STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWON M. BAKER, JR.,

APPELLANT

APPELLATE CASE NO. 2013-001366

INITIAL BRIEF OF APPELLANT

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1.) The trial judge erred in failing to direct verdicts of acquittal on the gun and murder offenses charged against appellant because the state failed to disprove self-defense in the case, and more importantly, appellant presented evidence of self-defense as a matter of law, particularly since appellant's assailant testified for the defense and admitted he started the fight by attacking appellant from behind with a blow to the back of his head.

2.) The lower court erred in denying appellant's pre-trial motion for dismissal of the case via immunity under the Protection of Persons and Property Act as the Act was applicable to his case despite the fact that he was not attacked in his vehicle, or his residence, or his place of business; because nonetheless, he was attacked in "another place where he had a right to be," i.e., a restaurant, and therefore could protect himself per S.C. Code Ann 16-11-440(c) included in the Act

STATEMENT OF THE CASE

Appellant Antwan Michele Baker was found guilty of murder and unlawfully carrying of a pistol per jury trial held during the June 2013 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Appellant was sentenced to imprisonment for an aggregate period of eighteen years. Robert Eugene Ianuario and Matt Canady represented appellant at trial, and Assistant Solicitors Derrick B. Bulsa and Lindsey Overby appeared on behalf of the state.

Appellant appealed his convictions and sentences. This brief follows.

QUESTION I

The trial judge erred in failing to direct verdicts of acquittal on the gun and murder offenses charged against appellant because the state failed to disprove self-defense in the case, and more importantly, appellant presented evidence of self-defense as a matter of law, particularly since appellant's assailant testified for the defense and admitted he started the fight by attacking appellant from behind with a blow to the back of his head.

At trial, state's witness Justin Davis testified that around 2:00 am on June 3, 2012, Brandon Glover drove him (Davis) and Anthony Young to a Waffle House located in Spartanburg County, and that appellant arrived there at the restaurant later while they were still there. Upon seeing appellant, Anthony Young declared that appellant previously pulled a gun on him. Davis testified that Brandon Glover went outside to talk with appellant and told him (appellant) that a fight would commence presumably out of loyalty to and revenge for Anthony Young. Appellant responded by stating that Glover robbed one of his (appellant's) friends and that Anthony Young attacked him (appellant) previously with a gun. Then, as appellant moved to re-enter the Waffle House, Brandon Glover hit appellant about the head. Thereafter, appellant pulled out his gun and started shooting. Everyone ran as shots were fired. Anthony Young was shot in the crossfire and died. Tr. 101, l. 101 – p. 107, l. 25.

State's witness Joshua Hance testified that he was working as a cook at the Waffle House on that same morning and witnessed the events in question. Hance stated that appellant was ordering his food when another man approached and "had words" with him (appellant). Hance added that appellant made an exit, but that when he (appellant) re-

entered, another man ran up and hit appellant, and that appellant responded by pulling out a gun and firing gunshots. Tr. 210, l. 15 – p. 217, l. 18.

Appellant did not testify at trial, but note that Brandon Glover testified at trial on behalf of the defense. Defense witness Glover testified that he was there along with Anthony Young and Justin Davis when the shooting at the Waffle House occurred. When appellant arrived and Young stated that appellant pulled a gun on him previously then he (Glover) went outside and argued with appellant. Glover stated that he threw the first punch at Glover at the Waffle house door and the shooting began afterwards. Tr. 388, l. 1 – p. 395, l. 11.

At the close of the state's case, and at the close of all testimony at the end of the case for the defense, counsel moved for directed verdicts and dismissals on the gun and murder offenses charged against him because the state failed to disprove the elements of self-defense in the case. Tr. 332, l. 10 – 22. The trial judge denied the motions. Tr. 332, l. 23 – p. 333, l. 7; App. 436, 15-22.

Shortly after the shooting, appellant was apprehended by police at the apartment complex nearby where he resided and gave them statements about what happened at the Waffle House. In his first statement, appellant explained that when he parked in the Waffle House parking lot on that night, he saw "ten to twelve boys" in the parking lot so he retrieved his gun. Then, appellant stated that as he was ordering and paying for his food and exiting, one male said he had a problem with him and another male said if he (appellant) didn't fight they would rob him. Appellant explained that he pleaded with them to let it go, but that when he turned to re-enter the Waffle House, "two of them hit [him] in the back of

the head" and that he "pulled out [his] gun and fired three to eight shots." Tr. 304, lines 1-25.

