STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JUL 13 2015

S.C. Supreme Court

Appeal From Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2015-001332
(Opinion No. 2015-UP-178, S.C. Ct. App., filed April 8, 2015)

THE STATE,

Respondent,

v.

ANTWON M. BAKER, JR.,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit

County Courthouse
3rd Floor
180 Magnolia St.
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

STATEMENT OF QUESTIONS ON APPEAL

I. Did the Court of Appeals properly affirm the circuit court's denial of Petitioner's directed verdict motion because the evidence presented created a jury issue regarding Petitioner's self-defense claim?

II. Did the Court of Appeals properly affirm the circuit court' denial of Petitioner's motion for dismissal under the Protections of Persons and Property Act because even if the Act applied, Petitioner failed to meet its requirements for immunity from prosecution?

STATEMENT OF THE CASE

In July, 2012, the Spartanburg County Grand Jury indicted Petitioner 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 Petitioner 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, Petitioner 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, Petitioner presented testimony from a police investigator regarding statements made by Petitioner 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, Petitioner "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." (Record on Appeal [R.], pp. 16-17, 20-52).

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

to fight or something." After Petitioner turned to walk back into the Waffle House, Glover hit him in the head, and Petitioner immediately pulled out a gun and starting shooting. As Davis was running away, he saw Petitioner chasing Victim and shooting him in the back. (R., pp. 61-72).

Hillary Wilkins was in the Waffle House parking lot the night of the shooting, and testified she saw Petitioner chasing Victim and shooting at him. (R., p. 154). Wilkins saw Victim fall down, and as she drove out of the parking lot she saw Victim laying on the ground with Petitioner standing over him. (R., pp. 147-160).

Amy Padgett testified she was also in the parking lot that night, heard gunshots and saw Petitioner chasing Victim. After Victim fell down, she saw Petitioner stand beside Victim and kick him. (R., pp. 161-170).

Joshua Hance testified he was working at the Waffle House the night of the shooting, and he saw Petitioner get hit in the head, pull out a gun and start shooting. He also saw Petitioner chasing Victim, firing the gun as he ran, and Victim fall on the ground. (R., pp. 170-180).

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." (R., pp. 181-189).

Officers subsequently apprehended Petitioner at his apartment complex, and recovered a semi-automatic 9mm handgun, containing a fifteen round clip holding ten rounds, from the trunk of Petitioner'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 Petitioner's gun. (State's Exhibit 35 [Diagram], State's Exhibit 36 [List]; R., pp. 189-206, 229-234).[1]

Petitioner 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 the man's cousin had a problem with him. Petitioner 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 Petitioner left to call the police. (State's Exhibit 1 [Voluntary Statement]).

Approximately an hour later, Petitioner 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 Petitioner if he did not fight Victim. Petitioner claimed that after someone hit him:

---

[1] The following Exhibits are on file with the Court: State's Exhibit #1 (Voluntary Statement); #2 (Voluntary Statement); #35 (Diagram); #36 (List for Sketch); #57 (Diagram); #59 (Wound Chart); #60 (Diagram).

> "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]).

Detective Richie Foster testified police found no other weapons, casings or bullets at the crime scene. He further testified Victim was the only one wounded that night. (R., pp. 263-267).

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. (R., pp. 279-287).

A forensic DNA analyst with the South Carolina Law Enforcement Division testified he compared swabs from the front of a pair of tennis shoes belonging to Petitioner to samples from Victim and Petitioner. 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. (R., pp. 251-258).

Petitioner 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. (R., pp. 292-293, 338).

The jury convicted Petitioner 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. (R., pp. 438-439, 443-444). This appeal followed.

In an unpublished opinion filed April 8, 2015, the South Carolina Court of Appeals affirmed Petitioner's conviction, and denied his Petition for Rehearing by Order filed May 21, 2015. (Appendix, pp. 1-13). On June 22, 2015, Petitioner filed a Petition for Writ of Certiorari to the Court of Appeals, asking this Court to review and reverse the Court of Appeals' opinion.

ARGUMENT

I. The Court of Appeals properly affirmed the circuit court's denial of Petitioner's directed verdict motion because the evidence presented created a jury issue regarding Petitioner's self-defense claim.

