STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2013-001366

THE STATE,

Respondent,

v.

ANTWON M. BAKER, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court properly denied Appellant's directed verdict motion because the evidence presented created a jury issue regarding Appellant's self-defense claim.

II. The circuit court properly denied Appellant's motion for dismissal under the Protections of Persons and Property Act because even if the Act applied, Appellant failed to meet its requirements for immunity from prosecution.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF THE FACTS

In July, 2012, the Spartanburg County Grand Jury indicted Appellant Antwon Baker, Jr., on one count of murder arising from the shooting death of Anthony Young ("Victim") in a Waffle House parking lot on June 3, 2012. In May, 2013, the Grand Jury also indicted Appellant on one count of unlawful carrying of a pistol in connection with the same incident. The case was called for a jury trial on June 3, 2013, before the Honorable J. Derham Cole, Circuit Court Judge.

Prior to trial, Appellant moved to dismiss the murder indictment on the ground he was entitled to immunity from prosecution under the Protection of Persons and Property Act (the Act) (a/k/a Stand Your Ground). In support of the motion, Appellant presented testimony from a police investigator regarding statements made by Appellant and other witnesses about the circumstances leading up to and following the shooting. The circuit court denied the motion, finding the Act did not apply, but even if it did, Appellant "failed to establish by a preponderance of the evidence that he acted reasonably, that he was attacked, and that he had a reasonable fear of imminent peril or death or great bodily injury, and that it was reasonably necessary to use deadly force in order to prevent that death or great bodily injury to himself." (Trial Transcript [TT], pp. 16-17, 24-56; Record on Appeal [R.], pp. _______).

Justin Davis testified Brandon Glover drove him and Victim to the Waffle House around 2:00 a.m. on June 3, 2012. Appellant arrived when they were in the parking lot about to leave, and Victim stated Appellant previously hit him in the face with a gun and knocked his teeth out. Davis testified Glover went inside the Waffle House and told Appellant to come outside. After they walked outside, Davis, Glover, and Victim asked Appellant about the previous incident. Appellant said Glover robbed one of his friends,

and Victim put a gun to this friend's face, and then stated "you fixing to have to fight or something." After Appellant turned to walk back into the Waffle House, Glover hit him in the head, and Appellant pulled out a gun and starting shooting. As Davis was running away, he saw Appellant chasing Victim and shooting him in the back. (TT, pp. 101-112; R., pp. _____).

Hillary Wilkins was in the Waffle House parking lot the night of the shooting, and testified she saw Appellant chasing Victim and shooting at him. (Tr. 194, l. 6-7). Wilkins saw Victim fall down, and as she drove out of the parking lot she, saw Victim laying on the ground with Appellant standing over him. (TT, pp. 187-200; R., pp. _______).

Amy Padgett testified she was also in the parking lot that night, heard gunshots and saw Appellant chasing Victim. After Victim fell down, she saw Appellant stand beside Victim and kick him. (TT, pp. 201-210; R., pp. _____).

Joshua Hance testified he was working at the Waffle House the night of the shooting, and he saw Appellant get hit in the head, pull out a gun and start shooting. He also saw Appellant chasing Victim, firing the gun as he ran, and Victim fall on the ground. (TT, pp. 210-220; R., pp. _____).

Antoine Gist testified he was riding past the Waffle House that night when he saw a lot of people "just scattering and running, leaving, somebody laying outside on the ground." He saw a man standing over the person on the ground, and then getting in a car and leaving the parking lot. He testified the man "wasn't in a hurry." (TT, pp. 221-229; R., pp. _____).

Officers subsequently apprehended Appellant at his apartment complex, and recovered a semi-automatic 9mm handgun, containing a fifteen round clip holding ten

rounds, from the trunk of Appellant's girlfriend's car. They also recovered five shell casings and one fired bullet at the crime scene, including two shell casings in a strip mall parking lot adjacent to the Waffle House parking lot, which were forensically connected to Appellant's gun. (TT, pp. 229-246, 269-274, State's Exhibit 35 [Diagram], State's Exhibit 36 [List]; R., pp. ________).