Appellant's second statement was almost identical to his first statement except that he added that after he was approached by the male in the blue shirt who insisted that they fight, he (appellant) noticed the following:

> A tall dude in a black shirt was telling him that it was going down, that he had his right hand on his waist...something... like he had a gun. And a short dude with dreads had a white t-shirt, was saying that they had guns and if I didn't fight them, their homeboy that they were going to take everything I had. I told the dude in the blue shirt to let it go. As I was walking back and forward – as he was walking back and forward I was scared that they was going to gang me. Some girls in a – some kind of car was yelling one of them to leave me alone. Then the tall dude in black was saying its going down and I got – it was going down and gets something up." I can't make that out. "And he was going to leave me stumped. I told the dude in white to let it go. And then I turned my back and they – and tried to walk in waffle house. Two of them hit me from behind in the back of my head. So I duck and turn around and pull my gun out and start firing it into the crowd. Tr. 306, l. 19 – p. 307, l. 11.

The trial judge charged self-defense to the jury in this case. Tr. 527, l. l.8 – p. 530, l. 24. In a case of self-defense, the law to be charged is determined from the facts presented in the case. State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999). If there is any evidence in the record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense. State v. Stone, 285 S.C. 386 330 S.E. 2d 286 (1985).

In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so

believed, and he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Also, depending on the circumstances, words accompanied by hostile acts may establish self-defense and one has a right to act on appearances. State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). Moreover, when a one claims self defense, the state is required to disprove the elements of self-defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 4 89 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012).

Here, it was clear that Glover fueled the attack, provoked appellant, and chided appellant about engaging in a fight, and then finally struck the first blow attacking appellant about his head from behind. Appellant was surrounded by Glover and his (Glover's) associates who refused to abide by appellant's requests to them to "let it go." Appellant was alone, out numbered, and surrounded by Glover's posse. Also, Glover's gang was armed as appellant saw what he believed to be weapons in their possession. Appellant was in fear of his life and had no other means of avoiding the attack other than to fire his weapon. In other words, Glover was the aggressor and appellant, who was surrounded by foes sans any means of escape, was in danger of losing his life or sustaining serious bodily injury. Hence, appellant was justified in firing his weapon in self-defense as a matter of law.

Compare the holdings in State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011), and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), where the Court in both cases found self-defense existed as a matter of law, which in effect meant that the state's evidence was insufficient to disprove self-defense. In Dickey, the defendant, i.e. Dickey, who was a security guard in a housing complex, responded to a call regarding a male guest that was

angry and drunk and made attempts to assault a resident of the complex. Dickey asked the angry and drunk man to exit the complex and when the man did so, he (Dickey) followed him outside in order to advise police of the man's whereabouts if needed because the police had already been called and notified of the pending event. When the angry man, who had a liquor bottle in his possession, started walking back toward Dickey, threatening to fight, and asking why he was being followed, Dickey pulled out a gun and fired because the angry and drunk man continued to advance aggressively and reached under his shirt (presumably for a weapon). Thereafter, the man continued to march toward Dickey and did not stop moving forward until the second gunshot slowed him and after the third gunshot made him drop to his knees. The Dickey Court held that Dickey was entitled to a directed verdicts of acquittal on the charges on the ground of self-defense as Dickey was not the aggressor as he walked outside to inform police of this man's location, and because Dickey believed he was in danger and had the right to act (shoot) on appearances[1] due to this angry and drunk man's aggressive behavior, especially where it appeared as though the man was armed. There was no duty to retreat since there was no other means of avoiding the danger (could not turn back) without losing his life or sustaining injuries.

Moreover, in Hendrix, supra, defendant Hendrix, whose relationship with the aggressive intoxicated man who accosted him on the day in question was not good, was approached by this drunk on the day in question threatening to fight him, and thereafter drove to Hendrix's property, pulled out a gun, walked up, pointed the gun, and threatened to

[1] A person has the right to act on appearances even if the person's belief is ultimately mistaken. State v. Fuller, 297 S.C. 440 443-44, 377 S.E. 2d 328, 331 (1989). "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." Dickey v. State

kill Hendrix. This occurred despite Hendrix's pleas for him to leave the property. Ultimately, Hendrix shot (four times) and killed the man. The Hendrix Court held that the intoxicated man was the aggressor and that Hendrix acted on appearances in believing he was in danger of losing his life or sustaining serious bodily injury and had no duty to retreat.

Here, the state did not meet the requirements to disprove the elements of self defense beyond a reasonable doubt. Clearly, appellant's case was a case of self-defense as a matter of law. Thus, there was insufficient proof of appellant's guilt on the state's charges beyond a reasonable doubt, which meant that his convictions were obtained in violation of the Fourteenth Amendment Due Process Clause and article 1, Section 3 of the South Carolina State Constitution.

