

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

ORIGINAL

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JUL 27 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRITTANY SHAUNTA PEARSON,

APPELLANT

APPELLATE CASE NO. 2016-001216

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE..... 2

STATEMENT OF THE FACTS..... 3

ARGUMENT

The court abused its discretion by failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the decedent attacked Appellant in her occupied vehicle and Appellant shot the decedent in self-defense after the decedent continually beat Appellant in the head and repeatedly slammed her head into the car window. 7

CONCLUSION 12

TABLE OF AUTHORITIES

Cases

<u>Brightman v. State</u> , 336 S.C. 348, 520 S.E.2d 614 (1999)	10
<u>State v. Curry</u> , 406 S.C. 364, 752 S.E.2d 263 (2013)	8, 9, 11
<u>State v. Davis</u> , 309 S.C. 326, 422 S.E.2d 133 (1992)	10
<u>State v. Dickey</u> , 394 S.C. 491, 716 S.E.2d 97 (2011)	10
<u>State v. Douglas</u> , 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014)	7, 8, 9
<u>State v. Duncan</u> , 392 S.C. 404, 709 S.E.2d 662 (2011)	7
<u>State v. Slater</u> , 373 S.C. 66, 644 S.E.2d 50 (2007)	10
<u>State v. Smith</u> , 406 S.C. 547, 752 S.E.2d 795 (Ct. App. 2013)	10
<u>State v. Thrift</u> , 312 S.C. 282, 440 S.E.2d 341 (1994)	3

Other Authorities

S.C. Code Ann. §16-1-60	8
S.C. Code Ann. § 16-11-420(B)	7
S.C. Code Ann. § 16-11-440	7
S.C. Code Ann. § 16-11-440(A)	9
S.C. Code Ann. § 16-11-450	6
S.C. Code Ann. § 16-11-450(A)	7

STATEMENT OF ISSUE ON APPEAL

Did the court abuse its discretion by failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the decedent attacked Appellant in her occupied vehicle and Appellant shot the decedent in self-defense after the decedent continually beat Appellant in the head and repeatedly slammed her head into the car window?

STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant on March 12, 2015 for murder and possession of a firearm during the commission of a violent crime. R. 256. Her case was called to trial on May 23, 2016 before the Honorable J. Derham Cole, and a jury. R. 1. Assistant Solicitors Timi Poulos, Russell Ghent, and Grady Anthony represented the state, and Thomas Quinn represented Appellant. R. 1.

On May 25, 2016, the jury found Appellant guilty of the lesser included offense of voluntary manslaughter and possession of a firearm during the commission of a violent crime. R. 247, l. 13 – 248, l. 3. Judge Cole sentenced Appellant to twenty-four years' imprisonment for voluntary manslaughter and five years concurrent the weapons offense. R. 250, l. 22 – 251, l. 7.

This appeal follows.

STATEMENT OF THE FACTS

Appellant moved to dismiss the indictments pursuant to the Protection of Persons and Property Act (the Act). R. 252. The court held a pretrial hearing to determine whether Appellant was immune from criminal prosecution under the Act.¹ R. 5, ll. 23-25. Appellant was the *only* witness who testified during the hearing. The following evidence was established during Appellant's testimony.

The decedent, Myah Cole, was Appellant's girlfriend. They had been dating for almost a year and were living together at the time of the decedent's death. R. 11, l. 16 – 12, l. 4. On the afternoon of November 8, 2014, Appellant and the decedent went to a baby shower that was hosted and attended by the decedent's family and friends. During the baby shower, the decedent grabbed Appellant's butt in front of everybody. This upset Appellant because the couple had agreed not to engage in public displays of affection. The decedent was angered at the way Appellant reacted and the two argued. R. 13, l. 8 – 14, l. 13.

¹ Before the hearing, the state moved to have the Act declared unconstitutional. Quoting State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994), the assistant solicitor argued, "Under the separation of powers doctrine, which is the basis for our form of government, the executive branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution and the South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands. The attorney general as the state's chief prosecutor may decide when and where to present an indictment and may even decide whether an indictment should be sought. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. The judicial branch is not empowered to infringe on the exercise of this prosecutorial discretion." R. 8, l. 18 – 9, l. 12. He continued, "What the legislature has done here is carved out a huge hole in the prosecutor's absolute discretion to decide who will and who won't receive immunity." R. 8, ll. 15-17. Consequently, the solicitor claimed the statute was unconstitutional. R. 10, l. 21. The court ultimately dismissed the state's argument and found the statute constitutional. R. 11, ll. 1-3.

When the couple left the shower, the decedent was still angry with how Appellant had reacted in front of her family and friends. The two continued to argue on the way home to their apartment and after they got home. R. 14, l. 14 – 15, l. 1. Their argument was purely verbal. R. 14, ll. 14-16.