Appellant gave two voluntary, written statements after his apprehension. In the first statement, he indicated that when he arrived at the Waffle House, he saw "10-12 boys" in the parking lot, and he had problems with some of them in the past, so he put his gun in his waistband before entering the Waffle House. He further stated the boys "didn't say nothing at first," but kept looking at him through the window. As he was paying for his food, one of the men [Glover] came in and told him to come outside because his cousin had a problem with Appellant. Appellant stated he went outside to tell them to let it go, but they continued to tell him to fight. When he turned to go back into the Waffle House, someone hit him in the back of the head, so he turned around, pulled out his gun, and fired "three to eight shots," and "everyone ran but one in the blue shirt," who "fell," and Appellant left to call the police. (State's Exhibit 1 [Voluntary Statement]; R., pp. _____).

Approximately an hour later, Appellant gave a very similar statement, but enhanced his story regarding events leading up to the shooting. This time, he stated one of the boys said "it look like him" as he walked into the Waffle House, and when he walked back outside, one of the men said "it was going down," had his hand on his waistband, and said they were going to rob Appellant if he did not fight Victim. After someone hit him:

> "I duck and turn around and pull my gun out and start firing it into the crowd. Everybody starts running. So I started running to my car. I fired another shot because the dude in the blue was running toward his car like he was going to get something."

((State's Exhibit 2 [Voluntary Statement]; R., pp. _____).

Detective Richie Foster testified police found no other weapons, casings or bullets at the crime scene. He further Victim was the only one wounded that night. (TT, pp. 303-307; R., pp. _____).

Dr. John David Wren, who performed Victim's autopsy, testified he found twelve bullet holes in the body, five entry wounds, one re-entry wound and six exit wounds, and determined Victim was shot five times. He also found a "slightly patterned" abrasion on Victim's forehead. The fatal wound entered Victim's back, passed through his heart, and exited his chest. The wounds in Victim's back were consistent with Victim running away as he was shot, and Dr. Wren stated two wounds (one entry and one exit) to Victim's leg were inflicted while Victim was on the ground. (TT, pp. 319-327; R., pp. _____).

A forensic DNA analyist with the South Carolina Law Enforcement Division testified he compared swabs from the front of a pair of tennis shoes belonging to Appellant to samples from Victim and Appellant. He determined the swab from the front of the right shoe contained Victim's DNA, with a one in 1.4 quadrillion likelihood of finding an unrelated individual with that DNA. He testified there was "a good bit" of material from Victim on the shoe, which was consistent with the shoe striking Victim in the head at some point. (TT, pp. 291-298; R., pp. _____).

Appellant moved for a directed verdict on the ground the State did not disprove self-defense beyond a reasonable doubt. Viewing the evidence presented in the light most favorable to the State, the circuit court denied the motion, finding the evidence

presented a jury question on the self-defense issue. (TT, pp. 332-333, 436; R., pp. _____).

The jury convicted Appellant of unlawful carrying of a pistol and voluntary manslaughter, and the circuit court sentenced him to concurrent terms of one year incarceration and eighteen years incarceration, respectively. (TT, pp. 539-540, 545-546; R., pp. _____). This appeal followed.

ARGUMENT

I. The circuit court properly denied Appellant's directed verdict motion because the evidence presented created a jury issue regarding Appellant's self-defense claim.

Appellant asserts the circuit court erred in denying his directed verdict motion because the State failed to disprove self-defense as a matter of law. In support of this assertion, Appellant recites an extremely truncated version of the evidence, and completely ignores the evidence making his self-defense claim a clear jury question.

When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight. State v. Butler, 407 S.C. 376, 755 S.E.2d 457, 460 (2014). On appeal from the denial of a directed verdict, the appellate courts view the evidence and all reasonable inferences in the light most favorable to the State. *Id.*; State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

A defendant must meet four prongs to justify using deadly force in self-defense:

(1) The defendant was 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 defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary 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 in this particular instance.

State v. Dickey, 394 S.C. 491, 716 S.E.2d 97, 101 (211) (*citing* State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489, 493 [1998]). "[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt." *Id.*

The directed verdict analysis in this case could begin and end with the first and fourth prongs of self-defense. There was ample evidence from which the jury could find Appellant was at fault in bringing on the difficult, and he had ample opportunity to avoid the danger rather than act as he did under the circumstances..

