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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDY E. SELF,

APPELLANT

APPELLATE CASE NO. 2023-001407

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by denying immunity without making sufficient findings of fact and conclusions of law for this Court to review, and by reasoning appellant was not without fault in bringing on the difficulty because he went outside of his own apartment, rather than stayed inside his apartment, after the decedent had attacked him inside of the apartment with a knife, since appellant had the right to go outside onto the curtilage of his own dwelling, he no duty to retreat, and he had the right to stand his ground when the decedent tried to attack him again outside the front door of his apartment pursuant to S.C. Code § 16-11-440(C)?

STATEMENT OF THE CASE

Appellant was indicted at the September 2021 term of the Lexington County grand jury for the offense of murder. R. p. *. His case was called to trial on August 21, 2023, before the Honorable Walton J. McCleod, IV, and a jury. Stephen Story, Jr., and David Mauldin represented appellant. Robert McNair, III, and Lucas Pincelli were the assistant solicitors. Tr. 1.

An immunity hearing was held on August 21, 2023 on appellant's motion for immunity pursuant to S.C. Code § 16-11-440(C). Tr. 4, ll. 4-18. R. p.* (Motion for Immunity).[1] The judge orally and summarily denied immunity at the conclusion of the hearing.[2] Tr. 90, l. 8 – 91, l. 2.

At the conclusion of the trial on August 24, 2023, the jury found the appellant guilty of murder. Tr. 160, ll. 22-24. Defense counsel told the judge that appellant was sixty-seven years old, and he was sixty-four or sixty-five years old at the time of his arrest. Tr. 167, ll. 2-5. The judge sentenced appellant to thirty-years imprisonment. Tr. 168, ll. 4-7.

This appeal follows.

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[1] The cites to the transcript in this brief are to the August 21, 2023, immunity hearing taken by court reporter, Keshia Reed, and not the jury selection taken by court reporter, Stacy Johnson. Each volume of the trial was numbered separately by separate court reporters for each day of court.

[2] The judge stated: "Ordinarily, we have a little more time, but I do a written ruling…" Tr. 90, ll. 24-25. However, trial counsel Stephen Story, stated that no written order denying immunity was ever filed in this case.

STANDARD OF REVIEW

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016), *citing* State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013); State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (recognizing that the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence). 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. State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) *citing* State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

ARGUMENT

The court erred by denying immunity without making sufficient findings of fact and conclusions of law for this Court to review, and by reasoning appellant was not without fault in bringing on the difficulty because he went outside of his own apartment, rather than stayed inside his apartment, after the decedent had attacked him inside of the apartment with a knife, since appellant had the right to go outside onto the curtilage of his own dwelling, he no duty to retreat, and he had the right to stand his ground when the decedent tried to attack him again outside the front door of his apartment pursuant to S.C. Code § 16-11-440(C).

Relevant Facts

Appellant, Randy Self, was the first witness at the immunity hearing. Randy testified that he was attending a birthday party for one of his neighbors in their apartment building, Elizabeth Bumpmin, along with some of his other friends on the afternoon of June 6, 2020. Tr. 5, ll. 14-22. Randy's roommate, decedent Stephen Stelloh, was also at the birthday party. Tr. 6, ll. 11-14.

Randy recalled that later in the afternoon, they decided to go to "a strip joint over in West Columbia." Tr. 6, ll. 17-18. After that, they went to Calloway's Tavern and Pool Hall to shoot pool and play darts. Tr. 6, l. 11 – 7, l. 6. Randy remembered that they left Calloway's at about 1:30 a.m. in the morning on June 7, 2020, "when the placed closed." Tr. 7, ll. 12-14. Randy and the decedent were then dropped off in the parking lot of their apartment complex. Tr. 7, l. 15 – 8, l. 1.

Randy remembered that he was discussing "a girl" they met at Calloway's with the decedent when they arrived home. Appellant then asked the decedent if he was going to "be able to pay any on the rent this coming Friday because he was a couple months behind on paying his half of the rent." Tr. 8, ll. 2-8. The decedent told Randy: "I don't know, we'll see. And then

quick as he said that he said why you want to fight about it, and I said, no, not really." Tr. 8, ll. 2-11.

They both went inside the apartment. The decedent had some chicken wings that he had purchased at Calloway's, and he went into his bedroom. Randy washed his hands in the bathroom and when he came outside of the bathroom, he had intended to go outside to smoke a cigarette. However, he saw the decedent coming down the hall at him with a knife in his hand. Tr. 8, ll. 3-25. The knife had a long silver blade and the decedent pushed Randy up against the wall and put his arm under his throat. "And he told me he was tired of me asking him about money all of the time, and he put the knife to my neck and told me he would cut my head off." Tr. 9, ll. 2-10. The much younger stronger decedent told the sixty-four-year-old Randy: "I'll F you up and cut your head off," and pushed him up against the wall again.[3] Tr. 9, ll. 2-22.

