

NOT DESIGNATED FOR PUBLICATION

No. 125,533

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellant,

v.

JACOB ANTON DELEON,
Appellee.

MEMORANDUM OPINION

Appeal from Butler District Court; JANETTE L. SATTERFIELD, judge. Oral argument held August 15, 2023. Opinion filed October 6, 2023. Affirmed.

Cheryl M. Pierce, assistant county attorney, and *Derek Schmidt*, attorney general, for appellant.

Patrick H. Dunn, of Kansas Appellate Defender Office, for appellee.

Before SCHROEDER, P.J., MALONE, J., and MARY E. CHRISTOPHER, S.J.

CHRISTOPHER, J.: The State appeals the district court's order granting self-defense immunity under K.S.A. 2021 Supp. 21-5231 to Jacob Anton DeLeon. The district court dismissed the charge of one count of second-degree murder, ruling that the decedent was the initial aggressor and DeLeon had reasonable grounds to believe he was in danger of great bodily harm. The State argues the district court erred because (1) DeLeon was precluded from claiming self-defense immunity because he was an aggressor under K.S.A. 2021 Supp. 21-5226(c); and (2) DeLeon lacked the reasonable belief that he needed to use deadly force to prevent great bodily harm. We find substantial evidence

supports the factual findings of the district court and conclude the court's grant of "stand-your-ground" immunity was proper under K.S.A. 2021 Supp. 21-5231.

FACTUAL AND PROCEDURAL BACKGROUND

Sometime in the late hours of July 3, 2021, or into the early morning hours of July 4, 18-year-old DeLeon fatally shot 17-year-old B.W. in the head after they got into an altercation at a party. The State originally charged DeLeon with one count of second-degree murder, one count of criminal possession of a firearm by a convicted felon, and one count of aggravated assault. Later the State amended the charges to include two additional charges of aggravated assault.

On July 14, 2021, DeLeon filed a pretrial motion claiming immunity from prosecution under K.S.A. 2021 Supp. 21-5231.

On November 18, 2021, the district court held a combined preliminary and immunity hearing. At the beginning of the hearing, the State moved to dismiss the charge of criminal possession of a firearm by a convicted felon because the underlying felony supporting the charge was based on the criminal threat statute, which had been declared unconstitutional. The district court granted the State's motion to dismiss the charge of criminal possession of a firearm.

The court then conducted the preliminary evidentiary hearing to establish probable cause for the remaining charges. The State presented testimony from several witnesses, including witnesses to the conflict, and numerous exhibits were admitted into evidence. The hearing also served as DeLeon's hearing on his pretrial motion claiming immunity from prosecution under K.S.A. 2021 Supp. 21-5231.

A summary of key testimony and evidence introduced at the preliminary hearing follows:

Detective Robert Albert interviewed witnesses D.M., B.M., and K.K. together at the scene on July 6, 2021. Exhibit 37, which is a recording of those interviews, was introduced into evidence and is consistent with Detective Albert's testimony regarding those interviews. B.M. and K.K. were already inside the vehicle. They were approached by a group of people—including DeLeon—and the group confronted them about a missing bag. DeLeon accused them of taking the bag. DeLeon's group told B.W.'s group that they were "going to press charges against them if they didn't give them the bag back."

B.W. told them they did not have the bag, and they were welcome to look inside the car. B.W. allowed them to look in the vehicle, and a "heated exchange" took place. After DeLeon raised his voice, B.W. said "don't talk to me like that." DeLeon said something along the lines of "you don't know who you're talking to" or "I don't know who you think you're talking to." B.W. told DeLeon, "I'll talk to whomever however I want."

DeLeon then made a gesture towards his waistband and told B.W., "[y]ou don't know what I got." B.W. responded that he did not care what DeLeon had. B.W. then hit DeLeon in the face, and DeLeon fell back against a parked vehicle. According to K.K., it was DeLeon who first pushed B.W.

DeLeon then lifted up his shirt, pulled out the gun, and "racked one into the chamber." DeLeon started walking backward to the north away from the group. He turned the gun's laser on and continued to back off to the north away from the group. DeLeon then stepped towards the front of the car, and he "started waving the laser around on [B.W.]." B.W. started walking towards DeLeon, and DeLeon continued to back up.

D.M. told B.W. "to stop and get in the car." B.W. went back to the car, and B.W. and his three friends were "in the process of getting in the car to leave." At the time, DeLeon was approximately 20 to 30 yards away from the car. One of the major discrepancies is that neither K.K. nor B.M. reported in their initial statements to police that DeLeon backed up 20 to 30 yards from the car. But in the interview at the scene on July 6, they agreed that B.W. had gotten back in the car when DeLeon approached and tapped the gun on the window.

B.W. had turned his back to DeLeon as he was preparing to leave. He was sitting in the rear passenger seat. D.M. testified that once B.W. got into the vehicle, D.M. "thought everything was said and done."

Just as B.W. was getting ready to close his car door to leave, DeLeon ran toward the car. He tapped the gun on the window of the car and said "yes, that's right leave." DeLeon was pointing the laser "at everybody that was in the car." DeLeon first pointed the gun at B.W. then at K.K., and then he waved the laser at D.M. and B.M. in the front seat. D.M. testified that he knew that B.W. had not yet completely shut the door to the car because the handle on that door was broken and could not be opened from the inside.

B.W. then swung open the door, knocking DeLeon back. B.W. tackled DeLeon, and he was trying to gain control of the firearm. At one point, he had DeLeon's right hand—with the firearm in it—pinned to the ground. B.W. was punching DeLeon in the head as they struggled for control of the gun. During the scuffle, DeLeon reached over with his left hand, grabbed the gun, and then just started firing off rounds. Six to eight rounds were fired, and one hit B.W. in the head. DeLeon then pushed B.W. off him, and he ran.

Another witness, P.D., gave a very different version of events. She testified that DeLeon was telling B.W. to leave, and B.W. was refusing. DeLeon then counted down

from three to one and then he shot B.W. P.D. watched the events from the inside of a car. P.D. testified that she did not have a direct view of the shooting, but she saw B.W. fall.

