

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS
2018-GS-24-829, 830

STATE of SOUTH
CAROLINA,

-v-

XZARIERA
OKEVIS GRAY,
Defendant.

ORDER

RECEIVED

Jun 11 2024

SC Court of Appeals

Addy, J.

THIS MATTER ORIGINALLY CAME BEFORE THE COURT in a jury trial which began on May 6, 2019 and concluded on May 9, 2019 with a guilty verdict. The case was appealed to the South Carolina Court of Appeals which remanded the case to the trial court so that the Court could make specific findings of fact with regard to Mr. Gray's Castle Doctrine motion which was heard after jury selection but prior to the swearing of the jury. *State v. Gray*, 438 SC 130, 142, 882 S.E.2d 469, 475 (2022).

The Court has previously communicated with the Greenwood Public Defender's Office and the Solicitor's Office concerning this case.¹ The Court has reviewed the trial transcript of the Castle Doctrine hearing as well as my notes and those of my law clerk. The Court's recollection of this case and the testimony is crystal clear; accordingly, further hearing is unnecessary, and the Court issues this Order based upon the record, the Court's notes, and the Court's recollection.

FINDINGS OF FACT AND ANALYSIS

In a Castle Doctrine hearing, the Defendant must demonstrate his entitlement to the protections of Section 16-11-440 by the preponderance of the evidence. *State v. Jones*, 416 SC

¹ At trial, Mr. Gray was represented by Chief Public Defender Janna Gregory who has now retired. Neither the State nor the Public Defender requested a hearing.

283, 290, 786 S.E.2d 132, 136 (2016) (quoting *State v. Curry*, 406 SC 364, 370, 752 S.E.2d 263, 266 (2013)). Although not decided at the time of Mr. Gray's trial, *Andrews* and *McCarty* require the trial court to make specific findings of fact so that appellate courts may review the grant or denial of immunity.¹ *State v. Andrews*, 427 SC 178, 830 S.E.2d 12 (2019); *State v. McCarty*, 437 SC 355, 878 S.E.2d 902 (2022).

At the immunity hearing, the Defendant testified in support of his immunity claim. The State called Jeovani Vaquez, Raymond Kennedy, and Ricky Grant in reply.

The Defendant essentially testified as follows: The decedent, Demetrius Fuller, a.k.a. "Meatball," was the initial aggressor. Defendant and the decedent had experienced prior difficulties roughly two weeks before the homicide which involved the decedent's brother. Defendant, decedent, and Mr. Grant go to a local club together. Defendant stayed outside the club while the others went in for several hours. Defendant never saw decedent with a gun. Mr. Grant and Defendant subsequently leave the club and return to Mr. Grant's house. Later, the decedent returns to the house and begins an argument with Defendant concerning the decedent's brother, and Mr. Grant asks Defendant and decedent to leave his house. Immediately outside the residence, the argument turns physical with decedent throwing the first punch. Per the Defendant, only he and decedent were outside. In the ensuing tussle, Defendant says that decedent reached for a gun in decedent's waist, the Defendant then grabs the gun, stumbles back, and fires. The Defendant maintained that he had seen decedent with a gun previously, that he fled the scene out of fear of the decedent's family who lived in the vicinity, and that he didn't call the authorities out of fear for his family's safety. On cross, the Defendant admitted to being in violation of his bond conditions that night and asserted that he and decedent were roughly



twenty (20) feet apart when the shot was fired. He also denied ever seeing decedent with a gun that evening prior to the altercation.

Jeovani Vacquez was called only to authenticate a video camera he installed at his residence which recorded the shooting. The admittedly grainy video was played for the court, and I vividly recall its contents.

Raymond Kennedy was called by the State and testified as follows: He had been hanging out with decedent at Mr. Grant's house. Mr. Grant, Defendant, and decedent went to the club, and decedent did not come back with them when Mr. Grant and the Defendant returned. The decedent subsequently returns and was asking Defendant about his gun. The decedent was visibly upset about his missing gun which Defendant denied taking. Decedent said something about having left the gun in Mr. Grant's car. The decedent then leaves, returns to the house after roughly thirty minutes, and again confronts Defendant about decedent's missing gun at which point the fight started which was witnessed by Mr. Kennedy. Mr. Kennedy also stated that others were present who witnessed the incident, including the Defendant's brother who was standing near the Defendant. Mr. Kennedy said they were about six (6) feet apart when the fight started, and the decedent stated that the Defendant was the only person who knew where decedent had put his gun.