Petitioner asserts the Court of Appeals erred in affirming the denial of his directed verdict motion because the State failed to disprove self-defense as a matter of law. As he did before the Court of Appeals, Petitioner purports to support this claim with an extremely truncated version of the evidence, and completely ignores 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, 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, 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 (2011) (*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 should begin and end with the first and fourth prongs of self-defense. There was ample evidence from which the jury could find Petitioner 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..

As Petitioner drove up to the Waffle House, before he even parked his car, he recognized some of the people in the parking lot were people he had trouble with previously. 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.[2] *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, Petitioner went outside with him rather than call the police, again well knowing there might, and most likely would, be trouble. Based on this evidence, the jury could reasonably conclude

[2]Appellant did not challenge his conviction for unlawfully carrying the pistol.

Petitioner was at fault in bringing on the difficulty, and he had several opportunities to avoid the danger entirely.[3]

Analysis of the second and third self-defense requirements also supports denial of Petitioner's directed verdict motion. Petitioner's conscious decisions to enter the Waffle House, and then walk outside with Glover, 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, Petitioner turned his back on the men, which clearly contradicts the assertion he believed he was in danger, and had "no other means of avoiding the danger (could not turn back) without losing his life or sustaining injuries." (Petition, p. 8).

Further, witness testimony and Petitioner's statements indicated the men outside the Waffle House were going to rob Petitioner if he did not "fight" Victim. No one threatened to shoot Petitioner if he did not "fight," and hitting Petitioner 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, Petitioner immediately turned around and started shooting,

---

[3]Petitioner'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, Petitioner only saw a 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 Petitioner fired any shots. In spite of this undisputed evidence, in an obvious attempt to present himself as a victim with no way to avoid death or injury but fire his gun, Petitioner states Victim "was shot in the crossfire and died." (Petition, p. 5) (emphasis added).

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.[4]

Petitioner'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 he 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 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, Petitioner was not acting in the scope of any legal duty, he was not on his own property facing someone with a shotgun threatening to kill him, he **illegally** armed himself prior to any confrontation, and he made no effort to retreat from the very trouble he anticipated when he got out of his car. Further, according to Petitioner's own version of the events, Victim, who was unarmed, did not say or do anything threatening toward Petitioner before Petitioner

[4]Petitioner conveniently ignores this critical evidence because it completely belies his self-defense claim.

chased him across the parking lot and shot him multiple times in the back. Those facts alone distinguish this case. *Compare* Butler, 755 S.E.2d at 460 (distinguishing Dickey and finding evidence created credibility issues and questions of fact regarding defendant's self-defense claim).

Petitioner asserts the Court of Appeals erred in citing Butler as support for affirming the circuit court on the directed verdict issue, claiming the evidence in this case was not susceptible of more than one reasonable inference, and he proved his case of self-defense as a matter of law. The record reveals both of these assertions are demonstrably inaccurate, and Petitioner relies on hyperbole and unsupported assumptions as evidence.

By way of example, Petitioner states Glover confronted him "presumably out of loyalty to and revenge for [Victim]," and "Glover took it upon himself to take revenge upon petitioner based on [Victim's] story." He is unable to cite anything in the record to support these statements, because there simply is no support. He further states Victim "was shot in the crossfire," even though there is absolutely no evidence anyone else had a gun or fired any shots that night. (Petitioner, pp. 5-7).

As to his self-defense "as a matter of law" contention, Petitioner apparently equates being "the aggressor" with being "at fault in bringing on the difficulty," but they are two different concepts. The mere fact Petitioner did not strike the first blow does not absolve him of any fault in bringing on the difficulty. On the contrary, he knew he had previous problems with some of the people in the Waffle House parking lot, and with full knowledge there might be trouble, he consciously armed himself illegally and proceeded into the Waffle House, which directly led to the ultimate confrontation. (State's Exhibits 1 and 2 [Voluntary Statements]). *See* Slater, 644 S.E.2d at 52 (any action reasonably

calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense). Consequently, the evidence did not prove his self-defense claim as a matter of law.

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, and amply supports denial of Petitioner's directed verdict motion. The Court of Appeals properly affirmed the circuit court's ruling, and the Petition should be denied on this issue.

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

Petitioner contends the Court of Appeals erred in affirming the denial of his motion for immunity pursuant to S.C. Code Ann. §16-11-450 and S.C. Code Ann. §16-11-440(C), because 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, Petitioner's contention ignores critical evidence. Further, he misconstrues the immunity provision of the Act as interpreted by this Court in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013).[5]

The expressly stated legislative intent of the Act is "to codify the common law Castle Doctrine which recognized that a person's home is his castle, 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." Curry, 752 S.E.2d at 266. If subsection (A)

[5]Petitioner completely ignores the Curry analysis and holding, stating only there was no valid self-defense claim in that case, which he summarily contends distinguishes Curry from this case. As discussed herein, however, Petitioner likewise had no valid self-defense claim.

