

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County

R. Marklev Dennis, Jr. Circuit Court Judge

THE STATE.

RESPONDENT

V.

BRANDON GREENE.

APPELLANT

APPELLATE CASE NO. 2012-212903

Pro SE BRIEF OF APPELLANT

BRANDON GREENE
Appellant

Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

APPELLANT

RECEIVED
OCT 17 2013
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS.....

TABLE OF AUTHORITIES.....

STATEMENT OF ISSUE ON APPEAL.....

STATEMENT OF THE CASE.....

ARGUMENT.....

CONCLUSION.....

ORIGINAL

TABLE OF AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

- I. Did the trial judge err in refusing to direct a verdict of acquittal because Appellant was acting in self-defense?

- II. Did the trial judge err in not charging the jury on the lesser included offenses of voluntary manslaughter and involuntary manslaughter when the jury asked the court what degree of murder?

STATEMENT OF THE CASE

In December of 2009 the Hampton County Grand Jury indicted Greene for murder and assault and battery with intent to kill, indictments #2009-GS-25-515, 567. On September 4, 2012, Greene proceeded to jury trial before the Honorable R. Markley Dennis. Attorney Byron E. Gipson represented Greene at trial. Attorneys Randolph Murdaugh, III and Tameaka Leggettie prosecuted the case on behalf of the State. The jury found Greene not guilty of assault and battery with intent to kill but guilty of murder. Judge Dennis sentenced Greene to forty (40) years in prison. A timely notice of intent to appeal was served on September 7, 2012. This appeal follows.

ARGUMENT

I. The trial judge erred in refusing to direct a verdict of acquittal because appellant was acting in self-defense?

The jury found Greene guilty of the murder of Dominick Badger. At trial Greene testified that he shot both Dominick Badger and his brother Anthony [Tony] Badger in self defense (R. p. 291, line 8 - p. 292, lines 1-22). The jury found Greene not guilty of the assault and battery with intent to kill involving Tony Badger. Evidence in murder prosecution reasonably supported conclusion that defendant was without fault in bringing on the difficulty as element of self-defense. At trial Greene testified when Anthony [Tony] Badger asked his brother Dominick Badger can he get his gun. Greene then told Dominick that he would go ahead and just leave, but as Greene was going to the car to leave Tony blocked him off as Greene was walking towards the vehicle. (R. p. 311, line 18 - p. 312, lines 1-25; p. 313, lines 1-7).

Further evidence in murder prosecution that reasonably support that Greene was without fault in bringing on the difficulty as element of self-defense. Greene testified at trial that after Dominick and Dexter put Tony inside the vehicle [truck]. Tony jumped back out of the vehicle coming at Greene saying he was going to burn [shoot] him. Greene getting away from Anthony [Tony] Badger, testified that Dominick Badger then attacked him on the passenger side of the vehicle Greene was driving. (R. p. 315, lines 4-9; p. 316, lines 21 - p. 317, lines 1-8; p. 318, line 5 - p. 319, lines 1-25).

Evidence in murder prosecution that supported defendant Greene's contention that he was in actual, imminent danger of death or serious bodily injury during shooting incident, as element of self-defense, Greene testified when Tony jumped back out the vehicle coming at him saying he was going to burn [shoot] him. Greene testified he felt threatened that Tony was going to kill him. Greene also testifies that as soon as he came around the front side of the vehicle getting away from Tony, Dominick attacked him, continuously coming after Greene after Greene kept trying to get away. Greene believed Dominick was going to shoot him, too, or kill him because Greene believed Dominick to have a gun when Tony asked him for a gun earlier and Dominick told Tony he wasn't going to give Tony his gun. (R. p. 315, lines 4-9; p. 318, line 2-25; p. 319, line 1-13).

Based upon Greene's testimony his actual belief of imminent danger was when Tony jumped back out of the vehicle saying he was going to burn Greene. (R. p. 315, lines 8-9 — p. 316, lines 21-23). Further actual belief of imminent danger was that Greene testified as soon as he came around the front side of the vehicle he was encountered by Dominick where then he tried to get Dominick off of him numerous times, but Dominick continuously kept coming after Greene. (R. p. 318, lines 23-25; p. 319, lines 1-7). Testimony from Dexter Bozman further states that Dominick was trying to get to Greene. (R. p. 128, lines 15-21).

Which shows that a reasonably prudent person of ordinary firmness and courage would have had the same belief because the danger never ceased stemming from the first incident with Tony. Giving Greene the belief his life was still in danger.

Evidence support conclusion that Greene had no other way or probable means to avoid the danger than to act as he did because Greene testified first Tony blocked him off from getting to his vehicle when he was leaving. Second Tony jumped back out the truck chasing Greene saying he was going to burn [shoot] him. when Greene was still trying to leave. Greene testified Dominick grabbed him throwing him up against a white truck and each time he was trying to get away from Dominick, Dominick continued to come after him. (R.p. 312, line 23-25; p. 319, line 2-6). Further testimony shows that Greene also testified he didn't know where Tony went when Tony went running back leaving Greene to believe when Dominick jumped on him the danger was still in effect leaving no means to avoid the danger. (R.p. 318, lines 5-15).

So evidence in murder prosecution was sufficient to entitle Greene a direct verdict on self-defense. due to evidence in record that permitted findings Greene had no probable means of avoiding danger other than to fire upon victims because victims prevented Greene from leaving each time Greene was trying to get to his car and leave.

II. The trial judge erred in not charging the jury on the lesser included offenses of voluntary manslaughter and involuntary manslaughter when the jury asked the court what degree of murder?

It's found in Greene's testimony that Dominick attacked him as soon as he got away from Tony and he subsequently fired after Dominick kept coming after him provides sufficient evidence to support a jury charge on voluntary manslaughter. Viewing the evidence in a light most favorable to Greene, it's believe a jury could find Greene acted in a heat of passion upon sufficient legal provocation, thus supporting a Voluntary manslaughter jury charge.

Greene also testified as soon as he came around the front side of the vehicle, right between the mirror and the fender on the passenger side of the vehicle, Dominick grabbed him. Greene then tussled with Dominick trying to get him off of him and when he broke away from Dominick, Greene ran. Dominick caught Greene again throwing him up against a white truck. Once he threw Greene up against the white truck, Greene tries to get away again once Greene got away from Dominick again, Dominick was on him again. Running around the back side of the vehicle [white truck] that's when Greene started shooting behind him at Dominick.

It's found that Greene's testimony provided evidence that he shot Dominick after Dominick attacked him and continuously kept pursuing him. Accordingly viewing the evidence in a light most favorable to Greene, it's found his version of the facts provided sufficient legal provocation to support a jury charge on voluntary manslaughter.

CONCLUSION

Based on the above arguments, Greene's conviction and sentence should be reversed and the case remanded for a new trial

Respectfully submitted

Brandon L. Greene
Brandon L. Greene
Appellant

This 10th day of October, 2013