Randy was surprised or stunned by the decedent's actions, but he did not fight back. The decedent "kneed me in the groin and I went down to one knee. And when I went down on one knee I [struggled] to get back up. And when I got back up, I seen [saw] where he had done went out the front door. And on the way out [of] the door, he had laid the knife down on the arm of my couch, which was sitting beside the entrance in my apartment." Tr. 10, ll. 15-24.

While the decedent put the knife down when he went outside, he left the front door to the apartment open. Randy got off of the floor, and he testified he wanted to "get rid of that knife." He picked up the knife on his way out of the door, but when he walked out of the apartment door, the decedent was there. He "squared off at me like he was wanting to fight, and he said where are you going?" Randy told the decedent that he just wanted to leave but the decedent

[3] The decedent was five-foot eight or five-foot nine, but he weighed two-hundred and sixty-five pounds or more. Appellant, Randy Self, was sixty-four years old. He stood six-foot three and he weighed one-hundred and eighty-five pounds. Tr. 11, ll. 1-10.

told him "you ain't going nowhere." The decedent threatened to take the knife away from Randy and "cut your head off." Tr. 11, ll. 14-24.

Randy backed up when he was threatened again by the decedent, and he recalled that his back was literally against the wall. The decedent continued to threaten him, and he kept grabbing at his arm. The decedent swung at him but missed. When the decedent swung at him a second time, he connected and hit Randy. Randy testified that he was almost knocked out by the punch. The decedent swung at Randy again, but he missed. "But when he miss[ed], I done swung that knife at him and caught him in the side." Tr. 12, ll. 6-24.

Appellant related that he was scared at the time because he was being threatened by the decedent. When the decedent fell to the ground, "I caught him. And he said help, I'm sorry, man, I didn't mean, I'm sorry and like that. And so, he fell on down to the ground right in front of my door and it scared me." Tr. 13, ll. 2-8. Randy threw the knife over the fence at that point. Tr. 13, ll. 9-11.

On cross-examination, Randy said that the knife involved came from the chicken plant where they both worked. Tr. 14; Tr. 41. Randy admitted that he lied to the police when they arrived because he was in shock about what had just occurred. Tr. 45-46. Randy agreed to go to the police station to talk with the police about what had happened. Randy was eventually arrested at the police station and taken to the Lexington County Detention Center. Tr. 54, l. 4 – 55, l. 17.

He called his friend Leon Moore, to see if Moore could pick up his truck since appellant was in jail. Randy told Moore that the decedent had attacked him again and Randy said he chased the decedent out of the apartment. Randy testified that he did not literally chase the decedent out of the apartment, and that he was only giving Moore the "short version" of what

actually occurred. Tr. 54, l. 4 – 55, l. 17. "I wasn't chasing him. I walked outside and the guy was waiting for me to come outside." Tr. 55, ll. 14-17.

Investigator Thomas Todd of the City of West Columbia Police Department testified that he arrived at the scene of the stabbing at the apartment at 2:26 a.m. When he went into the apartment, he saw bloody shoe prints going into the apartment in the direction of the kitchen. Tr. 67, ll. 6-11.

Todd met Randy at the police station at about 4:12 a.m., and he interviewed him. Todd said Randy told him that he lived with the decedent, but the decedent lost his job at the chicken plant at the beginning of March 2020. Todd testified that Randy told him that he was home for about thirty minutes on the night of the fatal incident when the decedent came home and was attempting to put his key into the lock. Randy told Todd that when he opened the apartment door for the decedent, the decedent "told him he had been fighting before he had collapsed to the ground. At the time point, Randy told me that two other individuals had walked up, and the defendant told me had called 9-1-1." Tr. 73, ll. 10-25.

Randy also informed Todd that he got a towel from the back bedroom to assist the decedent with. Todd testified that the bloody shoeprints inside the apartment were consistent with the shoes that Randy was wearing at the time. Tr. 73, ll. 10-25.

Todd maintained that Randy later "changed his story" by telling him he had been to Calloway's earlier that night with some friends. Tr. 74, ll. 3-14. Todd said he obtained surveillance footage from Calloway's which showed the decedent was at Calloway's with Randy that evening, and they left together at 1:24 a.m. The 9-1-1 call came in at 1:39 a.m. Todd offered that Calloway's was only a few minutes from Randy's apartment. Tr. 75, ll. 15-25.

As to injuries suffered in the altercation, Todd maintained that Randy had "a small blemish" on his nose but that he was not bleeding, [nor did he have] any other marks on his face. Tr. 75, ll. 15-25.