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.*

Any 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 Petitioner 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. The Court does not need to address the issue in this case because the applicability of the Act was not the ultimate basis for the circuit court's ruling, and Petitioner failed to establish a valid claim of self-defense.

The circuit court expressly found that even if the Act applied, Petitioner failed to sufficiently establish a valid self-defense claim for purposes of immunity. Specifically, the court found Petitioner "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." (R., pp. 51-52). As discussed above in Issue I, the evidence amply supported the circuit court's ruling.

Ignoring the duty to retreat prong for purposes of argument only, the evidence Petitioner presented at the pre-trial hearing, including his own statements to police, clearly established Petitioner's fault in bringing on the difficulty, which standing alone, vitiates his immunity claim. Rather than simply leaving when he recognized some of the people in the parking lot, Petitioner 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. Petitioner never actually saw anyone holding a gun, and in response to a blow to his head, he immediately started shooting, chased Victim through the parking lot while shooting him in the back, and then kicked and shot Victim after he fell down.[6] (State's Exhibit 1, State's Exhibit 2; R., pp. 20-46).

Using a tortured analysis, Petitioner argues this Court's holding in Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005), does not apply because the instant case involved a restaurant, which involves food as a basic human need. He asserts Gilchrist involved a night club, which is "a place that stays open late at night and provides food, drink, and entertainment," and is "an environment that does not meet a human need, and where alcohol may be served, and where dancing is a part of the scenery, which in turn most likely would encompass the potential for immoral behavior." (Petition, pp. 9-10). Petitioner's argument is internally inconsistent on its face because a restaurant frequently stays open late at night,[7] serves alcohol, and provides entertainment.

---

[6]As noted above, there was no evidence of any other guns present or shots fired.

[7]Indeed, Waffle Houses are generally open twenty-four hours a day.

Even overlooking the inconsistency, however, Petitioner completely misses the point. The extent of the Act's applicability to a "place where [the person] has a right to be" is open to debate, but it is not necessarily determined by the type of place involved, and may include virtually any place generally open to the public.

There is no dispute Petitioner had the right to be in the Waffle House, but the inquiry does not end there. Petitioner did not have a legal right to enter the Waffle House, or any other place, carrying a concealed firearm, so he was "engaged in an unlawful activity" when he did.[8] Based on that undisputed fact alone, the Act does not apply to Petitioner.

Further, as this Court held in Curry, the applicability of §16-11-440(C) requires "a valid case of self-defense," which "includes all elements of self-defense, save the duty to retreat." 752 S.E.2d at 266. Thus, even assuming for argument purposes Petitioner was not engaged in unlawful activity, and was in a place he had a right to be, and therefore had no duty to retreat, he must still establish all the other elements of self-defense before he would be entitled to immunity under §16-11-440(C). As discussed in detail above, at a minimum he simply could not establish he was not at fault in bringing on the conflict.

The circuit court's determination Petitioner was not entitled to immunity under the Act is amply supported by the evidence, and the Court of Appeals properly affirmed the circuit court's ruling. Accordingly, Petition should be denied as to this issue.

---

[8]Petitioner's continued declarations he was not engaged in an unlawful activity do not alter the undisputed facts establishing he was. Simply stated, Petitioner saying it repeatedly "don't make it so."

CONCLUSION

Based on the foregoing, Respondent submits the Petition for Writ of Certiorari to the Court of Appeals should be denied in its entirety.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit

By: Deborah R.J. Shupe
DEBORAH R.J. SHUPE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 13, 2015

RECEIVED
JUL 13 2015
S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2015-001332
(Opinion No. 2015-UP-178, S.C. Ct. App., filed April 8, 2015)

THE STATE,

Respondent,

v.

ANTWON M. BAKER, JR.,

Petitioner.

PROOF OF SERVICE

I, Sally Ellison, certify I served the Return to Petition for Writ of Certiorari to the Court of Appeals on Petitioner 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
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify all parties required by Rule to be served have been served.

This 13th day of July, 2015.

Sally Ellison

SALLY ELLISON
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727