When Appellant drove up to the Waffle House, he recognized some of the people in the parking lot as people he had trouble with previously, and rather than leave to avoid trouble, he made the conscious decision to park and go inside. He then **illegally** armed himself before exiting his car and entering the Waffle House, specifically **because** he knew there might be trouble with those people.[1] *See* State v. Slater, 373 S.C. 66, 644 S.E.2d 50, 52 (2007) ("'Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense.'") (*quoting* State v. Bryant, 336 S.C. 340, 520 S.E.2d 319, 322 [1999]). Finally, when Glover confronted him inside the Waffle House, Appellant went outside with him rather than call the police, again knowing there might be trouble.[2]

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[1]Appellant does not challenge his conviction for unlawfully carrying the pistol.

[2]Appellant's assertion he believed one of the men (**not** Victim) had a gun is irrelevant because his own statements reveal he had absolutely **no** basis for such a belief when he armed himself and went inside. When he walked outside with Glover, Appellant only saw the man with a hand on his waistband, and never actually saw a gun. Law enforcement found no other guns at the scene, and there was no evidence anyone other than Appellant fired any shots.

Based on this evidence, the jury could reasonably conclude Appellant was at fault in bringing on the difficulty, and he had several opportunities to avoid the danger entirely.

Analysis of the second and third self-defense requirements also supports denial of Appellant's directed verdict motion. Appellant's conscious decisions to enter the Waffle House, and then walk outside with Glover after Glover confronted him inside, contradict the assertion he actually, or even reasonably, believed he was in danger. Then, even after the men purportedly told him they were going to rob him, and purportedly seeing one of the men holding his hand on his waistband, Appellant turned his back on the men, which contradicts the assertion he believed he was in danger.

Further, witness testimony and Appellant's statements indicated the men outside the Waffle House wanted Appellant to "fight" Victim. No one threatened to shoot Appellant if he did not "fight," and hitting Appellant in the back of the head was likely calculated to initiate a "fight," not a shoot-out. Rather than try to get back inside the Waffle House, Appellant immediately turned around and started shooting, actually chased Victim across the parking lot while shooting him in the back, kicked Victim after he fell, and then shot Victim again while he was on the ground.[3]

Appellant's reliance on Dickey and State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), is misplaced, because both cases are distinguishable. In Dickey, the defendant was a security guard, and while acting within the scope of his duties, shot a highly intoxicated, aggressive man, who the defendant had just evicted from the premises. The man charged the defendant while threatening him and reaching under his shirt like he was reaching for a weapon, and the defendant's ability to retreat was

[3]Appellant conveniently ignores this critical evidence.

hampered by his physical condition and a set of locked doors. In reversing the defendant's voluntary manslaughter conviction, the Supreme Court found the **uncontroverted** facts established self-defense as a matter of law. 716 S.E.2d at 101-103.

In Hendricks, the defendant **legally** possessed a firearm while on his own property, and the victim came onto the defendant's property armed with a shotgun and threatened the defendant. The Supreme Court reversed the defendant's voluntary manslaughter conviction, again finding the uncontroverted evidence established self-defense as a matter of law. 244 S.E.2d at 506-507.

Contrary to the defendants in Dickey and Hendricks, Appellant **illegally** armed himself prior to any confrontation, and made no effort to retreat from the very trouble he anticipated. Further, according to Appellant's own version of the events, Victim, who was unarmed, did not say or do anything threatening toward Appellant before Appellant chased him across the parking lot and shot him multiple times in the back. Those facts alone distinguish this case. *Compare* State v. Butler, 407 S.C. 376, 755 S.E.2d 457 (2014) (distinguishing Dickey and finding evidence created credibility issues and questions of fact regarding defendant's self-defense claim).

Viewed in the light most favorable to the State, the evidence in this case created questions of fact for jury determination on each prong of the self-defense issue. The circuit court's denial of Appellant's directed verdict motion is amply supported by the record, and should be affirmed.

II. The circuit court properly denied Appellant's motion for dismissal under the Protection of Persons and Property Act because even if the Act applied, Appellant failed to meet its requirements for immunity from prosecution.

