STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TAQUAN L. BROWN,

APPELLANT

APPELLATE CASE NO 2015-001447

Appeal from Colleton County

Honorable Perry M. Buckner, Circuit Court Judge

Opinion No. 2017-UP-315

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Taquan Brown respectfully petitions this Court for a rehearing in the above-captioned matter after an unpublished opinion, dated July 26, 2017, affirmed his conviction for obstruction of justice, voluntary manslaughter, and possession of a weapon during the commission of a violent crime. In support of his petition, Appellant respectfully alleges that this Court overlooked or misapprehended the following arguments:

Issue I

As to Issue I, this Court erred in concluding that Appellant's conduct, in his residence and the curtilage of his residence, was reasonably calculated to bring on the difficulty such that

Appellant could not claim immunity from prosecution under the Protection of Persons and Property Act ("the Act").

In signing the Act into law, the General Assembly stressed that, "no person or victim of crime should be required to surrender his personal safety to a criminal, ***nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.***" § 16-11-420(E) (*emphasis added*). Appellant was without fault in bringing on the difficulty.

The trial denied Appellant immunity under the Act because the court believed that Appellant was not without fault in bringing on the difficulty and that there was conflicting evidence "as to whether the defendant actually believed he was in imminent danger of losing his life . . . " Tr. p. 213, l. 16 - 214, l. 8. The trial court also noted that "there's a conflict in the testimony there as to whether or not [Kemp] actually ever threatened [Appellant] or threatened others in [Appellant's] presence." Tr. p. 198, l. 7-10.

The trial court's determination that there was conflicting evidence on these issues was erroneous. The evidence a trial conclusively established that, Kemp, weighing 375 pounds and high on cocaine, booze, and marijuana, stormed into Appellant's residence uninvited at four in the morning. Tr. p. 35, l. 3 - 37, l. 20; Tr. p. 191, l. 10-25. Once inside Kemp threatened to kill Appellant and destroyed Appellant's home in his search for Boulware. *Id.*

Even if Appellant left his residence armed and was walking towards Boulware and Kemp while the two were leaving in Boulware's car, as the State claimed, there was still no evidence that this act was reasonably calculated to create a situation in which ***Kemp would leave his car and charge twenty feet across Appellant's yard.*** *See State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999) ("mere unlawful possession of a firearm, with nothing more, does not automatically bar a

self-defense"); *Cf. State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007) (defendant not without fault where he entered an on-going fight he was previously not involved in with a loaded weapon).

The eye-witnesses close enough to hear Appellant and Kemp, all agreed that Appellant was ordering Kemp to leave and that Kemp responded by threatening to kill Appellant or by taunting Appellant to shoot him. Tr. p. 48, ll. 11-23; *See State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("the defense of habitation provides, defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection." (*citing State v. Bradley*, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)).

Even in a light most favorable to the State, Appellant and Kemp were simply "talking trash" to one another, Kemp still chose to leave the safety of his car to charge at Appellant, who was standing in his own yard. *See State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232, n. 8 (2014) ([o]ne who merely does an action that affords an opportunity for conflict is not thereby precluded from claiming self-defense. Fault implied misconduct, not lack of judgment) (internal citations omitted); *see also: State v. Wiggins,* 330 S.C. 538, 548 n. 15, 500 S.E.2d 489, 494 n. 15 (1998)(the absence of a duty to retreat also extends to the curtilage of one's home, which includes the dwelling's yard).

Thus, Appellant had no duty to retreat in his own yard and did not "bring on the difficulty". § 16-11-440(A)(2). Kemp was the sole initiator of the difficulty and Appellant was allowed "to meet force with force". § 16-11-4 40(C).

Issue II

As to Issue II, respectfully, this Court erred in affirming the trial court's denial of a directed verdict. When a defendant asserts an affirmative defense, such as self-defense, the prosecution must disprove the elements of the defense beyond a reasonable doubt. *State v. Wiggins*, 330 S.C. 538, 544 -45, 500 S.E.2d 489, 491.

