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SC Court of Appeals

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

Benjamin H. Culbertson
Resident Circuit Judge

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October 24, 2024

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Columbia, SC 29201

RE: *State v. Calvin D. Ford*
Indictments: 2017GS2602912 – 2017GS2602915

Dear Attorneys:

Please find enclosed a copy of the Order Denying Immunity From Prosecution in the above referenced case issued at the direction of the SC Court of Appeals. I apologize for the delay in getting this to you. As you now know from the email chains in this case, I thought the order had been signed on 9/15/2023 and filed with the Horry County Clerk of Court. That was an oversight on my part.

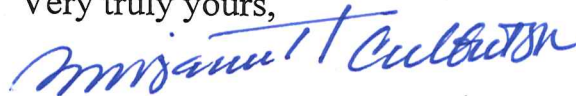
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Under copy of this letter, I am forwarding the original order to the Horry County Clerk of Court for filing.

With kindest regards, I remain

Very truly yours,



Benjamin H. Culbertson

BHC/bhc
Enclosure (a/s)
Natalie Stevens, Deputy Clerk of Court
Erin Smith, Deputy Clerk of Court

in self-defense and denies shooting Damian Alston.

Jamal Burgess was known to carry a gun.⁴ He was also known to be violent and had assaulted the defendant on a previous occasion by knocking out the defendant's teeth with a pistol.⁵ The defendant was afraid of Jamal Burgess from this prior altercation⁶ and thought that Jamal Burgess wanted to kill him.⁷

During the evening of July 23, 2016, while at a birthday party, Jamal Burgess was angry and aggressive toward the defendant.⁸ Damian Alston intervened and tried to calm the situation by getting between the defendant and Jamal Burgess. The defendant contends that both Damian Alston and Jamal Burgess had guns.⁹ He alleges that Jamal Burgess pushed Damian Alston, causing Damian Alston's gun to fall to the ground; that Jamal Burgess pulled out his gun and began shooting at the defendant; that the defendant picked up Damian Alston's gun and returned fire in self-defense, killing Jamal Burgess.¹⁰ The defendant denies that he shot Damian Alston and does not know who shot Damian Alston.¹¹

In contrast to the defendant's evidence, the State presented evidence that neither Jamal Burgess nor Damian Alston had guns, that the defendant was the only person with a gun and that the defendant instigated the altercation by pulling out his gun and firing shots at Jamal Burgess first.¹²

⁴ *Transcript*, p. 25, lines 17-19. Testimony of Everett Ford. *Transcript*, p. 70, lines 11-15. Testimony of Defendant.

⁵ *Transcript*, p. 28, line 24 – p. 30, line 17. Testimony of Everett Ford.

⁶ *Transcript*, p. 63, line 13 – p. 65, line 23; p. 67, lines 14-25; p. 111, lines 15-25. Testimony of Defendant.

⁷ *Transcript*, p. 68, line 1 – p. 70, line 15. Testimony of Defendant.

⁸ *Transcript*, p. 26, line 8 – p. 28, line 8. Testimony of Everett Ford.

⁹ *Transcript*, p. 32, line 2 – p. 34, line 10. Testimony of Everett Ford.

¹⁰ *Transcript*, p. 73, line 18 – p. 80, line 13; p. 97, line 16 – p. 99, line 10. Testimony of Defendant.

¹¹ *Transcript*, p. 79, lines 3-8; p. 80, lines 2-6. Testimony of Defendant.

¹² *Transcript*, p. 131, lines 18-19. Testimony of Elizabeth Holoman. *Transcript*, p. 136, line 13 – p. 139, line 15; p. 149, line 23 – p. 150, line 13; p. 156, lines 2-12. Testimony of Felicia Denise Williams. *Transcript*, p. 159, lines 6-13; p. 161, line 16 – p. 162, line 2; p. 170, lines 6-13. Testimony of Sherika Gore. *Transcript*, p. 175, lines 12-23. Testimony of Chris Turner.

CONCLUSIONS OF LAW

The *Protection of Persons and Property Act* (the Act) states as follows:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be...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....¹³

The Act further provides that “[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force....”¹⁴

A defendant is entitled to a pre-trial ruling by the circuit court to determine whether or not the defendant is entitled to immunity from prosecution under the Act. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). The defendant bears the burden of proving by a preponderance of the evidence that he has a valid claim of self-defense, saving and excepting the duty to retreat. *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013). A preponderance of the evidence means the greater weight of the evidence. It is evidence which, as a whole, shows that the fact sought to be proved is more likely true than not true. *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S. Ct. 1953, 138 L. Ed. 2d 327 (1997). Self-defense requires that: 1) a defendant must be without fault in bringing on the difficulty; 2) the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; 3) if the defendant believed he was in imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief or, if the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary

¹³ Code §16-11-440(c)

¹⁴ Code §16-11-450(A)

prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and 4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did. *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984). The last element of self-defense, the duty to retreat, is not required for a defendant to have immunity from prosecution under the Act. *State v. Curry*, *id.*

In the case at hand, the defendant alleges that he is entitled to immunity from prosecution under the Act because he acted in self-defense. However, the defendant asserts that he did not shoot or kill one of the victims, Damian Alston. He asserts that someone else did. Therefore, his defense to that alleged murder is not self-defense but, rather, that someone else committed the crime. The Act does not provide immunity from prosecution when a defendant claims that he did not commit the crime. Whether or not the defendant shot and killed Damian Alston (not whether or not the defendant acted in self-defense) is a question of fact to be determined by a jury at trial. Therefore, as a matter of law, the defendant is not entitled to immunity from prosecution under the Act for the alleged murder of Damian Alston.

As to the alleged murder of Jamal Burgess, possession of a weapon by a felon and possession of a weapon during the commission of a violent crime, the State presented evidence that the defendant was at fault in bringing on the difficulty. The State's evidence is in direct contrast to the evidence presented by the defendant and is as equally compelling as the evidence presented by the defendant. Therefore, the defendant failed to prove that it is more likely true than not true that he was not at fault in bringing on the difficulty, thus failing to prove that element of self-defense by a preponderance of the evidence. The defendant failed to meet the burden of proof required for immunity from prosecution. Therefore, as a matter of law, the defendant is not entitled

to immunity from prosecution under the Act for the alleged murder of Jamal Burgess, possession of a weapon by a felon and possession of a weapon during the commission of a violent crime.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the defendant's Motion for Immunity from Prosecution in this case is DENIED.

AND IT IS SO ORDERED.



Benjamin H. Culbertson
Presiding Judge

October 24, 2024
Georgetown, SC