QUESTION II

The lower court erred in denying petitioner's pre-trial motion for dismissal of the case via immunity under the Protection of Persons and Property Act as the Act was applicable to his case despite the fact that he was not attacked in his vehicle, or his residence, or his place of business; because nonetheless, he was attacked in "another place where he had a right to be," i.e., a restaurant, and therefore could protect himself per S.C. Code Ann 16-11-440 (c) included in the Act.

In the case at bar, appellant established by a preponderance of the evidence that he was entitled to immunity under the Protection of Persons and Property Act. S.C. Code Ann § 16 -11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act. See State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013),

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citing to State v. Starnes, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000) (citing State v.

where the defendant could not invoke protection under the Act because a valid case of self-defense did not exist, but in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), the Act applied because the deceased kept advancing into the defendant's house after the defendant kicked him out and warned him not to return. Similarly, this case involves a right to immunity in a public place where appellant had a right to be present, i.e., a restaurant known as the Waffle House. Specifically, under 16-11-440 (c) the Act provides that one is justified in using deadly force if:

> 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...

Moreover, unlike the case of Curry, where there was no valid self-defense claim; here, appellant was not engaged in an unlawful activity and also, appellant's self-defense claim was lawful and valid. Appellant was in a public restaurant, i.e., a public accommodation that was a place where he had a right to be and was attacked from behind by Glover. These are the uncontroverted facts. Glover himself admitted that he attacked appellant from behind at the Waffle House entrance. Also, appellant was confronted by a gang-like posse waiting to defend and attack; and clearly, appellant was outmanned and outnumbered. Appellant lawfully used deadly force to defend himself. Therefore, the trial judge erred in denying appellant immunity under the Act.

Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978)).

Appellant moved for dismissal of the charges against appellant per immunity under the Act prior to trial. Tr. 15, l. 17 – p. 17, l. 24; Tr. 51, l. 1-p. 52, l. 19; Tr. 15, lines 15 – p. 16, l. 18. Counsel made his position known as follows:

> Defense Counsel: the statute reads a person who is not engaged in an unlawful activity and who is attached in a place where he has a right to be...has no duty to retreat and may stand his ground. Mr. Baker was a lawful patron at the Waffle House on the evening of the shooting. I know we haven't gotten into the facts of the case yet but he – he was summoned outside. There was a quarrel. He stuck his head out the door and said he wanted no part of it, he was going back inside, didn't want to fight...[so] as he was turning around to reenter he was jumped by at least one individual. I believe there were four or five standing around. Tr. 16 – p. 17. L. 9.

During the pretrial hearing, Detective Richie Foster testified that in the course of his investigation into the Waffle House shooting, he learned that words were exchanged between appellant and a group of men, one of whom appellant had difficulty with previously, and that after these words were exchanged between the members of the group (including their threat to rob him) and appellant, one of the members of the group hit appellant in the back of his head upon his entry into the restaurant. Then, appellant responded by firing gunshots. Tr. 26, l. 1 – p. 29, l. 24. Detective Foster added that appellant was neither trespassing nor banned from the Waffle House and was rightfully at the restaurant, and that appellant pleaded with the gang to leave it alone. Tr. 30, lines 4-20.

The trial judge denied appellant's request for immunity under the Act in effect on the ground that the Act was inapplicable because the crime scene was not appellant's residence, or his vehicle, or his place of business. Tr. 54, l. 2 – p. 35, l. 22.

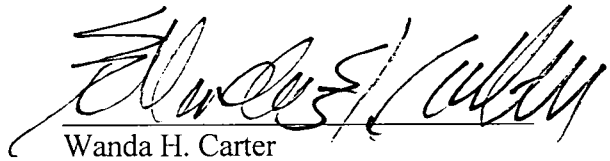
Clearly, the trial judge erred in ruling that the Act was inapplicable to appellant's case and in not reaching a ruling on the merits via S.C. Code Ann § 16-11-440 (c). Again,

appellant was protected from prosecution because he defended himself in self-defense after being attacked in a place where he had a right to be at the time of the attack upon him.

CONCLUSION

Based on the foregoing arguments, appellant requests that his convictions and sentences be vacated because self-defense was established as a matter of law, or in the alternate, that his convictions and sentences be vacated because he was immune from prosecution under S.C. Code Ann § 16-11-440 (c), or that the case be remanded for a proper hearing and ruling per section (c) of the Act.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of April, 2014.

STATE OF SOUTH CAROLINA

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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) Transcript pages. 1-19, 24-56, 93-333, 340-404, 409-437, 439-536, 539-540, 542-546; and
(3) Court's Exhibit #2 (Jury Question)

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

April 28th, 2014

Wanda H. Carter
Deputy Chief Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Megan Harrigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. Antwon M. Baker, Jr. #355673, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 28th day of April, 2014.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of April, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.