Self-defense, when undertaken at the defendant's residence, has the following three elements: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; and (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or if the defendant was actually 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. *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013).

Even when viewing the evidence in a light most favorable to the State, the prosecution failed to present any direct or substantial circumstantial evidence that Appellant unlawfully shot and killed Kemp. *Dickey*, 394 S.C. at 499-501, 716 S.E.2d at 101-102; (directed verdict proper where defendant was lawfully ejecting decedent); *Hendrix*, 270 S.C. at 657-658, 244 S.E.2d at 505-506 (defendant confronted on his own land had no duty to retreat and was entitled to a directed verdict on self-defense).

The all of the evidence presented at trial established that Appellant was without fault in bringing on the difficulty. The difficulty began when Kemp forced his way into Appellant's apartment at four in the morning. It continued, uninterrupted until Kemp got out of his car and was shot while charging at Appellant, who was standing in his own front yard.

The proximate cause of Kemp's death was his decision to charge at Appellant. *See State v. Goodson*, 312 S.C. 278, 440 S.E2d 370 (1994) (state must prove beyond a reasonable doubt that defendant's unlawful act was reasonably calculated to bring on the difficulty and the proximate cause of the homicide).

The State also failed to present any direct or circumstantial evidence that Appellant did not reasonably believe he was in imminent danger of losing his life or sustaining serious bodily injury where Kemp was likely between two and twelve feet away from Appellant and reaching into his waist band when he was shot. Tr. p. 20, ll. 4-23. In South Carolina, a person has the right to act on appearances. *Starnes*, 340 S.C. at 911-912, 531 S.E.2d at 319-320.
92-493 (1998).

Appellant testified that he was afraid for his life and believed Kemp was reaching for a weapon. Tr. p. 37, ll. 7-20; *see also State v. Lockamy*, 369 S.C. 378, 384, 631 S.E.2d 555, 558 (Ct. App. 2006) (had defendant struck the final blow while in imminent danger, then self-defense would apply, but where the threat had moved fifty feet away by the time defendant opened fire, defendant could no longer use self-defense). Kemp had threatened to kill Appellant just a week before the shooting and was high on alcohol and cocaine when he was shot.

With a three hundred seventy five pound convicted felon charging him while reaching into his waist band, Appellant acted as a reasonably prudent person would. *Hendrix*, 270 S.C. at 660, 244 S.E.2d at 507 (holding the trial court erred in failing to direct a verdict in the defendant's favor concerning the charge of murder as the evidence established the defendant acted in self-defense).

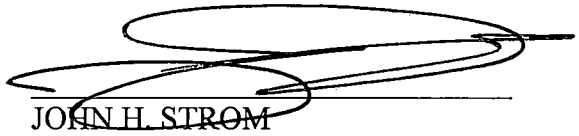
As Appellant was standing in the curtilage of his residence, he had no duty to retreat in the fact of Kemp's charge. *Hendrix*, 270 S.C. at 659-660, 244 S.E.2d at 506 (defendant, who armed himself on his own property, was without fault in bringing on difficulty and had no duty to retreat). Moreover, given how close Kemp was to Appellant when Appellant shot him and the gross disparities in size between the two of them, it would have been highly unlikely that Appellant could have safely retreated.

Accordingly, this Court erred in not finding as a matter of law that the circumstances would warrant a reasonable person to strike the fatal blow to save himself. In addition, this Court erred in not finding as a matter of law that Appellant actually and reasonably believed Kemp posed a danger to him and was without fault in bringing on the difficulty.

Conclusion

Appellant respectfully requests this Court rehear this matter for the significant points overlooked and/or misapprehended in rendering its unpublished opinion on July 26, 2017.

Respectfully Submitted,



JOHN H. STROM
Appellate Defender

This 10th day of August, 2017.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Taquan L. Brown, #341915, at Broad River Correctional Institution, Saluda B-110, 4460 Broad River Road, Columbia, SC 29210, this 10th day of August, 2017.

John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 10th day of August, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025