

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

[REDACTED],
Defendant.

Case No. 2024-CF-[REDACTED]-A

**ORDER GRANTING DEFENDANT, [REDACTED]'S, MOTION TO DISMISS
INFORMATION BASED UPON SELF DEFENSE IMMUNITY**

THIS CAUSE came before the Court pursuant to the Defendant's Motion to Dismiss Information Based Upon Self Defense Immunity (hereinafter "Motion") filed on December 17, 2025, pursuant to Florida Rule of Criminal Procedure 3.190(b), and Sections 776.032 and 776.021, Florida Statutes. A hearing on the Motion was held on December 22, 2025. Present at the hearing were [REDACTED], Esquire, Assistant State Attorney, for the State of Florida, and Meeghan Moldof, Esquire, counsel for the Defendant. The Defendant was present. At the hearing, the Court heard from five (5) witnesses, three called by the State: [REDACTED] (the alleged victim), Officer [REDACTED], and [REDACTED] (civilian witness); and two called by the Defense: [REDACTED] (wife of [REDACTED]/front seat passenger in [REDACTED]'s vehicle) and the Defendant. Defense also recalled Officer [REDACTED]. No evidence was introduced.

The Defendant has been charged with one count of Aggravated Assault with a Deadly Weapon. The charge is based upon events occurring on October 6, 2024. The Defendant argues that he is entitled to immunity based upon section 776.032, Florida Statutes, colloquially known as Stand Your Ground Law.

STATUTES

Section 776.032(1), Florida Statutes, Immunity from criminal prosecution and civil action for justifiable use or threatened use of force, provides:

A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom the force was used or threatened is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

Section 776.012, Florida Statutes, Use or threatened use of force in defense of person, provides:

- (1) A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.
- (2) A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to present imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground in the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

BURDEN OF PROOF

“[O]nce a prima facie claim of self-defense immunity from criminal prosecution has been raised by [the Defendant] at a pretrial immunity hearing, the burden shifts to the State to prove by clear and convincing evidence why [the Defendant] is not entitled to immunity from further

prosecution.” *Derossett v. State*, 311 So.3d 880, 888 (Fla. 5th DCA 2019); Section 776.032(4), Florida Statutes.

Clear and convincing evidence is defined as evidence that is “credible,” “clear and without confusion,” the sum total of which “convince the trier of fact without hesitation.” See *Edwards v. State*, 257 So.3d 586, 588 (Fla. 1st DCA 2018); See also *Pewo v. State*, 177 So.3d 32, 33 (Fla. 2d DCA 2015) (Clear and convincing evidence “is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue.”) If the “State [fails] to meet the clear and convincing standard of proof,” the court is required to “enter an order granting [the Defendant’s] motion and then discharge him from the crimes charged.” See *Derossett v. State*, 311 So.3d 880, 891 (Fla. 5th DCA 2019)

FACTS

The uncontested facts are that on [REDACTED] 2024, at 12:07 hours, Officer [REDACTED] responded to the area of [REDACTED], Mascotte, Florida 34753 in reference to a road rage complaint that occurred in Groveland, Florida. [REDACTED] and his wife/front seat passenger, [REDACTED], were traveling West on SR-50 when they approached the traffic light at North Main Avenue in Groveland, Florida. The light turned green. Defendant did not immediately proceed through the intersection. [REDACTED] became irate, exited his vehicle, walked up to Defendant’s vehicle and hit the vehicle’s rear corner panel with his hand.

Defendant was employed as [REDACTED] and had a passenger in the vehicle at the time of the incident. Defendant testified that the passenger expressed concern regarding Mr. [REDACTED]’s actions. Defendant stated he did not know whether there was damage to his vehicle due to Mr. [REDACTED]’s actions. Defendant said he was also unsure whether the passenger would report the incident to [REDACTED] and, therefore, felt he needed to obtain information from [REDACTED]

██████████ and his license plate number so he could report the incident to his employer. Defendant exited his vehicle and approached Mr. ██████████ with a gun in his waistband. The Defendant had a concealed carry permit. A brief verbal argument ensued between Mr. ██████████ and Defendant.

It is here that testimony diverges. ██████████ testified that Defendant pointed the gun in his face, and that he then grabbed a hammer from the backseat of his car in response. He testified that Defendant stated that “You don’t know who you’re messing with, I’ll blow your head off.” ██████████, who was at his place of business and could see the Defendant during the encounter, testified that Defendant pointed the gun towards the left front quarter panel or tire, not at Mr. ██████████. From his vantage point, he could not see whether Mr. ██████████ was holding anything. Ms. ██████████, who was seated next to Mr. ██████████, stated that she saw Mr. ██████████ reach for the hammer, but did not see a gun, much less see the Defendant point a gun, but testified that Defendant stated “I will shoot you and I will kill you.” Defendant testified that he pulled the gun out of his waistband only after seeing Mr. ██████████ retrieve the hammer, and did not point it at Mr. ██████████ or make any statements.

Thus, of the four witnesses to the incident itself, one testified that Defendant displayed the gun (rather than merely carrying it) before Mr. ██████████ armed himself with a hammer, one that he did so afterwards, and the other two could not testify as to timing (one could not see the gun, and the other could not see the hammer). One testified that Defendant pointed the gun at Mr. ██████████, two that he pointed it to the side, and one did not see the gun at all. Two witnesses testified that Defendant made threatening statements, but were not consistent with each other.

FINDINGS

Florida’s Stand Your Ground law confers immunity from criminal prosecution, without the obligation to retreat, on those who use force in defense of one’s person, home, property, or another

person. Sections 776.012, 776.013 and 776.031, Florida Statutes. See also Section 776.032, Florida Statute (providing that a “person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force”). Displaying a firearm without firing is not deadly force. *Burns v. State*, 361 So. 3d 372 (Fla. 4th DCA 2023). The Fifth Circuit has held that even pointing a firearm at another is not deadly force, *Copeland v. State*, 277 So. 3d 1137, 1140 (Fla. 5th DCA 2019), although another Circuit has disagreed *see Little v. State*, 302 So. 3d 396 (Fla. 4th DCA 2020) (finding that pointing a firearm was a threatened use of deadly force).

Under this standard, the use of nondeadly force is permitted when a defendant reasonably believes such force is necessary to defend oneself against another’s imminent use of unlawful force. Furthermore, a person who uses nondeadly force does not have a duty to retreat and has the right to stand their ground if they are in a place where they have a right to be and are not engaged in criminal activity.

In the present case, the evidence shows that Defendant was not engaged in any unlawful activity prior to the confrontation. Defendant was legally entitled to exit his vehicle in an attempt to retrieve information from Mr. [REDACTED]. Once Mr. [REDACTED] retrieved his hammer, it would be reasonable for Defendant to believe that nondeadly force was necessary to defend against an imminent use of force. The Court finds that the State did not prove by clear and convincing evidence that Defendant displayed the firearm before Mr. [REDACTED] retrieved his hammer. Therefore, the Court finds that Defendant cannot be prosecuted, and he is entitled to immunity from criminal prosecution, as well as dismissal of the pending charge.

Based upon the foregoing, it is

ORDERED AND ADJUDGED:

Defendant's Motion to Dismiss Information Based Upon Self Defense Immunity is hereby
GRANTED.

DONE AND ORDERED this 3rd day of February 2026, at Tavares, Lake County, Florida.

A handwritten signature in black ink, appearing to read "B. Welke". The signature is written in a cursive, flowing style.

BRIAN WELKE
CIRCUIT JUDGE