Deputy Jacob Lawrence testified about his interview with DeLeon after his arrest. DeLeon sustained a gunshot wound to his left thigh the night that he shot B.W. DeLeon originally told Lawrence that he was at the party in Augusta when he heard gunshots. He then ran to his car to leave the party. As he was running, he claimed he saw two white males fighting. DeLeon claimed that one of them shot him in the leg as he ran by.

DeLeon's second story was similar to the first. However, he then claimed that he knew one of the white males fighting as Kyler Colwick. DeLeon claimed that Colwick shot him and asked the officers for help in finding Colwick. The officers took a break from the interview and located the brother of Kyler, who informed them that Kyler was not at the party because he was stationed in Oklahoma for work.

Deputy Lawrence told DeLeon that they found out that Colwick was not at the party. Lawrence stated that he knew DeLeon was not being completely honest with him. Lawrence then told DeLeon that they believed he had been "bum-rushed and tackled." In response, DeLeon then told him that he had been involved in a fight. DeLeon told Lawrence that he was helping a girl find her purse when he confronted a guy, now identified as B.W., and DeLeon told B.W. he believed the purse was in B.W.'s car. DeLeon said B.W. "kind of bucked up to him . . . or chested up to him," and they got into a verbal argument. DeLeon told B.W. "you don't know what I got," and B.W. responded by repeating the same statement to him. DeLeon said that B.W. pulled a gun and punched him in the side of the face with either the gun or his fist. DeLeon stumbled back and pulled his gun from his waistband. DeLeon said that B.W. rushed and tackled him, and that is when he shot B.W.

A few days later, Deputy Lawrence spoke with DeLeon again. Lawrence testified regarding these additional details:

"A. . . . "[DeLeon] told me, again, that he was struck, either with the gun or a fist, by the subject that he had shot on the 4th of July. Mr. DeLeon continued stating after getting [struck] he went backwards, drew his gun, turned his laser on, and put the laser on the other kid and began ordering him, telling him to get back in his car and leave. He said he made that demand 2 to 3 times. At that point, Mr. DeLeon explained that the other kid that he had shot actually began to get in the vehicle. You said the kid entered the vehicle, was in the process of getting in the vehicle, and Mr. DeLeon actually believed the kid was getting ready to leave. At that point Mr. DeLeon said he approached the vehicle, with his gun still out, and was attempting to walk to his vehicle by walking right beside the car.

"Q. Okay.

"A. At that point Mr. DeLeon said that—I believe he told me while walking past the vehicle, the other kid hadn't drove off yet, so he continued telling him to just leave or just go home. At that point, supposedly, the other kid got out of the car and ran after him and tackled him.

"Q. Okay. So where was his gun when he was walking by there and approaching the other kid that he shot?

"A. He originally told me his gun was out. He still had it in his hand at his side. Throughout speaking with other investigators between my original interview and the second interview, I'd received information that there were witnesses to that Mr. DeLeon had actually pointed his laser through a car window at people inside the car as he re-approached and went—walked past the car.

"Q. Okay.

"A. So at that point, I confronted Mr. DeLeon with that information.

"Q. And what did he respond?

"A. He told me that he did have the gun on this other kid or pointed somewhat at this other kid as he was getting into the car. And I asked him if he had pointed the gun at the other kid and other people in the car? He told me he didn't intentionally do it, but if he did, it was by accident. But he did have his gun out somewhat pointed at the other kid who was getting in his car."

DeLeon also told Lawrence that his gun got jammed during the incident, and he shot himself in the leg. DeLeon did not testify at the preliminary/immunity hearing.

At the conclusion of the hearing, the district court took the matter under advisement and ordered the parties to submit proposed findings of fact and conclusions of law by March 18, 2022.

On July 21, 2022, the district court filed an order granting DeLeon's motion based on self-defense immunity from prosecution and dismissing the count of second-degree murder. The court found the State had failed to meet its burden of proving or rebutting by probable cause that the defendant was not justified in his use of force. The district court based its ruling on Kansas law that a person who acts in defense of himself or a third party has the right to stand their ground with no duty to retreat. The court determined DeLeon was not the initiator of the physical violence, and B.W. did not demonstrate a desire to remove himself or withdraw from the conflict.

In its July 21 order, the district court set forth its factual findings and conclusions as follows:

"On July 4, 2021, Butler County [Sheriff] Officers were dispatched to a shooting that had occurred at a large party or gathering at 6264 SW Church Rd in rural Augusta, Kansas. Detective Albert arrived at approximately 2:36 a.m. It was estimated that 100-150 people, including minors were present. Many of the party goers did not know each other as apparently this was a free for all invite through snap chat. This most unfortunate situation involved numerous underage drinkers including the decedent (vitreous [*sic*] most dependable result), [B.W.], who had a blood alcohol level of .247 over 3 times the legal limit in Kansas. There was a gate entrance to the residence and nearby field and pond that was apparently not being policed based on the presence of alcohol and at least two known guns.

"Although there were numerous individuals there and numerous vehicles parked in front of the house in the unmanicured yard/field near where the pond was located, when the Detective arrived there were only 4 vehicles on scene. A deceased white male (later identified as [B.W.]), was lying in the outdoor area where he had been shot. His body laid close to the rear, driver's side bumper of a white four door car with its trunk up. Said vehicle was not one that [B.W.] had traveled to the party in nor was it the defendant's vehicle.

"[B.W.] had traveled to the party arriving at approximately 9:00 p.m. on the 3rd [of July] with [D.M.], (the driver of the vehicle), [B.M.] (the owner of the vehicle) and [K.K.] None of these individuals who witnessed the shooting remained at the scene to give a contemporaneous, firsthand account or statement to the police after [B.W.], their friend and fellow passenger, was fatally shot. The [B.W.] group headed to their vehicle late that evening at about midnight to either obtain more fireworks from their trunk or put what they had left in the trunk and leave when they were approached by [DeLeon] and a female searching for a lost or stolen pink bag that had a cell phone in it. It may have been an encounter related to an attempt to track the cell phone location by using an App. The contents of the bag were later located at the scene within about 40 feet of [B.W.]'s body location. The bag itself was never found. A verbal exchange about said bag occurred between [B.W.] and DeLeon and escalated into a physical altercation. [B.W.] shoved and punched DeLeon knocking him into the white car. There was one other vehicle initially in between the white car and the car [B.W.] was in, driven by an individual named Hunter, who pulled away at that point, and did not testify in the probable cause hearing.

