

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
COURT OF GENERAL SESSIONS

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2011-GS-04-1022
2010-GS-04-2259
2010-GS-04-2260

The State,

Respondent,

v.

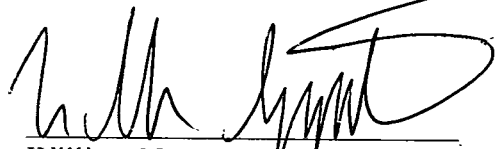
Raphael Davon Parks,

Appellant.

APPELLANT'S MEMORANDUM OF LAW ON THE ISSUE OF THE IMMEDIATE
APPEALABILITY OF THE TRIAL COURT'S DENIAL OF APPELLANT'S REQUEST FOR
IMMUNITY PURSUANT TO S.C. CODE ANN. §16-11-410, ET. SEQ.

The Appellant submits the following memorandum pursuant to this Court's request
inquiring if the Trial Court's Order is immediately appealable.

May 13, 2013



William Norman Epps III, #73158
Post Office Box 2167
Anderson, South Carolina 29622
(864) 224-2111
(864) 224-3536, fax
Attorney for Appellant

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SC Court of Appeals

Other Counsel of Record:

Donald J. Zelenka
Office of the Attorney General
South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

Rame Campbell
Office of the Solicitor
Tenth Judicial Circuit of South Carolina
P.O. Box 8002
Anderson, South Carolina 29622
Attorney for Respondent

Joshua Allen
Office of the Solicitor
Tenth Judicial Circuit of South Carolina
P.O. Box 8002
Anderson, South Carolina 29622
Attorney for Respondent

FACTUAL AND PROCEDURAL BACKGROUND AND GROUNDS FOR APPEAL

The trial court issued its Order from Immunity Hearing in *State v. Raphael Davon Parks*, filed November 2, 2012, which denied the Appellant Raphael Davon Parks' request for an order of immunity pursuant to S.C. Code Ann. §16-11-410, et. seq. "Protection of Persons and Property Act". The Appellant is charged in Anderson County with murder and possession of a weapon during the commission of a violent crime under indictment Nos. 2011-GS-04-1022, 2010-GS-04-2259 and 2010-GS-04-2260¹. The Appellant moved for an order of the trial court granting him immunity from prosecution under the aforementioned indictments pursuant to the "Protection of Persons and Property Act" which the trial court subsequently denied. Appellant filed a motion to reconsider which the trial court denied. The Appellant then filed a Notice of Appeal on December 6, 2012. This memorandum of law is submitted by the Appellant pursuant to a request by this Court dated May 3, 2013 directing each party to serve and file a memorandum addressing whether or not the trial court's Order is immediately appealable.

The trial court found the following facts solely for the purpose of the Order from Immunity Hearing:

During the early morning hours of July 18, 2010, Parks, along with Quentin Boykin ("Boykin") and Terrance Odom ("Odom"), drove his BMW to "Andrews", a bar located off Clemson Boulevard in Anderson County. They arrived around 4:30 a.m., but did not enter "Andrews" because of a Ten (\$10) Dollars cover charge and the lateness of the hour. Parks and his friends did remain outside "Andrews". Around 4:45 a.m., the bar closed; and its patrons began leaving the premises. A highly intoxicated patron, Antonio "Bo" Paul ("Bo"), his fiancée, Katherine Jones, ("Jones") and her friend, Selena Smith ("Smith"), were leaving the bar when someone made a crude remark about Jones. Parks was walking or standing behind "Bo" at the time. Thinking Parks made the remark, "Bo" turned around and swung at Parks, missing him and falling to the ground. Bo's cousin, Timothy Pickens (Victim) apologized, stating that "Bo" was intoxicated and asserting they were not looking for trouble. Thereafter, Jones found her vehicle (a Jeep) while Victim and Elmo Williams ("Elmo") escorted a belligerent "Bo" to Jones' vehicle. (First Incident)

Jones was inside the Jeep in the driver's seat; "Bo" was in the back seat; Smith was standing outside the passenger side door, with the front door open. Victim and Elmo were outside, close to the Jeep.