Appellant contends the circuit court erred in denying his motion for immunity pursuant to S.C. Code Ann. §16-11-450, because under S.C. Code Ann. §16-11-440(C), he was not engaged in an unlawful activity and was attacked in a place he had a right to be present (Waffle House). As with his directed verdict argument, Appellant's contention ignores critical evidence.

The expressly stated legislative intent of the Act is "to codifiy the common law Castle Doctrine which recognized that a person's home is his caste, and to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. §16-11-420(A) (Supp. 2013). The legislature further provided "that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles." S.C. Code Ann. §16-11-420(B) (Supp. 2013).

The main thrust of the Act is set forth in §16-11-440(A), which "provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle." State v. Curry, 406 S.C. 364, 752 S.E.2d 263, 266 (2013). If subsection (A) does not apply, the analysis defaults to subsection (C), "which deals with the use of force by one who is attacked in another place where he has a right to be." *Id.*

The immunity from prosecution afforded under §16-11-450 only applies "*if* a person is found to be justified in using deadly force." *Id.* (emphasis in original). Using a

preponderance of the evidence standard, the trial court must determine the right to immunity pre-trial, which the appellate court reviews for abuse of discretion. *Id.* "A **valid case of self-defense must exist**,' and the trial court "must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity," which "includes all elements of self-defense, save the duty to retreat." *Id.* (emphasis added).

The circuit court questioned whether the Act applied in this case because Appellant was not in his home, vehicle or business when the shooting occurred. Admittedly, whether "another place where he has a right to be" extends beyond places in which the person has a possessory interest remains an open question in South Carolina. Contrary to Appellant's contention, however, the applicability of the Act was not the sole basis for the circuit court's ruling.

The circuit court expressly found that even if the Act applied, Appellant failed to sufficiently establish a valid self-defense claim for purposes of immunity. Specifically, the court found Appellant "failed to establish by a preponderance of the evidence that he acted reasonably, that he was attacked, and that he had a reasonable fear of imminent peril or death or great bodily injury, and that it was reasonably necessary to use deadly force in order to prevent that death or great bodily injury to himself." (TT, pp. 55-56; R., pp. ______).

Ignoring the duty to retreat prong for purposes of argument only, the record amply supports the circuit court's determination Appellant did not establish a valid self-defense claim. The evidence Appellant presented at the pre-trial hearing, including his own

statements to police, clearly established Appellant's fault in bringing on the difficulty, which standing alone, viatiates his immunity claim.

Rather than simply leaving when he recognized some of the people in the parking lot, Appellant consciously armed himself illegally and went inside the Waffle House. He then voluntarily went back outside after Glover confronted him, well knowing there could be trouble. Appellant never actually saw anyone holding a gun, and in response to a blow to his head, he immediately started shooting and chased Victim through the parking lot. There was no evidence of any other guns present or shots fired. (TT, pp. 24-50, State's Exhibit 1, State's Exhibit 2; R., pp. _____).

The circuit court properly exercised its discretion in determining Appellant failed to present a valid self-defense claim for purposes of immunity under the Act. Accordingly, the circuit court ruling should be affirmed.

CONCLUSION

Based on the foregoing, Respondent submits Appellant's conviction and sentence should be affirmed.

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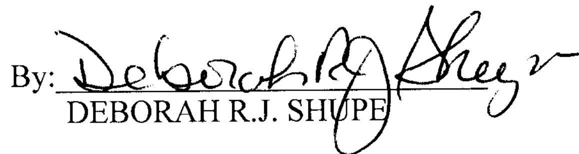

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THE STATE,

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Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Wanda H. Carter
Chief Deputy Appellate Defender
South Carolina Commission on Indigent Defense
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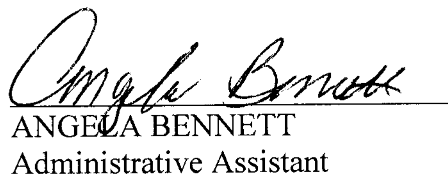
I further certify all parties required by Rule to be served have been served.

This 4th day of August, 2014.



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Re: The State v. Antwon M. Baker, Jr.
Appellate Case No. 2013-001366

Dear Ms. Carter:

Enclosed are two copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General
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DRJS/ab

Enclosures

cc: The Honorable Jenny A. Kitchings
(Original enclosed)
Victim Services (with enclosure)

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