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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No.: 2023-000943

State of South Carolina — Appellant,

v.

Justin Tyler Anderson — Respondent.

INTIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Court erred in concluding the Respondent was only required to prove by a preponderance of the evidence two of self-defense's elements to be entitled to immunity.

2. Whether the Court erred in not making an actual determination on whether the "without fault for the difficulty" element had been established.

3. Whether Anderson could be found to be without fault in bringing on the difficulty due to to the opprobrious language he used to provoke the physical altercation that occurred with the alleged victim.

4. Whether Anderson did not reasonably need to use deadly force against the unarmed alleged victim at the time he did so.

STATEMENT OF THE CASE

The Respondent concurs with Appellant's Statement of the Case.

STATEMENT OF FACTS

Donna Ferguson, Defendant's mother, owns a hair salon in York County. The salon is located next door to a restaurant and bar which has a large parking lot. The salon has a small parking lot which is marked by several signs giving notice that parking is only for salon customers. (Tr. p. 8 ln. 21 - Tr. p. 13, ln. 7). Ms. Ferguson posted the signs because of problems she had had in the past regarding patrons of the restaurant using her parking spaces. (Tr. p. 13, ls. 8 – 16).

The Defendant, son of Mrs. Ferguson, had the authority to watch the salon when his mother was not present as well as monitor the parking conditions when she was not there. On this evening, he had that authority and watched over the property while his mother had gone to the restaurant to let a customer know that she was ready for her. (Tr.

p. 14, ln. 5 - Tr. p. 15, ln. 3). (Tr. p. 15, ls. 16 -20). Present with Mr. Anderson was his girlfriend Kirsten Michelle Picket, and her 10 year old daughter Bailey who suffers from cerebral palsey (Tr. p. 15 ls. 4 – 15); (Tr. p. 21, ls. 17 – 25).

Prior to the incident another car pulled into the fourth parking spot of the salon. The occupants exited the car and Ms. Pickett told them they were not allowed to park there. They began to walk away and Ms. Pickett told them she was going to call a tow truck. Eventually they returned to the car and pulled away. Two minutes later another car pulled up and began to back into the fourth parking spot. This time the Defendant was waiving at the car to let them know they couldn't park there. The driver's window was rolled up at that time. The driver stopped the car and rolled down the window asking what the problem was. Mr. Anderson told him he couldn't park there. The driver responded to Mr. Anderson that the salon was closed so he could park there. (Tr. p. 22 ln. 25 – p. 25, ln. 18). (Tr. p. 66, ls. 3 – 21).

At that time both men began raising their voices. The man sitting in the car asking the Defendant what his problem was. The driver of the car then exited the car and approached the Defendant who was still behind the car in the third parking spot and who didn't move. The driver came up in front of the Defendant and began poking him at his nose and chest and yelling at him. (Tr. p. 25, ln 24 – p. 26, ln. 24), (Tr. p. 66, ln. 24 – p. 68, ln. 21).

Then the driver returned to his car for a moment and then came back to the Defendant as Ms. Pickett sat a few feet away in her car. The driver of the car then threatened the Defendant by saying that he "was going to fuck him in the ass." When he got close to the Defendant he spat on the Defendant. He then began to return to his car

but turned around again. He then came back, lunging into the Defendant, knocking him into the rear driver's side door of Ms. Pickett's car where Ms. Pickett was sitting in the driver's seat, and the door inside of which her daughter Bailey was sitting. (Tr. p. 27, ln. 5 – p. 29, ln. 1), (Tr, p. 68, ln. 6 – p. 69, ln. 7).

Immediately after the driver knocked the Defendant into Ms. Picket's car, he also swung a fist at the Defendant. While this was happening, the Defendant reached his hand into his pocket to retrieve a utility knife he carries for his work. The Defendant lifted both hands into the air defensively and the knife struck the side of the driver's neck cutting him. It was at this time the driver then backed off of the Defendant. The driver realized he had been cut and went toward his vehicle. The Defendant threw the utility knife up onto the windshield of his van. He then tackled the driver in the parking lot. It was at this time that Ms. Pickett kicked the Defendant and the Defendant released the driver and he went to the restaurant. The Defendant and Ms. Picket remained on the scene, comforted Bailey, and awaited the arrival of law enforcement. Law Enforcement arrived and the Defendant was arrested. (Tr. p. 69, ln. 13 – p. 71, ln. 9).

The driver later admitted to law enforcement and under oath that if he had just stayed in his car and drove somewhere else to park, all of this could not have happened. (Tr. p. 107 ln. 23 – p. 108, ln. 9).

ARGUMENTS

Whether the Court erred in concluding the Respondent was only required to prove by a preponderance of the evidence two of self-defense's elements to be entitled to immunity.