"As DeLeon regained his position and while backing up, he hollered at [B.W.], 'You don't know what I got', gesturing to his waist band. According to [D.M.], [B.W.] understood what [DeLeon] meant, which was that he had a gun. [D.M.] volunteered that [B.W.] had fought individuals with guns before indicating [B.W.] was not afraid. [B.W.] made some statement to the effect 'I don't care what you got.' In all likelihood, expletives were used as well. Another significant point made by [D.M.]; the driver of the car, was if [B.W.] had fully gotten into their car and closed the passenger rear door, he would have been unable to exit as the door handle would not open from the inside. By all accounts, Defendant DeLeon, kept telling [B.W.] to leave and just get back into the car. After being struck and hitting the vehicle, words were still being exchanged between the two and as DeLeon was moving away he then pulled out his gun with a laser and pointed in [B.W.]'s direction calling him names and telling him to get in the car.

"The defendant's gun was located in Haysville, Kansas, and it has been introduced as a black 9 mm Glock. Initially statements of the three individuals with [B.W.] did not mention the laser shining in their car or the defendant tapping the window. Their initial statements were never admitted into evidence but done the following day of the shooting. On July 6, 2021, a reconstruction of the events was attempted by law enforcement with all three subjects who then mentioned the laser pointer and closeness of the defendant. That video and their court testimony in the probable cause hearing was the asserted basis for [B.W.] to tackle DeLeon (bum rush and then mount the defendant as testified to by [officers] and witnesses).

"While DeLeon was on the ground with [B.W.] on top of him, [B.W.] pinned DeLeon and held his arm down with the gun while punching him in the head and face or upper torso which is when defendant DeLeon squeezed the trigger and began firing off shots. One fatal shot killed [B.W.] which was a blow to the head with an entrance wound at the left frontal scalp and the projectile lodged in the right occipital bone. The shot was down, backward and right. The defendant DeLeon was shot in the left thigh area, but it is unclear how that transpired other than the defendant stating the gun jammed and he may have shot himself. Five (5) 9mm shell casings were located near [B.W.]'s body, one 40 caliber casing was also found but was never fully identified in terms of locating the gun or identifying whose it was. When the 9mm was seized it had a cartridge magazine of which held 17 rounds. 10 rounds remained upon confiscation. Defendant DeLeon did not testify.

"It appears to the Court that other than the verbal exchanges, [B.W.] initiated the original physical contact. After he was hit and shoved into a car, DeLeon was moving away when he displayed the gun, while displaying the gun he was not threatening to shoot [B.W.], he was just yelling at him to get back in the car and mocking [B.W.]. When it appeared [B.W.] may be getting in the car to head out, DeLeon walked toward or by the car to supposedly make his way to his car to leave but was still waiting or holding the gun out right with the laser still on. DeLeon was close enough to [B.W.]'s vehicle that [B.W.] was able to hit him with the door. He then tackled DeLeon to the ground, wrestling with him and while DeLeon was holding the gun, [B.W.] was on top of him trying to pin his right arm with the gun and striking him about the face, head, and torso. While on the ground, the trigger was pulled, and [B.W.] was struck in the head.

"This Court finds based on the facts that [B.W.] never fully disengaged from the altercation. The shots and fatal shot were contemporaneous with being struck by [B.W.]

This Court does not find that the State has met its burden of proof or rebutting by probable cause that the defendant was not justified in his use of force. Identical to [*State v. Hardy*, 305 Kan. 1001, 390 P.3d 30 (2017)] . . . , a person has a right to stand their ground with no duty to retreat. The defendant was not the initiator of the physical violence, and the decedent did not demonstrate a good faith desire to remove himself or withdraw from the conflict. The Level 1, Murder in the Second Degree, homicide charge is dismissed, and is subject to appeal. The remaining charges remain in effect and the defendant is bound over for further arraignment and jury trial."

Per the district court's order, the murder in the second degree homicide charge against DeLeon was dismissed, subject to appeal, but the remaining three counts of aggravated assault were to remain in effect. Later, on July 29, 2022, the district court entered an agreed order submitted by the parties dismissing the action without prejudice. The State filed its notice of appeal the same day.

The State timely appeals the district court's order dismissing the count of second-degree murder on the basis of self-defense immunity.

DISCUSSION

1. *Did the district court err in granting self-defense immunity to DeLeon and dismissing the charge of second-degree murder?*

The State maintains the district court erred in granting DeLeon immunity under K.S.A. 2021 Supp. 21-5231 and dismissing the charges of second-degree murder. First, the State argues the district court improperly granted dismissal because DeLeon was not entitled to self-defense immunity as he was an aggressor under K.S.A. 2021 Supp. 21-5226(c). The State also contends that, even if this court does not find DeLeon was the initial aggressor, we should nevertheless find he was not entitled to immunity under K.S.A. 2021 Supp. 21-5222(b) because DeLeon lacked the reasonable belief that he needed to use deadly force to prevent great bodily harm.

Principles of law and standard of review

The plain language of K.S.A. 2022 Supp. 21-5231 evidences the Legislature's intent to create a "true immunity" that prevents the State from criminally prosecuting individuals who are statutorily justified in their use of force. See *State v. Collins*, 311 Kan. 418, 424, 461 P.3d 828 (2020). To give effect to this immunity, district courts must perform a gatekeeping function and insulate these qualifying cases from continued prosecution and trial. 311 Kan. at 424. A defendant invokes the district court's gatekeeping function by filing a motion under K.S.A. 2022 Supp. 21-5231, which then imposes a burden on the State to come forward with evidence establishing probable cause that the defendant's use of force was not statutorily justified. See *State v. Phillips*, 312 Kan. 643, 655-56, 479 P.3d 176 (2021); *State v. Thomas*, 311 Kan. 403, 412, 462 P.3d 149 (2020).

To meet its burden, the State must present evidence establishing probable cause that the defendant did not believe that deadly force was necessary to protect himself from death or great bodily harm or that a reasonable person would not believe that deadly force was necessary. K.S.A. 2022 Supp. 21-5222(a); see *State v. Wiseman*, No. 113,468, 2018 WL 911420, at *5 (Kan. App. 2018) (unpublished opinion). In the alternative, the State could also meet its probable cause burden if the defendant acted as an aggressor and provoked the use of force. K.S.A. 2022 Supp. 21-5226(c).