Ricky Grant was the last witness called by the State and testified as follows: He, Defendant, and decedent went to the club together. The decedent put his gun in some bushes prior to entering the club. Mr. Grant denied that he had agreed to take Defendant back to Defendant's home after they left the club. Consistent with Mr. Kennedy's testimony, Mr. Grant testified that the decedent came to the house asking about a gun, that Defendant denied taking the decedent's gun, that the decedent left and returned a short time later again asking about the



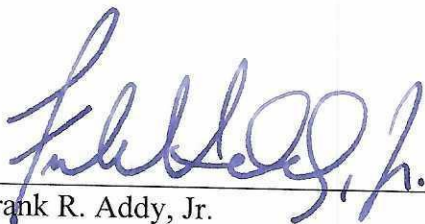
gun. Although not an eye witness to the fight or the shooting, Mr. Grant indicated that Defendant appeared to be in shock after the shooting. He also indicated that he never really hung out with the decedent and that he may have told the authorities that the decedent had left the gun in Mr. Grant's car before entering the club.

At trial, the Court found that Defendant had not proven his entitlement to the protections of Section 16-11-440 by the preponderance of the evidence, and the Court reaffirms this ruling. The testimony of Mr. Grant and Mr. Kennedy is more reliable and credible than that of the Defendant for the following reasons. First, Mr. Grant and Mr. Kennedy are neutral witnesses who have no stake in the outcome of the trial. Second, the Defendant's version makes little sense. His assertion - that everyone amicably rode to the club together without any argument or dispute, and the decedent later returns to the house to rekindle, abruptly and without provocation, the dispute involving his brother from two weeks prior - is quite unbelievable. Finally, and most importantly, Mr. Kennedy, again a neutral witness, established that all of this was clearly over a gun. If the decedent was armed when he returned to the house as the Defendant maintained, why would he be confronting the Defendant about stealing the very gun with which he was armed? Mr. Grant established to the satisfaction of the Court that the decedent left his gun outside the club and that Defendant very likely took the gun. In short, the Defendant's version of events is illogical and not credible in light of the other testimony and evidence presented at the Castle Doctrine hearing. Having concluded that the most likely scenario is that Defendant appropriated the decedent's gun while waiting outside the club, the Defendant is not entitled to immunity as he is at fault in bringing on the difficulty. Therefore, he failed to meet his burden of proof by the preponderance of the evidence, and the Court properly submitted the matter to the jury for their consideration on the merits.



WHEREFORE, for the reasons stated above, Mr. Gray's motion for immunity pursuant to Section 16-11-440 is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Resident Judge, Eighth Judicial Circuit

May 24, 2024
Greenwood, South Carolina

ⁱ *Semper ad meliora*. Although the Court fully appreciates, and has attempted to comply with, the holding in *McCarty* and the remand instructions from the Court of Appeals, I would suggest perhaps a preferable procedural rule going forward with respect to cases in which the appellate courts find an insufficient factual finding was made in Castle Doctrine cases. Established precedent dictates that a court's denial of immunity is not immediately appealable, whereas a finding of immunity is immediately appealable. *State v. Isaac*, 405 S.C. 177, 747 S.E.2d 677 (2013). The logic behind this rule is that a court granting immunity effectively ends the case; accordingly, the State should have the opportunity for appellate review of the trial court's decision.

With regard to motions for summary judgment, a similar rule exists. An order granting summary judgment is immediately appealable because such an order ends the case. *Brandt v. Gooding*, 368 SC 618, 625, 630 S.E.2d 259, 262 (2006) (citing *Royster Co. v. Eastern Distribution, Inc.*, 301 SC 18, 20, 389 S.E.2d 863, 864 (1990)). However, an order denying summary judgment is not immediately appealable. *Mitchell v. Mitchell*, 276 SC 44, 45, 275 S.E.2d 1, 1 (1981). The logic behind this rule is that, if a motion for summary judgment is erroneously denied, the court makes no ruling on the merits, and the moving party is not prejudiced because they can still proceed to trial. *Osborne v. Allstate Ins. Co.*, 319 S.C. 479, 462 S.E. 291 (Ct. App 1995).

