THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Presiding Judge

Civil Action No. 2011-CP-07-04796
Appellate Case No. 2014-000550

Rodney J. Allgire, Respondent,

v.

Marshall C. Blanton, Appellant.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

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Appellant Marshall C. Blanton ("Blanton") hereby petitions this Court for a rehearing and moves to allow oral argument, and hereby petitions this Court for reconsideration and appropriate alteration or amendment of the Court's opinion filed August 5, 2015, Unpublished Opinion No. 2015-UP-393. The grounds for the petition are as follows:

I. The Court erred in not determining that the circuit court should have granted Blanton's motion for directed verdict because the evidence proved he acted in self-defense and with due care.

The Court erred in not determining that Blanton had proved that he had acted in self-defense. In order to establish self-defense, a defendant must prove (1) he was without fault in bringing on the difficulty, (2) he reasonably believed the force was necessary because he was in imminent danger of suffering serious bodily harm, and (3) he used every reasonable means to avoid danger. Shramek v. Walker, 152 S.E. 88, 93-94, 102, 149, S.E. 331, 333-34, 337 (1929). However, the Court did not address that the privilege extends to the defense of others, so long as the other person defended would also be entitled to the privilege. State v. Hayes, 121 S.C. 163, 113 S.E. 362 (1922).

The evidence in this case established that Blanton was defending his colleague, Joey Blythe ("Blythe"), and had simply mistaken the identity of the person making the threat to his friend. The evidence in this case showed that there were clearly several verbal altercations with increasing intensity that began on the

golf course. Rodney Allgire ("Allgire"), was playing in a foursome directly behind Blythe's foursome. At one point, Dennis Robinson ("Robinson"), another player in Allgire's foursome, yelled ahead at Blythe's group. Blythe testified that Robinson used profanity and told them to hurry up. Heated words were exchanged between the two groups. When Allgire and his foursome reached the 18th green, Blythe approached Robinson to apologize for the slow play. Blanton was in the clubhouse during this time period. However, he observed from a distance that Robinson had his putter in his hand and was backing Blythe up towards the back of the cart. When Blythe came back to the clubhouse, he told Blanton about the exchange and that he felt threatened. He had actually heard someone say that they were going to the car and that they "would be back." This indicated that something further would occur. Blythe was worried that this was a threat, and that they would come back with a gun. Because Allgire was part of the group making the perceived threats, he was also perceived to be a threat. When Allgire came up to the clubhouse, Blanton perceived his approach as an initiation of the group's threat against Blythe. There was no evidence at trial that Allgire's conduct was not perceived as a threat Blanton and other members of his group.

Blanton was without fault in bringing on the difficulty because he was in the clubhouse when the conflict escalated. Blythe was without fault because he attempted to diffuse the situation by apologizing. However, Blythe perceived

Robinson's movements toward him with a golf club as a threat. After another heated exchange, Blythe heard other members of Allgire's group state that they were going to their cars but they "would be back." Blanton observed this exchange and heard Blythe communicate his fear of Allgire, a much larger man. Blanton therefore reasonably believed he needed to defend his friend as he saw Allgire approaching the clubhouse. Because a physical threat had already been made by Allgire's group (Robinson approaching Blythe with a golf club), Blanton was reasonable in believing that he had to counter with force. There was no way to avoid the perceived danger because Allgire and his group were approaching the clubhouse, and there was no way to escape.

Because Blanton proved the elements of self-defense at trial, the trial court should have directed a verdict for Blanton, and this Court should have determined that the trial court's ruling was in error and wholly unsupported by the evidence.

II. The Court erred in not determining that the award of punitive damages should be stricken because the award violated due process.

The punitive damages award was also so grossly excessive that does not comport with due process. One of the Gamble factors that the trial court found particular import was Blanton's degree of culpability, and reasoned that the evidence taken in the light most favorable to Allgire showed that Blanton "went to the problem." However, it is a conclusion wholly unsupported by the evidence.

Allgire's group was approaching the Blanton group, not the other way around. Blanton's choices *at the time of the perceived threat* were: a) to stay in the clubhouse and wait for what he felt was an imminent attack against Blythe or other members of his group; b) to go down the stairs and try to thwart an attack before the group reached Blythe and the others up on the deck. In sum, Blanton's movements down the stairs were part of the defense of Blythe and the other members of his group, and a way of keeping distance between the perceived threat and the individuals he was trying to protect.

The duration of the conduct was also minimal. There was only one (1) punch. There was no concealment of the incident. Finally, and most importantly, there was no evidence of Blanton's ability to pay. Therefore, the verdict does not comport with the elements under either Gamble or Gore, and the Circuit Court should have granted Blanton a new trial absolute or substantially reduced the punitive damages award to an amount consistent with the Gamble factors.

CONCLUSION

For the reasons stated, Blanton asks the Court for reconsideration and appropriate alteration or amendment of its previous opinion.

DATED this 18th day of August, 2015, at Beaufort, South Carolina, and

Respectfully submitted,

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