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Dec 16 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton B. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MIKAH NELSON GREEN,

APPELLANT.

APPELLATE CASE NO. 2022-000297

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant immunity under the Protection of Persons and Property Act?

STATEMENT OF THE CASE

Appellant was indicted in Richland County for murder and a weapons charge. R. 627. On February 28, 2022, appellant was tried before the Honorable Clifton B. Newman and a jury. R. 1. Ruston W. Neely and Philip S. Coury represented the State. R. 1. William Michael Duncan represented appellant. R. 1. The jury convicted appellant. R. 603-04. Judge Newman sentenced appellant to thirty-five years' imprisonment for murder and a concurrent term of five years' imprisonment for the weapons charge. R. 623. This appeal follows.

STANDARD OF REVIEW

The appellate courts review a claim of immunity under the Act using an abuse of discretion standard of review. State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013); see also State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Douglas, 411 S.C. at 316, 768 S.E.2d at 237 (internal citation omitted).

ARGUMENT

The trial court erred in denying appellant immunity under the Protection of Persons and Property Act.

Appellant Mikah Nelson Green (“Green”) defended himself from an angry gang member after a dice game. Green testified at the pre-trial immunity hearing that he and the decedent, Stacy Rhodes (“Rhodes”) were friends and often gambled together. R. 66-67. Green went to a friend’s apartment for a cookout. R. 62-63. Friends started gradually showing up to the cookout as the afternoon progressed. R. 64-65.

People started gambling—“rolling dice.” R. 66. Green and Rhodes played dice often. R. 67. About five or six people, including Green and Rhodes, were playing. R. 68-69. Rhodes became angry and Green tried to calm him down. R. 70. Rhodes left to make a phone call. R. 70.

While Rhodes was on the phone, someone “tried to snatch the pot.” R. 70. Rhodes’ roll had already lost, but Green said his temper “just escalated and escalated and escalated.” R. 71. “He ran off, and he came back with a pistol.” R. 71.

When Rhodes returned with the pistol, he was in a car with another man. R. 72. This man was Rhodes’ brother who told Green, “If you pull that gun on my brother, you going to see some gangsta shit.” R. 107. They drove up so aggressively that “people started running because they thought it was going to be a drive-by.” Rhodes then said, “I’m going gun you down on your own blood.” R. 72.

Green explained that the way Rhodes used the phrase “on blood” converted the disagreement into “a gang situation.” R. 76-79. Green said, “He put it on blood that he would kill me. Then—that—when he put it on blood, that’s now gang-related situation and to where

other people are looking like, Oh.....” R. 103. If “someone puts it on a gang, it’s serious and they got to do it. . . .” R. 128. Green explained that he sees people “do dumb stuff all day...just because they put it on a gang.” R. 128.

Someone offered Rhodes the money, but he refused. R. 78. Rhodes was holding a gun and pointing it at Green. R. 78. R. 129. Rhodes said he did not care about the money and that he was going to shoot Green. R. 79. When someone tried to calm Rhodes, he said again, “Oh, I’m about to kill this pussy-ass nigger. On blood, I’m about to kill him.” R. 79. Green could not get in his car because Rhodes told him he would “Swiss cheese” the car. R. 113.

Green heard shots and ran. R. 79. Green returned fire while running away. R. 79. Green said, “And I ran for my life. I had people behind me shooting.” R. 79. He kept running until he could find someplace safe and he did not hear any more shots. R. 79. Green called the police the next day. R. 80. He met the police at Wal-Mart and they took him to the station where he gave a statement. R. 84.

Booker Henley (“Henley”) also testified at the immunity hearing. He saw Green walk away and Rhodes following him with a gun. R. 153-54. They both had guns. R. 153. He heard the gunshots. R. 153. Henley was clear that he saw Rhodes being loud and aggressive and threaten Green. R. 153-54.

At the hearing, the State presented the testimony of Alexia Smith (“Smith”). R. 185-86. Smith saw a lot of men talking loudly. R. 185-86. Smith knew Rhodes and offered him a ride to help calm him down. R. 186. Smith said that a man then walked up and shot Rhodes in the back. R. 186-87. Smith did not identify Green as the shooter.

The trial court denied immunity. R. 197-201. The court reasoned that appellant “was engaged in an illegal activity” because he was gambling. R. 197-201. The court also stated that

appellant was illegally armed with a pistol. R. 197-201. Judge Newman found appellant's testimony not credible and found Smith's testimony credible. R. 197-201.

The trial court erred in denying immunity. Under the Protection of Persons and Property Act:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). During the pretrial hearing, a defendant must show "a valid case of self-defense must exist," excluding the duty to retreat prong, "and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." Id. at 371, 752 S.E.2d at 266.

Green met this standard and the trial judge should have granted immunity. The gambling and possession of a firearm were not illegal acts that deprived appellant of the right to use the statute or the right to defend himself. The illegal act must be the proximate cause of the wrong in order to deprive a defendant of the right to defend himself. See State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 107 (1999).

In State v. Williams, 427 S.C. 246, 830 S.E.2d 904 (2019), the Court held that bringing a gun to a drug deal meant the defendant could not claim self-defense. The Court noted the inherently dangerous nature of a drug deal. Id. But the Court did not foreclose all self-defense when the unlawful possession of a firearm is merely incidental. Id.

A dice game among friends is not the kind of inherently dangerous activity contemplated in Williams. Appellant's possession of a firearm was merely incidental to the dice game and certainly was not the proximate cause of the shooting. Rhodes was the proximate cause of the shooting. Rhodes became enraged and threatened appellant, using a gang oath that meant he could not back down. Smith did not identify appellant as the shooter. Green had the right to defend himself from this dangerous, gang-related attack and the trial judge erred in denying immunity.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of December, 2022.

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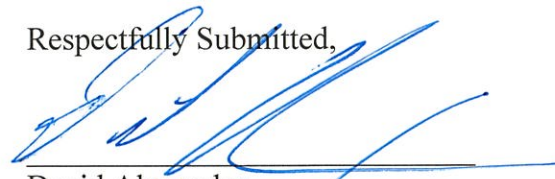
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mikah Nelson Green states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Clifton B. Newman, which was held on February 28 - March 2, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Mikah Nelson Green.

Respectfully Submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of December, 2022.

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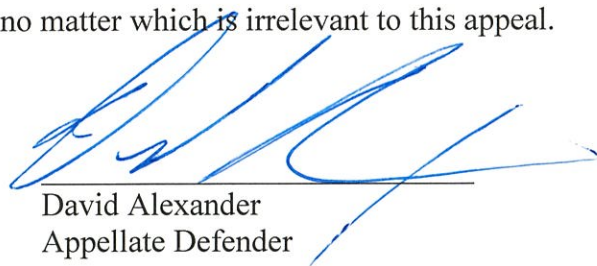
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial transcript dated February 28-March 2, 2022 (Vols. 1, 2 & 3):
- (2) True-billed indictment(s): and
- (3) Sentence Sheet(s)

I certify that this designation contains no matter which is irrelevant to this appeal.



David Alexander
Appellate Defender

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ATTORNEY FOR APPELLANT

This 16th day of December, 2022.


CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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This 16th day of December, 2022.