Later that night, Appellant and the decedent met another couple at Red's Bar and Grill. While they were at the bar, the other couple was "kissing in public." The decedent "made a smart comment" to Appellant about public displays of affection. R. 15, ll. 5-21. In response to the decedent's comment, Appellant walked out of the bar and went to her car. As Appellant was trying to leave, the decedent started banging on the car window to get Appellant's attention because she did not want Appellant to leave her. R. 16, ll. 7-11. The decedent then stood in front of Appellant's car "to where if [Appellant pulled out she] would hit her with [her] car. So [Appellant] unlocked the door" and let the decedent in the car. R. 15, l. 22 – 16, l. 6.

Appellant then drove home to the couple's apartment. Her plan was to drop the decedent off and leave. After she parked the car, Appellant told the decedent, who was sitting in the front passenger seat, to get out of the car. She gave the decedent her keys to their apartment because the decedent did not bring hers. Appellant "kept trying to get her to get out of the car." While the decedent refused at first, she eventually got out of the car and stood outside. Nevertheless, she quickly got back into the car and began to attack Appellant, who was still sitting in the driver's seat. R. 16, l. 12 – 17, l. 19. The decedent had her knees on the front passenger seat and was "punching" Appellant in the head and "beating [her] head into the window." R. 18, ll. 4-17. Appellant said the decedent's left hand was holding Appellant's head down and she was punching Appellant with her right hand. R. 18, ll. 22-24.

As the decedent was beating her, Appellant “was trying to fend her off” and had her hands up in a defensive position. R. 18, l. 25 – 19, l. 3. Appellant’s vehicle, a Dodge Dart, was a very small car. Appellant still had her seatbelt on and was pulled up very close to the steering wheel because she is short. Consequently, she “couldn’t move.” R. 17, l. 20 – 18, l. 3; R. 20, ll. 1-2. Appellant “had never been put in a position like that before, and didn’t know what to do.” R. 19, ll. 21-25. She ultimately reached under her seat, grabbed her gun, cocked it, and shot the decedent.² R. 20, ll. 3-6. She fired “one time.” R. 20, ll. 5-6. Appellant later said that she “wasn’t aiming” and just put the gun between them “and fired.” R. 24, l. 19 – 25, l. 7.

After Appellant shot the decedent, she opened the car door, threw the gun out, and got out of the car. When she got out of the car, the decedent fell over into the driver’s seat. R. 20, ll. 17-21. Appellant immediately called 911 and told the operator that she “had just shot [her] girlfriend.” R. 20, l. 21 – 21, l. 1; R. 29, ll. 18-23. Appellant was hysterical when the police arrived and felt “numb.” R. 21, ll. 2-9. She cooperated with law enforcement and gave both a written and a recorded statement that night. R. 34, l. 16 – 36, l. 4.

Appellant testified that she had no “other option” but to shoot the decedent, and that if she had not shot the decedent, it would have been the decedent on trial instead of Appellant. R. 22, ll. 1-6. She also said she is “not a fighter” and that she feared she would be seriously injured or killed if she did not shoot the decedent. R. 20, ll. 7-9.

Appellant was five feet, three inches tall and 145 pounds. The decedent was the same height as Appellant, but approximately ten to fifteen pounds heavier. R. 19, ll. 4-10; R. 32, ll. 7-17. Appellant had purchased the Dodge Dart about a month before the decedent’s death. It was exclusively her car. She and the decedent had different schedules and did not share transportation

² Appellant had a valid concealed weapons permit. R. 36, 14-18.

during the week. However, if they did something together on the weekends, they would ride together in the same vehicle. Appellant said she “probably” let the decedent drive her car at some point, but she could not recall. R. 31, l. 12 – 32, l. 6.

At the conclusion of the hearing, the court broke for a lunch recess without permitting argument. R. 40, ll. 3-9. After the recess, the court found Appellant was not entitled to immunity under the Act. The court simply said, “I . . . find that the motion to dismiss or to grant immunity to the defendant based upon 16-11-450 should be, and therefore is, denied.” R. 44, ll. 8-10.

ARGUMENT

The court abused its discretion by failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the decedent attacked Appellant in her occupied vehicle and Appellant shot the decedent in self-defense after the decedent continually beat Appellant in the head and repeatedly slammed her head into the car window.

Appellant was entitled to immunity under the Protection of Persons and Property Act because the evidence presented pretrial established that Appellant shot and killed the decedent in self-defense after the decedent attacked Petitioner in her car.

“Section 16-11-450(A) of the South Carolina Code provides immunity from criminal prosecution to a person using deadly force as permitted by the Act.” State v. Douglas, 411 S.C. 307, 317, 768 S.E.2d 232, 238 (Ct. App. 2014). The Act expresses the General Assembly’s finding “that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.” S.C. Code Ann. § 16-11-420(B). “[T]he legislature intended to create a true immunity, and not simply an affirmative defense.” State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). “Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial.” Id. “[W]hen a party raises the question of immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence.” Id. at 411, 709 S.E.2d at 665.

Section 16-11-440 sets forth the circumstances under which the Act allows the use of deadly force. Id. The statute states in relevant part:

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

...

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has the 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 or to prevent the commission of a violent crime as defined in Section 16-1-60.