After the confrontation, Parks and his friends went to his vehicle, ostensibly to leave. Defendant drove from his parking place through the parking lot, heading

¹ Indictment 2010-GS-04-2259 was upgraded to murder in Indictment 2011-GS-041022.

in the direction of Clemson. Parks stopped his car in the vicinity of the rear of Jones' Jeep. Parks exited his vehicle, walked a distance to Jones' vehicle, opened the rear driver's side door of the Jeep and assaulted "Bo". He did so by attempting to punch "Bo" with his fist but instead missed, hitting the seat near "Bo". (Second incident)

By all accounts, Parks had no permission to open Jones' vehicle, either by express or implied invitation. Defendant had no prior knowledge of "Bo" before the first incident referenced above.

Subsequent to Parks' assault, he was immediately chased to his vehicle by Victim. With Victim in fast pursuit, Parks was able to make it into his BMW. However, an altercation immediately erupted between Parks and Victim. By reports, Victim held Parks' driver side door open while attempting or preparing to punch Parks. It was during this altercation that Parks shot Victim two (2) times with a 40. cal. Glock pistol. Testimony ranged from Parks having the pistol in his glove compartment at the time of the altercation with Victim to his arming himself with the pistol prior to the assault on "Bo". Victim ultimately died from his wounds.

Parks claims immunity from prosecution under § 16-11-410, et. seq. "Protection of Persons and Property Act" and State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). (Order from Immunity Hearing at 2-3).

Testimony at the hearing also established that subsequent to Parks' failed assault on "Bo", Parks did slam closed the back door of the Jeep. Boykin testified that he got out of the BMW and heard an unknown person at the Jeep yell "you'll done f***** up now, get the heat." Boykin then yelled to Parks "let's go" and got back in the back passenger's side seat of the BMW. Parks said something to the effect of "ok" and began running back to his BMW. At that time Pickens was chasing Parks. Boykin testified that his and Mr. Park's aforementioned comments were loud enough for everyone in the area around the Jeep and BMW to hear. Testimony established that Pickens had part of his body in the BMW, and was attempting to punch Mr. Parks. Further, Parks did not assault Pickens in any way shape or form. Parks did not provoke Pickens to chase and attack him at his BMW.

LEGAL ARGUMENTS AND AUTHORITY

The "Protection of Persons and Property Act," ("The Act") found in S.C. Code Ann. §16-11-410, et. seq., is a codification of the common law Castle Doctrine and a substantive expansion of the law of self defense in South Carolina. State v. Bolin 381 S.C. 557, 560, 673 S.E.2d 885, 886 (Ct. App. 2009). The Act allows individuals who employ deadly force in certain circumstances to seek immunity from criminal prosecution. S.C. Code Ann. §16-11-450. See State v. Duncan 392 S.C. 404, 709 S.E.2d 662 (2011).

As explained by the trial court's Order, the Appellant must establish the elements warranting immunity under the Act by a preponderance of the evidence. Under the Act, a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person: (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred. S.C. Code Ann. § 16-11-440(A)(1) and (2). However, a person is not allowed to claim the immunity provided by "The Act" if at the time of using deadly force they are engaged "in an unlawful activity or are using the dwelling, residence or occupied vehicle to further an unlawful activity." (Order from Immunity Hearing at 5). SC Code Ann. §16-11-440(B)(3).

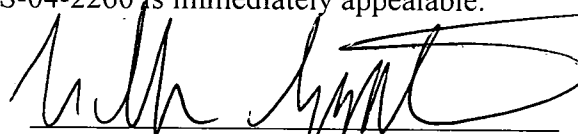
The South Carolina Supreme Court has explained that individuals who qualify for immunity under the Act are completely protected from criminal prosecution. State v. Duncan, 392 S.C. 404, 408, 709 S.E.2d 662, 664 (2011). The Court instructed that this protection is not simply an affirmative defense but functions as a bar to criminal prosecution. Id at 410, 665. Accordingly, requests for immunity pursuant to the Act must be decided prior to trial. Id.