As a practical matter, Castle Doctrine cases will be reviewed by the appellate courts in only one of two instances: (1) either the trial court grants the defendant's motion, thereby effectively ending the case or (2) the trial court denies the motion, the case proceeds to a jury verdict, and a conviction is obtained. In the first instance, detailed findings of fact are essential in order for the appellate courts to do their job. In such cases, although due deference is given to the trial court which had the ability to pass upon the credibility of the witnesses, the appellate courts are still at liberty to make their own finding of fact. *State v. Cervantes-Pavon*, 426 SC 442, 451-452, 827 S.E.2d 564, 569 (2019). However, in cases where a trial court may deny immunity and a jury unanimously finds the Defendant guilty beyond a reasonable doubt, an appellate court is extremely unlikely to find facts contrary to the jury's findings. *State v. Curry*, 406 SC 364, 370-372, 752 S.E.2d 263, 266-267 (2013). Castle Doctrine and self-defense are similar in many respects and constitute closely related defenses. *Id.* at 371. In that sense, if a jury rejects a claim of self-defense and finds a defendant guilty, any insufficiently factually articulated denial of the Defendant's Castle Doctrine motion by the Court is of no import because the jury has found against the defendant beyond a reasonable doubt. Just as in civil cases where a court may erroneously deny summary judgment to a civil defendant, a defendant in a criminal trial suffers no prejudice to the erroneous denial of his motion if he is acquitted at trial, and obviously an acquittal by a jury cannot be appealed by the State. This very logic undergirds the holding in *Isaac*, *supra*.

Furthermore, for an appellate court to conclude, taking the appellate court's own view of the evidence and testimony from the cold record, that a defendant has met his burden of proving entitlement to immunity by a preponderance of the evidence would require an appellate court to reject the jury's finding of guilt beyond a reasonable doubt. In this case, the Defendant gave essentially the same testimony to the jury in his case in chief as he gave to the Court at his immunity hearing. Just as the Court did, the jury rejected his version of events. Therefore, this remand for the Court to "make specific findings that support [the Court's] determination of whether Gray is, or is

not, entitled to immunity under the Act” constitutes little more than busywork because the jury has, for all intents and purposes, spoken on this very issue.

Additionally, going forward practical issues may well arise with appellate courts remanding cases in the manner in which Mr. Gray’s case was. Judges may leave the bench, become incapacitated, pass away, or (God forbid) seek an appellate court seat. In such cases, even if another judge were to be assigned to hear the case, that judge would be at a substantial disadvantage in that they did not have an opportunity to pass upon the credibility of witnesses at trial.

For the reasons expressed above, this judge would humbly suggest that the admittedly wiser appellate courts may wish to consider modifying the procedural rule as promulgated in *Andrews* and *McCarty*.





State of South Carolina
The Circuit Court of the Eighth Judicial Circuit

Frank R. Addy, Jr.
Judge

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May 24, 2024

The Honorable Chastity ^{Copeland} Copeland
Greenwood County Clerk of Court
Via Hand Delivery

Re: State v. Xzariera O. Gray
2018-GS-24-829, 830
Appellate Case No. 2019-001109


Dear Madam Clerk,

Please file the attached Order in the above case. This Order is my effort to comply with the instructions from the Court of Appeals on remand in the case of *State v. Gray*, 438 S.C. 130, 882 S.E. 469 (2022).

By copy of this letter, a copy of the Order is being forwarded by email to counsel listed below.

Thank you for your attention and assistance.

Sincerely,



Frank R. Addy, Jr.

Enclosure

Cc: Chelsea McNeill, Esq.
The Hon. David Stumbo
Josh Thomas, Esq.
Susan Barber Hackett, Esq.
Deputy Attorney General Don J. Zelenka
Janna Gregory, Esq. (courtesy copy)
The Hon. Aphrodite Konduros (courtesy copy)