When analyzing a defendant's motion for immunity under K.S.A. 2022 Supp. 21-5231, the district court must consider the totality of circumstances without weighing the evidence in deference to the State. In doing so, the district court determines whether the State has "carried its burden to establish probable cause that the defendant's use of force was not statutorily justified." *State v. Hardy*, 305 Kan. 1001, 1011, 390 P.3d 30 (2017); see *State v. Ultreras*, 296 Kan. 828, 845, 295 P.3d 1020 (2013) (State has the burden to

show the use of force by the defendant was not justified in order to establish probable cause).

In *Collins*, the Kansas Supreme Court discussed the meaning of probable cause in a self-defense immunity analysis. The *Collins* court explained in the context of a self-defense immunity setting, "probable cause means that the facts as found by the district court are sufficient for a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of defendant's guilt despite the claim of justified use-of-force immunity." 311 Kan. at 426. The Supreme Court also emphasized: "It is important to remember the probable cause burden . . . is substantially less than the proof beyond a reasonable doubt necessary to obtain a guilty verdict." 311 Kan. at 426.

In reviewing the district court's ruling on a motion for immunity under K.S.A. 2021 Supp. 21-5231, the appellate court applies a bifurcated standard of review. When a district court makes factual findings arising out of disputed evidence, as in this case, a reviewing court will not reweigh the evidence and will review those factual findings for supporting substantial competent evidence. Then, the ultimate legal conclusion drawn from those facts is reviewed de novo. *Hardy*, 305 Kan. at 1012; see *Collins*, 311 Kan. at 427 (reiterating standard of review set forth in *Hardy*). Substantial competent evidence is evidence that a reasonable person could accept as adequate to support a conclusion. *State v. Smith*, 312 Kan. 876, 887, 482 P.3d 586 (2021). In addition, to the extent any part of the analysis requires an interpretation of statutes, this court exercises unlimited review. *State v. Stoll*, 312 Kan. 726, 736, 480 P.3d 158 (2021).

Relevant statutes

K.S.A. 2022 Supp. 21-5231, the self-defense immunity statute, provides, in relevant part:

"(a) A person who uses force which, subject to the provisions of K.S.A. 2022 Supp. 21-5226, and amendments thereto, is justified pursuant to K.S.A. 2022 Supp. 21-5222, 21-5223, or 21-5225, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, 'criminal prosecution' includes arrest, detention in custody and charging or prosecution of the defendant.

....

"(c) A prosecutor may commence a criminal prosecution upon a determination of probable cause."

Also relevant to this analysis is the statute governing self-defense, K.S.A. 2022 Supp. 21-5222, which provides:

"(a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force.

"(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.

"(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person."

Subsections (a) and (b) in K.S.A. 2022 Supp. 21-5222 differentiate between the degree of force that may be justified in self-defense or defense of another depending upon the threat presented. Subsection (a) justifies use of ordinary force to defend against another's imminent use of unlawful force. Subsection (b) extends the self-defense justification in subsection (a) to circumstances in which a person reasonably believes

deadly force is necessary to prevent imminent death or great bodily harm to that person or a third person. *Thomas*, 311 Kan. at 410.

"Use of force" and "use of deadly force" are defined in K.S.A. 2022 Supp. 21-5221:

"(a) As used in . . . K.S.A. 2022 Supp. 21-5202 through 21-5208, 21-5210 through 21-5212, and 21-5220 through 21-5231, . . . and amendments thereto:

"(1) 'Use of force' means any or all of the following directed at or upon another person or thing: (A) Words or actions that reasonably convey the threat of force, including threats to cause death or great bodily harm to a person; (B) the presentation or display of the means of force; or (C) the application of physical force, including by a weapon or through the actions of another.

"(2) 'Use of deadly force' means the application of any physical force described in paragraph (1) which is likely to cause death or great bodily harm to a person. Any threat to cause death or great bodily harm, including, but not limited to, by the display or production of a weapon, shall not constitute use of deadly force, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of such actor or another or to affect a lawful arrest.

"(b) An actor who threatens deadly force as described in subsection (a)(1) shall be subject to the determination in subsection (a) of . . . K.S.A. 2022 Supp. 21-5222, and amendments thereto, and not to the determination in subsection (b) of . . . K.S.A. 2022 Supp. 21-5222, and amendments thereto."

The definition of "use of force" broadly includes words or actions that reasonably convey the threat of force, including threats to cause death or great bodily harm; the presentation or display of the means of force; or the actual application of the physical force, including by a weapon or through the actions of another. K.S.A. 2022 Supp. 21-5221(a)(1). Under this statutory definition, threats of lethal force are considered a use of force, but not a use of deadly force. Thus, under K.S.A. 2022 Supp. 21-5222(a), a person is justified in use of force against another, including threats of lethal force, i.e., words or actions conveying a threat of causing death or great bodily harm, when and to the extent

it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force. See K.S.A. 2021 Supp. 21-5222(a); K.S.A. 2021 Supp. 21-5221(a)(1).

As noted, the "[u]se of deadly force" is defined to mean the "application of any physical force described in paragraph (1) which is likely to cause death or great bodily harm to a person." K.S.A. 2022 Supp. 21-5221(a)(2). Therefore, a person is justified in the use of deadly force under circumstances when "it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force . . . if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person." K.S.A. 2022 Supp. 21-5222(a), (b); see K.S.A. 2022 Supp. 21-5221(a).

The definition of "[u]se of deadly force" includes the "application of any physical force described in paragraph (1)." K.S.A. 2022 Supp. 21-5221(a)(2). Significantly, however, the Legislature crafted a specific exception within the statute excluding the "display or production of a weapon" for defense of self or another from the definition of use of deadly force.

"Any threat to cause death or great bodily harm, including, but not limited to, by the display or production of a weapon, *shall not constitute use of deadly force*, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of such actor or another or to affect a lawful arrest." (Emphasis added.) K.S.A. 2022 Supp. 21-5221(a)(2).