Arguments of counsel

Defense counsel Story argued that the evidence showed Appellant Randy Self was entitled to immunity under S.C. Code § 16-11-440(C). Appellant was in his own apartment, where he had the right to be. He was not engaged in any unlawful activity when the decedent attacked him inside of his own apartment. The decedent pushed appellant against the wall, smashed his head against the wall, and kneed him in the groin. The decedent made other threats and then left the apartment. Appellant walked outside the apartment after arming himself with the knife the decedent had threatened him with, but the decedent attacked him again outside. The decedent swung at appellant but missed him. However, when he swung again, he hit appellant on the side of his head. Tr. 84, l. 10 – 85, l. 1.

Defense counsel continued that the decedent was seventy-pounds bigger than appellant and he was much younger. The decedent was only thirty-eight years old, and quicker and stronger than appellant. In addition, the decedent was trying to grab the knife away from appellant while threatening him outside the apartment. Tr. 85, ll. 2-15.

The solicitor admitted appellant was in his own home and he no duty to retreat. However, the solicitor argued that appellant had given several versions of what actually occurred. The solicitor maintained it was not reasonable to think someone -- appellant -- would follow someone outside of their apartment after being threatened with physical harm inside of the apartment. The solicitor noted that in State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct.

App. 2014), the photographs showed serious injuries to Douglas. Here, appellant did not suffer "massive swelling, cuts, or bruises." Tr. 86, ll. 1-16.

The solicitor added that appellant told Leon Moore on the jail call that he chased the decedent out of the apartment with a knife, and the solicitor maintained that brought on the difficulty. Tr. 87, ll. 15-23. The solicitor also asserted that once the decedent left the apartment, the difficulty was over. "The first time Mr. Self said anything about the victim having a knife, it was in today's hearing." He argued appellant had admitted lying to several different people, that granting immunity would not be proper, and that self-defense was a jury issue in this case. Tr. 88, l. 4 – 89, l. 11.

Defense counsel responded that the photographs did show injuries to appellant's face and his nose. Defense counsel also correctly argued that appellant had the right to go outside of his apartment, the same as he had a right to be inside of his apartment. Tr. 89, l. 13 – 90, l. 7.

The judge's ruling

> THE COURT: All right. Well, we've heard a lot of testimony from the stand. We've heard a jail call. We've seen photographs. We saw a portion of the body cam. And in light of all the evidence I heard in this hearing, it's my finding that there's not been a preponderance of the evidence met to warrant immunity in this situation. I certainly – I do think the testimony I've heard or seen [about] the knife on the couch arm and going to grab the knife. *And then from what I've heard go outside where the victim had gone to meet certainly contributed to the difficulty. Defendant in this case certainly was not without fault in bringing on the difficulty.* I received credibility as an issue here based upon all the evidence we've heard today. You can't simply just deny immunity because they're conflicting stories, but I think we have a failure of the elements required to be proven by the preponderance of the evidence. Ordinarily, we have a little more time, but I do a written ruling. But that's where I am at this point, okay.

Tr. 90, l. 8 – 91, l. 2. (emphasis added).

Discussion

The court erred by finding that appellant brought on the difficulty by going outside of his own apartment after the decedent had gone outside and left the knife behind. This finding flies in the face of the rights granted by S.C. Code § 16-11-440(C):

> 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.

(emphasis added).

In State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014), this Court held that a person's home is a place he has a right to be within the meaning of the statute.[4] Thus, appellant here, just like the defendant in Douglas, had no duty to retreat, he had the right to stand his ground, and he had the right to meet force with force when the decedent attacked him again outside of the front door of his apartment.

If the stand-your-ground provision of S.C. Code § 16-11-440(C), is to be interpreted consistent with its legislative intent, it did not require appellant to cower inside his apartment, to lock the door and hope the decedent, who had a key to the apartment, did not return. The decedent was the wrongdoer according to the evidence offered at the immunity hearing, and appellant was not obligated to hide from him in the hope the decedent did not harm or kill him. See S.C. Code Section 16-11-420 (E)("The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack").

[4] Certiorari dismissed as improvidently granted.

Further, as in State v. Douglas, appellant had the right to take the weapon, the knife, with him after he had been attacked by the decedent inside of his own apartment. See State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007).

In State v. Jones, 416 S.C. 283, 486 S.E.2d 132 (2016), our Supreme Court also held that a person's residence was "another place" he had a right to be under the stand your ground provision of the statute. In Jones, the defendant, Whitlee Jones, was living with her boyfriend in their shared residence.

In Jones, the defendant and her boyfriend were involved in a physical altercation over a cell phone the boyfriend had given to the defendant. Defendant Jones testified that her boyfriend began pushing her and punching her as she attempted to leave the apartment. On outside of the apartment, her boyfriend grabbed her by her hair and dragged her part way down the street.