(D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

Our Supreme Court emphasized in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013)

“that immunity under the Act ‘is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by a preponderance of the evidence,’ save the duty to retreat.” Douglas, 411 S.C. at 318, 768 S.E.2d at 238 (quoting Curry, 406 S.C. at 371-372, 752 S.E.2d at 266-267). “[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.” Id. at 318, 768 S.E.2d at 238 (quoting Curry, 406 S.C. at 371, 752 S.E.2d at 266) (alternation in original).

“There are four elements required by law to establish a case of self-defense: First, the defendant must be without fault in bringing on the difficulty. Second, 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. Third, if his defense is based upon his belief of imminent danger, a reasonably 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. Fourth, 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.” Id. at 318, 768 S.E.2d at 238-239 (internal citation omitted). As mentioned, the last element, the duty to retreat, need not be shown when seeking immunity under the Act. Id. at 318, 768 S.E.2d at 239 (citing Curry, 406 S.C. at 371, 752 S.E.2d at 266.

Appellant’s testimony pretrial established that the decedent unlawfully entered Appellant’s car after Appellant had ordered her out of the vehicle, and immediately began to attack Appellant. The decedent continually punched Appellant in the head with her fists and repeatedly slammed Appellant’s head into the car window. Because the decedent unlawfully entered Appellant’s car after Appellant had ordered her out of the vehicle, Appellant was “presumed to have a reasonable fear of imminent peril of death or great bodily injury” under § 16-11-440(A) when she shot the decedent. Consequently, Appellant reasonably believed under the presumption created by the statute that the decedent was going to seriously injure or kill her if she did not use deadly force to protect herself.

Additionally, Appellant established by a preponderance of the evidence that she was acting in self-defense when she shot the decedent. First, Appellant was without fault in bringing on the difficulty. Appellant’s testimony pretrial established she drove the decedent home from the bar with the intention of dropping her off and leaving. Appellant gave the decedent her

house keys and told her to get out of the car. While the decedent initially got out of the car, she reentered the vehicle and immediately began beating Appellant. Appellant, who had a valid concealed weapons permit, only armed herself after the decedent attacked her. Therefore, there is no question Appellant was without fault in bringing on the difficulty. Cf. State v. Dickey, 394 S.C. 491, 500, 716 S.E.2d 97, 101 (2011) (finding the state did not produce any evidence to contradict Dickey's testimony that he routinely carried his concealed weapon for which he had a permit, and did not deliberately arm himself in anticipation of a conflict that evening, and consequently, the state did not carry its burden to disprove the elements of self-defense beyond a reasonable doubt); State v. Slater, 373 S.C. 66, 71, 644 S.E.2d 50, 53 (2007) (holding the trial court correctly found Slater was not entitled to a self-defense charge because his actions, including the unlawful possession of the weapon, proximately caused the exchange of gunfire and ultimately the death of the decedent, and any act of the accused in violation of the law and reasonably calculated to produce the occasion amounts to bringing on the difficulty); and State v. Smith, 406 S.C. 547, 554-555, 752 S.E.2d 795, 798-799 (Ct. App. 2013) (finding the state presented evidence Smith was not acting in good faith at the time of the shooting in that he took a gun to a drug deal, and holding going to a drug deal while armed with a deadly weapon is evidence of fault in bringing on the difficulty).

Moreover, not only did Appellant believe she was in imminent danger of losing her life or sustaining serious bodily injury, she actually was in such imminent danger. As seen *supra*, the decedent was holding Appellant's head with her left hand and continually punching her in the head with her right fist. See State v. Davis, 309 S.C. 326, 344, 422 S.E.2d 133, 144 (1992) *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) (holding a hand or fist may be a deadly weapon). She was also slamming Appellant's head into the

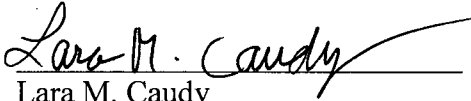
window. Appellant testified that she had no “other option” but to shoot the decedent, and that if she had not shot the decedent, it would have been the decedent on trial instead of Appellant. R. 22, ll. 1-6. Due to the constant punches, Appellant feared she would be seriously injured or killed if she did not shoot the decedent. R. 20, ll. 7-9. Under the circumstances, a reasonable person in Appellant’s position would have likewise believed he or she was in imminent danger and acted as Appellant acted in order to save herself from serious bodily injury or death.

As mentioned, the last element, the duty to retreat, need not be shown when seeking immunity under the Act. Id. at 318, 768 S.E.2d at 239 (citing Curry, 406 S.C. at 371, 752 S.E.2d at 266. Therefore, when Appellant reached under her seat, grabbed her gun, and shot the decedent once, she was lawfully acting in self-defense.

Respectfully, this Court should reverse Appellant’s convictions and sentence and hold she is immune from prosecution under the Act.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse her convictions and sentence and hold she is immune from prosecution pursuant to the Protection of Persons and Property Act.


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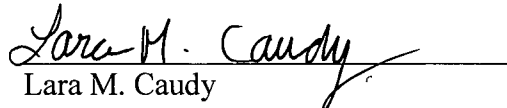
ATTORNEY FOR APPELLANT

This 27th day of July, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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