Analysis

We turn to the State's main argument that the district court improperly determined DeLeon was entitled to self-defense immunity where he, not B.W., was the initial

aggressor under K.S.A. 2021 Supp. 21-5226(b). In its brief, the State contends the problem is the district court's failure to acknowledge the factual findings that include DeLeon's threatening and provocative actions toward the victim during the first encounter. The State contends it was only after DeLeon said to the victim, "you don't know what I got," while grabbing the waistband of his pants, that the confrontation turned physical. The State argues B.W. lawfully used force to defend himself after DeLeon's threats of lethal force. It maintains under K.S.A. 2021 Supp. 21-5226(b), a self-defense claim may be denied when a person "initially provokes the use of any force against such person or another." In the State's view, not only did DeLeon initially provoke the use of force by B.W., but B.W. was justified in defending himself against DeLeon in light of DeLeon's threat of lethal violence.

DeLeon argues the State is attempting to convince this court to improperly reweigh the facts because the district court found B.W. "shoved and punched" DeLeon, knocking him into the white car, before DeLeon said, "[y]ou don't know what I got" or gestured toward his waistband. DeLeon contends that, after weighing the facts, the district court explicitly found B.W. was the initial aggressor and the district court's finding is supported by substantial competent evidence.

After considering the evidence presented at the preliminary/immunity hearing, the district court found DeLeon had established immunity under K.S.A. 2021 Supp. 21-5231, commonly known as "Stand-Your-Ground" immunity. See, e.g., *State v. Barlow*, 303 Kan. 804, 805, 368 P.3d 331 (2016). The district court made specific findings as to the initial and later parts of the exchange between B.W. and DeLeon:

". . . [B.W.'s] group headed to their vehicle late that evening at about midnight to either obtain more fireworks from their trunk or put what they had left in the trunk and leave when they were approached by [DeLeon] and a female searching for a lost or stolen pink bag that had a cell phone in it. . . . A verbal exchange about said bag occurred

between [B.W.] and DeLeon and escalated into a physical altercation. [B.W.] shoved and punched DeLeon knocking him into the white car. . . .

"As DeLeon regained his position and while backing up, he hollered at [B.W.], 'You don't know what I got,' gesturing to his waist band. . . . [B.W.] made some statement to the effect, 'I don't care what you got.' In all likelihood expletives were used as well. Another significant point made by . . . the driver of the car, was if [B.W.] had fully gotten into their car and closed the passenger rear door, he would have been unable to exit as the door handle would not open from the inside. By all accounts, [DeLeon] kept telling [B.W.] to leave and just get back into the car. After being struck and hitting the vehicle, words were still being exchanged between the two and as DeLeon was moving away he then pulled out his gun with a laser and pointed in [B.W.'s] direction calling him names and telling him to get in the car.

. . . .

"It appears to the Court that other than the verbal exchanges, [B.W.] initiated the original physical contact. After he was hit and shoved into a car, DeLeon was moving away when he displayed the gun, while displaying the gun he was not threatening to shoot [B.W.], he was just yelling at him to get back in the car and mocking [B.W.]. When it appeared [B.W.] may be getting in the car to head out, DeLeon walked toward or by the car to supposedly make his way to his car to leave but was still waiving or holding the gun out right with the laser still on. DeLeon was close enough to [B.W.'s] vehicle that [B.W.] was able to hit him with the door. He then tackled DeLeon to the ground, wrestling with him and while DeLeon was holding the gun, [B.W.] was on top of him trying to pin his right arm with the gun and striking him about the face, head, and torso. While on the ground, the trigger was pulled, and [B.W.] was struck in the head.

"This Court finds based on the facts that [B.W.] never fully disengaged from the altercation. The shots and fatal shot were contemporaneous with being struck by [B.W.]. This Court does not find that the State has met its burden of proof or rebutting by probable cause that [DeLeon] was not justified in his use of force. . . . [A] person has a right to stand their ground with no duty to retreat. The defendant was not the initiator of the physical violence, and the decedent did not demonstrate a good faith desire to remove himself or withdraw from the conflict."

Here, the district court cited *Hardy*, writing many of the factors in that case "are identical in our case." The district court noted in *Hardy*, the principal question presented

was whether the shooting was contemporaneous with the violence initiated by Flores or had Flores disengaged before being shot, and the answer turned on a factual determination where the preliminary testimony supported both possibilities. See 305 Kan. at 1002.

In *Hardy*, our Supreme Court recognized that based on the plain language of K.S.A. 2016 Supp. 21-5231, the Legislature intended to give a defendant "true immunity" when acting in self-defense. 305 Kan. at 1010. The Supreme Court was "convinced by the legislature's use of the key terms 'probable cause' and 'immune' that the legislature intended that the district court perform a warrant-like gatekeeping function in this context." 305 Kan. at 1011. The Supreme Court determined that, in considering motions for self-defense immunity, if a district court identifies disputed evidence, the district court need not accept the version of the testimony which is most favorable to the State. See 305 Kan. at 1011. In *Hardy*, because the statutory process requires a district court to hear and resolve conflicts in the evidence, the Supreme Court reasoned the district court must consider the totality of the circumstances and weigh the evidence without deference to the State. 305 Kan. at 1011-12.

"Thus, upon a motion for immunity . . . the district court must consider the totality of the circumstances, weigh the evidence before it without deference to the State, and determine whether the State has carried its burden to establish probable cause that the defendant's use of force was not statutorily justified." 305 Kan. at 1011.

The State argues not only did DeLeon initially provoke the use of force by B.W., but contends B.W. was justified in defending himself against DeLeon in the face of what can only be interpreted as a lethal threat of violence.

Here, the district court made factual findings after reviewing all the evidence and testimony of the various witnesses. In the decision, the district court noted a verbal

exchange about the missing bag occurred between B.W. and DeLeon that escalated into a physical altercation. The district court found B.W. "shoved and punched" DeLeon, "knocking him into the white car," before DeLeon "regained his position and while backing up . . . hollered at [B.W.], 'You don't know what I got,' gesturing to his waist band." Based on these facts, the district court concluded B.W. was the initial aggressor.

