), provides a roadmap back onto the path and out of the quagmire we find ourselves in.

The majority relies upon the Fourth District's dicta in *Langel v. State*, 255 So. 3d 359 (Fla. 4th DCA 2018), in concluding that a defendant who asserts immunity under the Stand Your Ground law, section 776.032, Florida Statutes, bears the initial burden of presenting prima facie evidence of self-defense before the burden shifts to the State.

The question in *Langel* was whether the 2017 amendment to the Stand Your Ground law applied retroactively to the defendant in that case. 255 So. 3d at 361. The Fourth District held that the amendment "'is treated as a substantive change in the law' that cannot be applied retroactively under the Florida Constitution." *Id.* at 361-62 (quoting *Smiley v. State*, 966 So. 2d 330, 334 (Fla. 2007)). Consequently, defendant's petition was denied. Although immaterial here, the Florida Supreme Court recently abrogated this holding, finding the change in the law to be procedural—not substantive. *See Love v. State*, 286 So. 3d 177, 190 (Fla. 2019) (concluding that the 2017 burden of proof amendment to the Stand Your Ground law is procedural, and thus applies retroactively, but only for immunity hearings held on or after the effective date).

Despite its holding, the Fourth District opined in further discussion that even if the amendment were to apply retroactively to the defendant's case, the defendant failed to state a prima facie case. *Id.* at 363. The majority incorrectly relies upon this discussion as an alternative holding. Instead, the Fourth District's discussion was dicta because it was not necessary to decide the case. The Fourth District had already held that the amendment did not apply and, therefore, its discussion on raising a prima facie case was "a pronouncement of law that [was] ultimately immaterial to the outcome of the case, [and] cannot be said to be part of the holding in the case." *See Lewis v. State*,

34 So. 3d 183, 186 (Fla. 1st DCA 2010) (defining dicta). Accordingly, the Second District in *Jefferson* deemed *Langel* to be dicta for the same reason. *Jefferson*, 264 So. 3d at 1029 n.4. Although the majority cites to the First District's recent opinion in *Rogers v. State*, 45 Fla. L. Weekly D204, No. 1D18-5207 (Fla. 1st DCA Jan. 27, 2020), as support for their view that *Langel* was an alternative holding, the First District in *Rogers* declined to reach this or any other issue pertinent to an interpretation of the Stand Your Ground law. *Rogers*, No. 1D18-5207 at 3.

In its dicta, the Fourth District defined a "prima facie *case*" to require the establishment of a rebuttable presumption by a defendant. *Langel*, 255 So. 3d at 362 n.2 (emphasis added). The Florida Legislature, however, was quite precise in requiring only a "prima facie *claim*." *See* § 776.032(4), Fla. Stat. (2019) (emphasis added). Moreover, the Fourth District acknowledged that although it had an expectation that in raising a Stand Your Ground claim, a defendant would want to "[o]rdinarily . . . testify," the defendant could "otherwise present or point to evidence from which the elements for justifiable use of force can be inferred." *Langel*, 255 So. 3d at 362-63. Indeed, the latter would be more consistent with a textual interpretation of section 776.032(4), by presenting a motion that would allege facts pointing to a "prima facie claim."

Jefferson correctly interprets the Stand Your Ground law. Looking, as we should, to the text of the statute we are interpreting, it is clear that a person seeking immunity from criminal prosecution and trial must "raise" a "prima facie claim" of self-defense. § 776.032(4), Fla. Stat. (2019). In its textual interpretation, the Second District explained that "[t]he phrase 'prima facie claim,' then, is an assertion that, at first glance, is sufficient to establish a fact or right but is yet to be *disproved* or rebutted by someone." *Jefferson*, 264 So. 3d at 1027 (emphasis in original). It further explained that to "raise" a claim is to "bring up for discussion or consideration," and not to prove. *Id.* The Second District concluded that a defendant does not have the burden of proof when

raising a "prima facie claim" of immunity, and that the only evidentiary burden created by section 776.032(4) is that placed on the State to overcome the claim of immunity by clear and convincing evidence. *Id.* Therefore, it held that a defendant does not need to present evidence when raising a "prima facie claim." *Id.* at 1028-29. Instead, the alleged facts in a motion to dismiss only need to be facially sufficient in supporting the elements of self-defense. *Id.* at 1029.

Indeed, Justice Canady dissented in *Bretherick v. State*, 170 So. 3d 766 (Fla. 2015), when the Florida Supreme Court had interpreted the prior Stand Your Ground statute to require a defendant to bear the burden of establishing entitlement to Stand Your Ground immunity. *See id.* at 780 ("By imposing the burden of proof on the defendant at the pretrial evidentiary hearing, the majority substantially curtails the benefit of the immunity from trial conferred by the Legislature under the Stand Your Ground law.") (Canady, J., dissenting).

In response to the *Bretherick* majority's interpretation, the Florida Legislature amended the Stand Your Ground statute, adopting most of Justice Canady's dissent, to unambiguously place the burden on the State to prove by clear and convincing evidence that a defendant asserting a "prima facie claim" is not entitled to immunity from prosecution or trial. *See Love v. State*, 286 So. 3d at 180 ("The Legislature thus largely adopted the *Bretherick* dissent but with a 'clear and convincing' burden on the State as opposed to the more exacting trial burden of 'beyond a reasonable doubt.'"); *see also Jefferson*, 264 So. 3d at 1027-28 ("To interpret [Stand Your Ground immunity] otherwise would write into the statute a requirement that is not there and quell the legislature's obvious attempt to upend the supreme court's *Bretherick* decision, where our supreme court held that the person seeking Stand Your Ground immunity bore the burden to prove his immunity by a preponderance of the evidence." (citation omitted)).

Petitioner here, like the petitioner in *Jefferson*, relied on the alleged facts of her motion to dismiss because she only needed to raise a "prima facie claim," as set forth in the clear and unambiguous Stand Your Ground law. The trial court should not have applied an evidentiary burden on Petitioner. As in *Jefferson*, the trial court should have determined whether the alleged facts in the motion were facially sufficient to support the elements of self-defense. *See id*. at 1027 (the statutory "text indicates that the legislature intended that the person simply bring that yet to be disproven prima facie claim of self-defense to a pretrial immunity hearing for the trial judge to determine, at first glance, if all elements required to demonstrate the particular self-defense statute are present"). If so, the evidentiary burden was on the State—not Petitioner. Thus, I would grant the Petition and remand for further proceedings consistent with *Jefferson*.

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Opinion/Decision filed: March 26, 2020

Petition for Writ of Prohibition from the County Court in and for Palm Beach County; Judge Debra Moses Stephens.

Petition filed: May 30, 2019

DATE OF PANEL: JANUARY 8, 2020

PANEL JUDGES: WEISS, SCHER, ARTAU

GRANTED/DENIED/OTHER: PETITION DENIED

PER CURIAM OPINION/DECISION BY: DALIAH WEISS

CONCURRING:	DISSENTING:	CONCURRING SPECIALLY:
	With Opinion	With/Without Opinion
/s/ Daliah Weiss	_____	_____
DATE: 3/25/20 J.	J.	J.
/s/ Rosemarie Scher	_____	_____
DATE: 3/25/20 J.	J.	J.
_____	/s/ Edward Artau	_____
J.	DATE: 3/25/20 J.	J.