The defendant returned to the apartment after she "cooled down." When she opened the door to the apartment, she observed her boyfriend throwing her things around. The boyfriend followed her around the apartment making sure she did not take any of his possessions. When she went upstairs to get her shoes, the defendant noticed a knife and grabbed it for protection. Her boyfriend began yelling at her again and he was physically pushing her. The defendant believed that her boyfriend was getting ready to hit her again and she stabbed him one time in the chest and ran out of the apartment. Our Supreme Court agreed that Defendant Jones was entitled to immunity given these facts.

Respectfully, given the logic of the trial judge in this case, the defendant in Jones should not have gone back inside of her apartment after her boyfriend had assaulted her outside of the apartment. She should have anticipated that another altercation might occur if she went back

inside of her apartment knowing her boyfriend was there. Therefore, she was not without fault in brining on the difficulty, and she would not have been entitled to immunity.

However, the stand-your-ground provision of the Protection of Persons and Property Act, S.C. Code § 16-11-440(C), does not require the defendant to run away from his or her own dwelling or conversely to hide inside that dwelling because they fear they may be attacked again by their roommate in "another place" where they have the right to be. That is counter to the spirit and intent of the stand your ground statute.

Quite simply, appellant here did not create the difficulty, and the judge erred as a matter of law by finding appellant created the difficulty by going outside the door of his own apartment with the knife after the decedent had put the knife to his throat inside of the apartment and threatened to kill him. Further, it is certainly reasonable to conclude that appellant was not sure where the decedent had gone after he had attacked him. Appellant may have been surprised the decedent stayed around after attacking him with a knife.

Finally, the Protection of Persons and Property Act requires the judge to determine whether the moving party is entitled to immunity. See State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). The court "must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act." State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 864, 868 (2019).

In State v. Cervantes-Pavon, our Supreme Court remanded for a new immunity hearing, and for the judge to make proper findings of fact and conclusions of law. In this case, the judge indicated that he would issue a written order, apparently because he felt the pressure of the impending trial and further pre-trial motions. "Ordinarily, we have a little more time, but I do a written ruling." Tr. 90, ll. 24-25. However, the judge here never issued a written order.

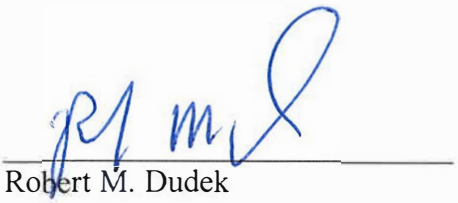
As in State v. McCarty, 437 S.C. 355, 878 S.E.2d 902 (2002), this Court should order another immunity hearing for appellant together with a directive the judge make proper findings of fact and conclusions of law since the trial court abdicated its responsibility by issuing only an oral ruling denying immunity that was less than one-page of the transcript long. Tr. 90, l. 8 – 91, l. 1.

Moreover, as in State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019), the trial court abused its discretion by failing to address the elements of self-defense finding only, and erroneously, that appellant brought on the difficulty by going outside of his apartment after he was attacked by the decedent inside. "While we understand that written orders are not always practical given the timing of the immunity hearings, the circuit court, in announcing its ruling, should at least make specific findings on the elements of self-defense. See State v. Glenn, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019) *citing* State v. Cervantes-Pavon, 426 S.C. 442, 452 n. 4, 827 S.E.2d 864, 869 n. 4 (2019) (specific findings of fact and conclusions of law are critical to a reviewing court, particularly given the gravity of the circumstances these cases necessarily involve).

The judge in this case did not make proper findings of fact and conclusions of law. The judge also erred by finding appellant brought on the difficulties by going outside the front door of his own apartment. Therefore, this case should be remanded to the circuit court for a new immunity hearing with proper findings of fact and conclusions of law to follow that hearing.

CONCLUSION

Based on the foregoing argument, this Court should reverse the decision of the circuit court's ruling denying immunity and remand this case to the Lexington County Court of General sessions for a new immunity hearing with proper findings of fact and conclusions of law to follow.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of July, 2024.

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APPELLANT

APPELLATE CASE NO. 2023-001407

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randy E. Self states:

1. He is Chief 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 Walton J. Mcleod, Iv, which was held on August 23-24, 2023, 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 Randy E. Self.

Respectfully Submitted,

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

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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) True-billed indictment;
(2) Entire Trial Transcript;
(3) State's Exhibit #16 (Jail Call);
(4) Motion for Immunity.

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

Robert M. Dudek
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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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."

Robert M. Dudek
Chief Appellate Defender

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Randy E. Self, #231613, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 24th day of July, 2024.

Robert M. Dudek
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ATTORNEY FOR APPELLANT