This court is not to reweigh the evidence; instead, our standard requires a review of the factual findings for substantial competent evidence in support. Deputy Lawrence testified DeLeon said that when he told B.W. he believed the girl's purse was in [B.W.'s] car, B.W. "kind of bucked up to him . . . or chested up to him." Deputy Lawrence testified DeLeon said "they began getting into somewhat of a verbal argument. During that incident, Mr. DeLeon . . . told the guy that, you don't know what I got. . . . At that point, Mr. DeLeon said that that guy pulled a gun, and either punched him in the side of the face with either the gun or his fist." This testimony supports the conclusion that B.W. was the first to provoke physical contact, and it was only after B.W. initiated physical aggression toward DeLeon that he made the statement, "[y]ou don't know what I got." We find substantial competent evidence supporting the district court's finding that B.W. was the initial aggressor.

Additionally, we find no basis for the State's claim that B.W. acted in justified self-defense after DeLeon's threat of lethal violence, i.e., saying "[y]ou don't know what I got" and gesturing to his gun. As discussed above, words or actions conveying a threat to use deadly force are defined as "use of force." Words and gestures are not considered "use of deadly force" under Kansas law. See K.S.A. 2021 Supp. 21-5221(a) and (b); K.S.A. 2021 Supp. 21-5222(a). Further, even if DeLeon's threatening statement "you don't know what I got," and an act of gesturing to his waist band somehow fit squarely within the definition of use of deadly force, which they do not, the threat still would not constitute use of deadly force under the exception in K.S.A. 2021 Supp. 21-5221(a)(2):

"Any threat to cause death or great bodily harm, including, but not limited to, by the display or production of a weapon, shall not constitute use of deadly force, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of such actor or another or to affect a lawful arrest."

The district court did *not* find that B.W., the initial aggressor, was justified in his use of force against DeLeon under the circumstances. Because B.W. provoked the altercation, the only way the district court could have concluded he was justified in his use of force against DeLeon is if it found B.W. met one of the two available "safe harbor" retreat exceptions in K.S.A. 2021 Supp. 21-5226(c)(1) and (2). See K.S.A. 2021 Supp. 21-5226(c)(1), (2) ("The justification described in . . . K.S.A. 21-5222 . . . is not available to a person who . . . otherwise initially provokes the use of any force against such person or another, unless: [1] Such person has reasonable grounds to believe that such person is in imminent danger of death or great bodily harm, and has exhausted every reasonable means to escape such danger other than the use of deadly force; or [2]) in good faith, such person withdraws from physical contact with the assailant and indicates clearly to the assailant that such person desires to withdraw and terminate the use of such force, but the assailant continues or resumes the use of such force.). An initial aggressor may claim self-defense to a charge arising out of the use of force if one of the retreat exceptions to the general rule prohibiting an initial aggressor from claiming self-defense applies, and the aggressor did not initially provoke the use of force with the intent to use such force as an excuse to inflict bodily harm on the assailant. *Phillips*, 312 Kan. at 663.

The district court specifically noted:

"Another significant point made by . . . the driver of the car, was if [B.W.] had fully gotten into their car and closed the passenger rear door, he would have been unable to exit as the door handle would not open from the inside. By all accounts, . . . DeLeon, kept telling [B.W.] to leave and just get back into the car. After being struck and hitting the vehicle, words were still being exchanged between the two and as DeLeon was moving

away he then pulled out his gun with a laser and pointed in [B.W.'s] direction calling him names and telling him to get in the car."

In its decision, the district court determined, "based on the facts . . . [B.W.] never fully disengaged from the altercation."

The district court appeared to reason that, because B.W. did not shut the car door completely, he left open the possibility of reengaging in the fight. Thus, B.W. could not have exhausted every reasonable means to escape such danger, or in good faith have withdrawn from physical contact *and* indicated a desire to withdraw and terminate the use of force.

The district court's findings of fact are supported by substantial competent evidence, and this court will not reweigh the evidence. *Hardy*, 305 Kan. at 1012. This court reviews the ultimate legal conclusion drawn from the fact findings of the district court de novo. 305 Kan. at 1012; see *Collins*, 311 Kan. at 427. Based on our review of the record and the district court's factual findings, we conclude the district court did not err in determining that B.W. was the initial aggressor and the State failed to meet its burden to establish probable cause that DeLeon was not justified in his use of force.

2. *The State's argument regarding a second physical confrontation is waived due to failure to follow Kansas Supreme Court Rules 6.02 and 6.03.*

For the first time at oral argument, the State maintained that a second physical confrontation occurred at the point in time when B.W. disengaged from the fight and got in the car to leave, but then DeLeon came back pointing his gun at B.W. as he was sitting in the car. The State argued the district court erred in its analysis of this second confrontation because a claim of self-defense requires both an objective and subjective belief that such "use of deadly force" is necessary to prevent imminent death or great bodily harm.

The State characterizes DeLeon's actions at this point in time as "use of deadly force" rather than "use of force." The State's argument implicitly asks this court to look at this discreet moment in time to make a new finding on appeal that DeLeon, not B.W., was the initial aggressor during a second confrontation. In addition, the State's argument potentially raises the issue of whether DeLeon, who was initially adjudged the defender, had a duty to go another direction or to retreat.

The problem is the State did not raise this argument in its brief. There is no mention of it in the initial brief, and no reply brief was filed. There is nothing in the State's brief indicating that this argument was raised below, and we are without any reference or citation to the record to be able to determine if the district court had the opportunity to address this issue.

Kansas Supreme Court Rules 6.02 and 6.03 (2023 Kan. S. Ct. R. at 35, 36) govern the content of an appellant's brief and an appellee's brief, respectively. Both require argument, separated by issue, and citations to authority supporting the argument. Here, the State has failed to meet the requirements of Rules 6.02 and 6.03. "We have held that an issue not briefed is deemed waived or abandoned; similarly, a point raised only incidentally in a brief but not argued there is deemed abandoned." *Cooke v. Gillespie*, 285 Kan. 748, 758, 176 P.3d 144 (2008) (deeming statute of limitations argument waived and abandoned); see also *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018) (appellate courts treat argument within brief that fails to cite pertinent authority, or fails to show why a point is sound despite a lack of supporting authority, as waived or abandoned); *Russell v. May*, 306 Kan. 1058, 1089, 400 P.3d 647 (2017) (appellate courts treat point raised incidentally within brief without proper argument to be waived and abandoned); *State v. Tague*, 296 Kan. 993, 1001, 298 P.3d 273 (2013) ("[F]ailure to support an argument with pertinent authority or to show why the argument is sound despite a lack of supporting authority or in the face of contrary authority is akin to failing

to brief the issue."). For these reasons, we deem the State's argument waived or abandoned.