The trial court found that Appellant failed to establish by a preponderance of the evidence that he is immune from prosecution under the "Act". The Appellant appeals this finding. The South Carolina Supreme Court held in Duncan, supra at 407, 709 S.E.2d at 663, n.2:

We find an order granting or denying a motion to dismiss under the Act is immediately appealable, as it is in the nature of an injunction. See S.C. Code Ann. § 14-3-330(4) (Supp.2010) ("The Supreme Court ... shall review upon appeal ... an interlocutory order or decree ... granting, continuing, modifying, or refusing an injunction....").

Therefore the Appellant respectfully asks that this Court issue an Order finding that the trial court's denial of the Appellant's request for immunity from prosecution pursuant to S.C. Code Ann. §16-11-410, et. seq. "Protection of Persons and Property Act" under indictment Nos. 2011-GS-04-1022, 2010-GS-04-2259 and 2010-GS-04-2260 is immediately appealable.

May 13, 2013



William Norman Epps III, #73158
Post Office Box 2167
Anderson, South Carolina 29622
(864) 224-2111
(864) 224-3536, fax
Attorney for Appellant

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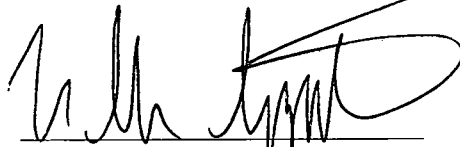
v

Raphael Davon Parks.....Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Memorandum on Appealability, on Rame L. Campbell, Assistant Solicitor for the State of South Carolina, Joshua B. Allen Assistant Solicitor for the State of South Carolina and Don Zelenka, Senior Assistant Deputy Attorney General by depositing a copy of it in the United States Mail, with postage prepaid, on May 13, 2013 addressed to Rame L. Campbell, Assistant Solicitor for the State of South Carolina, Joshua B. Allen, Assistant Solicitor for the State of South Carolina, Post Office Box 8002, Anderson, South Carolina and Don Zelenka, Senior Assistant Deputy Attorney General, 1000 Assembly Street, Columbia, SC 29201.

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William Norman Epps, III
Post Office Box 2167
Anderson, South Carolina 29622
(864) 224-2111
ATTORNEY FOR APPELLANT

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ATTORNEYS AND COUNSELORS AT LAW

PO Box 2167
230 WEST WHITNER STREET
ANDERSON, SOUTH CAROLINA 29622

WILLIAM N. EPPS, JR.
SAMANTHA P. NELSON*
WILLIAM N. EPPS, III
CLIFTON M. SAMS
*Also Admitted in Georgia

May 13, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State vs. Raphael Davon Parks
2011-GS-04-1022
2010-GS-04-2259
2010-GS-04-2260
Our File No.: CR12-2286

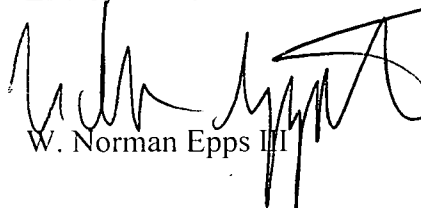
Dear Ms. Kitchings:

Pursuant to this Court's letter dated May 3, 2013 requesting the parties to file a memorandum addressing the issue of appealability, please find enclosed the Appellant's original memorandum in support thereof. Also enclosed, please find the Appellant's Proof of Service.

With kind regards, I am

Sincerely yours,

EPPS, NELSON & EPPS



W. Norman Epps III

WNEIII:ac

cc: Rame L. Campbell, Assistant Solicitor
Joshua B. Allen, Assistant Solicitor
Don Zelenka, Senior Assistant Deputy Attorney General

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