The trial court was correct in concluding the Defendant only had to present evidence by a preponderance of the evidence of two self defense elements. Normally there are four elements that must be satisfied to justify the use of deadly force as self-defense. *State v. Dickey*, 394 S.C. 491, 499 716 S.E.2d 97, 101 (2011); *State v. Duncan*, 392 S.C.404, 411 709 S.E.2d 662, 665 (2011). The elements of self-defense are: (1) The defendant was without fault in bringing on the difficulty; (2) the Defendant actually believed that he was in imminent danger of losing his life or suffering serious bodily injury, or he actually was in such imminent danger; (3) a reasonable and prudent man of ordinary firmness and courage would have entertained the same belief; and, (4) the Defendant had no other probable means of avoiding the danger of losing his own life or sustaining bodily injury than to act as he did in this particular instance. *Dickey*, 394 S.C. 499, 716 D.E.2d at 101.

The trial court found, in citing *State v. Brooks*, 252 S.C. 504, 510 167 S.E.2d 307, 310 (1969) that a business proprietor has the right to eject trespassers from the premises and that the proprietor is without fault in bringing on the difficulty as long as he is engaged in a legitimate exercise in good faith of his right to eject. *State v. Rogers* 130 S.C. 426, 126 S.E.2d 329 (1925).

In the present case, the alleged victim was not only a trespasser, unlike the decedents in *Brooks* who at one point had been invitees, but had been a trespasser from

the beginning. Therefore, the first element of self-defense was never to be a consideration in this case.

Whether the Court erred in not making an actual determination on whether the "without fault for the difficulty" element had been established.

Since the ejectment began immediately upon the alleged victim's entry onto the property, and so at no point was the Defendant in a position to be considered as to be at fault in bringing on any difficulty, as shown above, that element didn't apply in this case and the Court was correct in concluding that. The allegation by the State that the Court didn't specifically make a finding of fact that the Defendant was not at fault is moot since the element didn't apply.

Whether Anderson could be found to be without fault in bringing on the difficulty due to to the opprobrious language he used to provoke the physical altercation that occurred with the alleged victim.

The State argues that due to the language the Defendant used toward the alleged victim at the time the alleged victim refused to leave the property after trespassing, and threatened and used "opprobrious" language toward the Defendant, the Court should have found the Defendant at fault in bringing on the difficulty.

First, as argued above, the Defendant was not required to prove the first prong of self- defense in this case due to *State v. Brooks*, 252 S.C. 504, 167 S.E.2d 307 (1969). The Defendant, from the beginning was dealing with a trespasser as he was authorized to do.

Secondly, if the first prong was required to be shown, there was sufficient evidence that the Defendant was not at fault at bringing on the difficulty. Upon

reviewing the decision of the trial court in a pretrial immunity proceeding, Respondent submits the standard of appellant review is whether there is sufficient evidence in the record to support the finding by the trial court. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). The trial court found that the Defendant was the son of the owner of the salon and the parking lot, and had placed the Defendant in authority to monitor the parking lot while the owner walked up to the restaurant to let a client know she was ready for the client's appointment. Therefore, the Defendant had authority to give notice of trespass and demand trespassers to leave. (Ct. Ord. P. 3 pp. 4 – pp. 7) Further the Court found that the property had been plainly marked regarding non-client parking (Ct. Ord. P 3 pp.8).

The Court also found that at the time the Defendant began to yell at the alleged victim, the victim had trespassed on the property and was continuing to do so and began to yell at the Defendant about his poor attitude. Also, the Court found it was the alleged victim who exited his car and began to move first toward the Defendant. (Ct. Ord. P. 4 pp. 11 – 13.).

Again, it should also be noted that the Court specifically addressed and compared the believability of the witnesses in this matter and found the testimony of the Defendant and Ms. Pickett to be more believable and credible than that of the alleged victim. (Ct. Ord. P. 6 pp. 22).

Whether Anderson did not reasonably need to use deadly force against the unarmed alleged victim at the time he did so.

Once again, in reviewing the decision of the trial court in a pretrial immunity proceeding, Respondent submits the standard of appellant review is whether there is

sufficient evidence in the record to support the finding by the trial court. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011).

The Court found in the record that the physical confrontation was initiated by the alleged victim and that all of the witnesses described how the alleged victim retreated to his car no less than twice and then returned finally starting the physical altercation with the Defendant. The Defendant was concerned about what the alleged victim may have been able to obtain from his car. Because of this, the Court found that both the second and third element had been satisfied. Given the testimony and evidence in the record, the Court made no error in making those findings of fact. Nor did the Court err in finding that the Defendant was in a place where he had a right to be and therefore, had no duty to retreat. (Ct. Ord. P. 9).

CONCLUSION

For the reasons set forth above, the Court made no error in concluding that Defendant established by a preponderance of the evidence the second and third elements of self-defense without having to establish the first and the fourth, and was thus entitled to immunity from prosecution under the South Carolina Protection of Persons and Property Act (S.C. Code Ann. Section 16-11-410, et seq.)

Therefore, the ruling of the trial court should be upheld.

Respectfully submitted,

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