3. *Do the facts support the district court's finding that DeLeon possessed a reasonable belief that the use of deadly force was necessary to prevent bodily harm?*

The State next contends that, even if this court does not determine DeLeon was the initial aggressor, this court should still find he was not entitled to immunity under K.S.A. 2021 Supp. 21-5222(b) because DeLeon lacked the reasonable belief that he needed to use deadly force to prevent great bodily harm.

Our Supreme Court set forth a two-pronged test to determine whether a defendant's conduct was reasonable. The test has a subjective component and an objective component. The subjective part of the test requires a showing that the defendant subjectively believed that (1) the use of unlawful force was imminent and (2) the use of force in response was necessary. And the objective part of the test requires a showing that a reasonable person in those circumstances would have believed the use of deadly force in self-defense was necessary. *State v. McCullough*, 293 Kan. 970, 975, 270 P.3d 1142 (2012); see *State v. Andrew*, 301 Kan. 36, 45, 340 P.3d 476 (2014). The critical part of the inquiry is the reasonableness of the belief that self-defense was necessary. *State v. Walters*, 284 Kan. 1, 16, 159 P.3d 174 (2007).

Before the district court, the State needed to establish probable cause that DeLeon did not have a subjective belief that deadly force was necessary or that an objectively reasonable person in a defendant's circumstances would not have concluded that deadly force was necessary.

The State's analysis in support of this argument focuses on the point in time that DeLeon had backed away from the altercation and B.W. had entered his car to leave.

DeLeon told Deputy Lawrence that it appeared that B.W. was going to leave at this point in time. DeLeon then reapproached the car, however. DeLeon claimed he was going toward his car in an attempt to leave. Deputy Lawrence testified that there were a lot of different routes that DeLeon could have taken to his car, but he chose to walk right beside the car that B.W. was in while still waiving or holding the gun outright with the laser still on and pointing the laser at others in the car. This is not the point in time that DeLeon used deadly force, however.

The proper point in time to evaluate whether DeLeon felt the use of unlawful force was imminent and whether the deadly force was necessary is the actual point in time that he used or applied *deadly force*. As discussed, threats to use lethal force are considered a use of force, but are not defined as use of deadly force, and the "display or production of a weapon" in self-defense is excluded from the definition of "[u]se of deadly force." As defined in K.S.A. 2021 Supp. 21-5221(a)(2), the definition of "[u]se of deadly force" means the "*application of any physical force . . . which is likely to cause death or great bodily harm to a person.*" (Emphasis added.)

In this case, the crucial point in time is when B.W. was on top of DeLeon, punching him in the head and attempting to gain control of the gun. See *Hardy*, 305 Kan. at 1012-13 (a person can use a firearm to shoot an unarmed assailant who is punching them in the face). Ultimately, the district court concluded: "The shots and fatal shot were contemporaneous with [DeLeon] being struck by [B.W.]. This Court does not find that the State has met its burden of proof or rebutting by probable cause that [DeLeon] was not justified in his use of force."

The dissent states it "simply disagree[s] with the district court's ultimate legal conclusion that DeLeon is immune from prosecution under these facts." Slip op. at 29. To reach this conclusion, however, the dissent reweighs the facts. Despite noting the district court's finding "B.W. initiated physical contact by punching DeLeon in the face" is

supported by substantial evidence, the dissent would overturn the district court's finding that B.W. was the initial aggressor. Slip op. at 27. The dissent states: "B.W. may have initiated physical contact by throwing the first punch, but *the encounter began when DeLeon* approached B.W.'s group, accused them of theft, and conveyed to the group that he was carrying a gun." (Emphasis added.) Slip op. at 29. Here, the district court specifically found B.W. "shoved and punched DeLeon knocking him into the white car" before the point in time when DeLeon regained his position and, while backing up, hollered at B.W., "You don't know what I got."

In suggesting new findings as to when and how the encounter began, the dissent appears to disregard the gatekeeping process envisioned by K.S.A. 2021 Supp. 21-5231. This process "require[s] a district court to hear and resolve conflicting evidence when making its factual findings." *Thomas*, 311 Kan. at 409. The facts at the hearing were disputed and required the district court to resolve conflicts in the evidence before reaching any legal conclusions. Here, the district court did what it was supposed to do; it considered the totality of the circumstances, weighed the evidence without deference to the State, and then determined if the State met its burden to establish probable cause. See 311 Kan. at 409.

In addition, the dissent's conclusion relies on an argument not raised in the State's briefing, that "when B.W. was getting back into the car to leave, DeLeon ran 20 to 30 yards back to the car and pointed his gun at everyone in B.W.'s group." Slip op. at 29. As discussed above, we did not reach the issue of whether DeLeon had a duty to retreat from the aggressor during the altercation because it was not properly briefed. *Cooke*, 285 Kan. at 758; see also K.S.A. 2021 Supp. 21-5230 ("A person who is . . . attacked in a place where such person has a right to be has no duty to retreat and has the right to stand such person's ground and use any force which such person would be justified in using."). As such, the issue is not properly before this court.

The dissent also places much emphasis on DeLeon's approach toward the car while yielding his gun, but it is important to remember the use of deadly force happened only after B.W. struck DeLeon with the car door, jumped on him, and started beating him around his head and body while trying to take the gun from DeLeon. On appeal, we are directed to review factual findings for substantial competent evidence. The district court specifically found B.W. had not withdrawn from the altercation as he left the car door open and used it to strike DeLeon before he jumped on DeLeon and started beating him around his head and body while trying to take the gun from him.

"[O]ur task on appeal is not to replace our judgment for that of the district court on factual questions. Instead, our task is to determine whether there was substantial competent evidence supporting the district court's factual findings and whether those findings support the district court's legal conclusion that [defendant] is entitled to immunity." *State v. Rotramel*, No. 119,209, 2019 WL 2237422, at *9 (Kan. App. 2019) (unpublished opinion), *rev. denied* 312 Kan. 900 (2020).

Finally, the dissent focuses on a "legal contradiction" based on the district court finding "probable cause to bind DeLeon over for trial on two felony counts of aggravated assault committed against B.M. and K.K.," and finding "DeLeon is immune from prosecution for shooting B.W. a few moments later." Slip op. at 29. However, shortly after the immunity decision was filed, the district court entered an agreed order submitted by the parties dismissing the criminal action pending against DeLeon. The felony charges were not pending during the appeal, and any issue concerning legal contradiction was not briefed or raised by the State.

Here, the evidence supports the district court's finding that DeLeon had a subjective belief the use of deadly force was necessary at this particular point in the conflict. And a reasonable person in those circumstances would have believed that deadly force was necessary. The State's argument fails.

We find the district court did not err in granting DeLeon immunity under K.S.A. 2021 Supp. 21-5231(a).

Affirmed.

* * *

MALONE, J., dissenting: I respectfully dissent. Without reweighing the evidence and giving deference to the district court's factual findings, I simply disagree with the district court's legal conclusion that Jacob Anton DeLeon is immune from prosecution under these facts. I would find based on the evidence that the State carried its burden to establish probable cause that DeLeon's use of force was not statutorily justified.

The following facts are supported by substantial competent evidence presented by the State at the probable cause/immunity hearing. Sometime in the late hours of July 3, 2021, or into the early morning hours of July 4, 18-year-old DeLeon fatally shot an unarmed 17-year-old, B.W., after they argued and fought at an outdoor party near Augusta in Butler County. It was estimated that 100-150 people were present including many underage drinkers. B.W. was at the party with his friends, D.M., B.M., and K.K. They had come to the party in the same vehicle. Sometime around midnight, B.W.'s group headed to their vehicle and were about to leave the party.

As B.W.'s group was leaving, they were approached by another group of people, including DeLeon, and the group confronted B.W.'s group about a missing bag. DeLeon accused them of taking the bag. B.W. told them they did not have the bag, and they were welcome to look inside the car. B.W. allowed them to look in the vehicle, and then a "heated exchange" took place. Sometime during this encounter, DeLeon gestured toward his waistband and told B.W., "You don't know what I got." The group interpreted this statement to mean that DeLeon was carrying a weapon.

B.W. initiated physical contact by punching DeLeon in the face. DeLeon fell back against a parked vehicle. DeLeon then lifted his shirt, pulled out a gun, and "racked one into the chamber." DeLeon started walking backward to the north away from the group. B.W. started walking towards DeLeon, but D.M. told him to stop and get back into the car. B.W. went back to the vehicle and his group was leaving. D.M. later testified that once B.W. got into the vehicle, D.M. "thought everything was said and done." At that time, DeLeon was about 20 to 30 yards away from the car.

Rather than leaving things alone, DeLeon ran back toward the car. DeLeon tapped the gun on the car window and said, "[Y]es, that's right leave." DeLeon was pointing the gun at everyone in the car including B.M. and K.K. For these acts, the State charged DeLeon with two counts of aggravated assault, and the district court found probable cause to bind DeLeon over for trial following the probable cause/immunity hearing. D.M. testified that he knew that B.W. had not completely shut the door of the car because the handle on that door was broken and could not be opened from the inside.

B.W. then swung open the door, knocking DeLeon back. B.W. tackled DeLeon, and he was trying to gain control of the firearm. B.W. was punching DeLeon in the head as they struggled for control of the gun. During the scuffle, DeLeon reached over with his left hand, grabbed the gun, and then started firing rounds. Six to eight shots were fired, and a shot hit B.W. in the head. DeLeon then pushed B.W. off him and ran away.

After hearing this evidence, the district court issued an eight-page order granting DeLeon self-defense immunity. The written order set forth statutes and caselaw on self-defense immunity and summarized the evidence presented at the hearing, but the district court's factual findings and legal conclusions were sparse. The district court's order stated: "It appears to the Court that other than the verbal exchanges, [B.W.] initiated the original physical contact." This finding is supported by substantial competent evidence.

Almost all the witnesses confirmed that B.W. initiated physical contact by throwing the first punch, although K.K. testified that it was DeLeon who first pushed B.W. The district court's order then stated: "This Court finds based on the facts that [B.W.] never fully disengaged from the altercation." The district court's order then concluded as follows:

"This Court does not find that the State has met its burden of proof or rebutting by probable cause that the defendant was not justified in his use of force. Identical to [*State v. Hardy*, 305 Kan. 1001, 390 P.3d 30 (2017)] . . . , a person has a right to stand their ground with no duty to retreat. The defendant was not the initiator of the physical violence, and the decedent did not demonstrate a good faith desire to remove himself or withdraw from the conflict. The Level 1, Murder in the Second Degree, homicide charge is dismissed, and is subject to appeal. The remaining charges remain in effect and the defendant is bound over for further arraignment and jury trial."

I simply disagree with the district court's ultimate legal conclusion that DeLeon is immune from prosecution under these facts. B.W. may have initiated physical contact by throwing the first punch, but the encounter began when DeLeon approached B.W.'s group, accused them of theft, and conveyed to the group that he was carrying a gun. Then when B.W. was getting back into the car to leave, DeLeon ran 20 to 30 yards back to the car and pointed his gun at everyone in B.W.'s group. B.W. was justified at this point to try to wrestle the gun away from DeLeon to protect himself and his friends from danger. To me, it is a legal contradiction for the district court to find probable cause to bind DeLeon over for trial on two felony counts of aggravated assault committed against B.M. and K.K., and then to find that DeLeon is immune from prosecution for shooting B.W. a few moments later when B.W. was trying to wrestle the gun away from DeLeon, even though B.W. was punching DeLeon in the process. The majority points out that the State has dismissed the aggravated assault charges, but as the dismissal order states, the charges were dismissed without prejudice only to allow the State to bring this appeal.

I could understand under these facts that a jury might find DeLeon was acting in self-defense when he shot and killed B.W. during their final scuffle. But to find that DeLeon is *immune from prosecution* under these facts is a result that I do not believe was ever intended by the Legislature when it enacted Kansas' stand-your-ground laws.