STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALLEN WESLEY MASSEY,

APPELLANT

APPELLATE CASE NO 2015-001934

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Appellant is entitled to immunity from prosecution under the Protection of Persons and Property Act where Appellant was without fault in bringing on the difficulty that precipitated his use of deadly force and where Appellant actually and reasonably believed he was in imminent danger of sustaining great bodily injury or death.

STATEMENT OF THE CASE

On January 2, 2014, the Lancaster County Grand Jury indicted Appellant Allen Wesley Massey for murder and possession of a weapon during the commission of a violent crime. R. 1108.

On March 30-31, 2015 a hearing was held before the Honorable Craig Brown on whether Appellant was entitled to immunity from prosecution under the Protection of Persons and Property Act. (R. 1). Mark Grier represented Appellant, and Assistant Solicitor Lisa Collins represented the State. On April 3, 2015, Judge Brown denied Appellant immunity from prosecution in an oral ruling from the bench. (R. 451, l. 1 - 12, l. 23).

On August 3-7, 2015, Appellant proceeded to trial before the Honorable G. Thomas Cooper and a jury. (R. 463). The jury found Appellant guilty of voluntary manslaughter and possession of a weapon during the commission of a violent crime. (R. 820, l. 16 - 822, l. 6). The trial court sentenced Appellant to 15 years imprisonment, suspended on the service of ten years imprisonment and five years of probation. (R. 838, l. 3 - 839, l. 17).

ARGUMENT

Appellant is entitled to immunity from prosecution under the Protection of Persons and Property Act where Appellant was without fault in bringing on the difficulty that precipitated his use of deadly force and where Appellant actually and reasonably believed he was in imminent danger of sustaining great bodily injury or death.

Relevant Facts

In the early morning hours of October 12, 2013, Appellant was at a small party at his cousin's, Malika Harris, house just inside Lancaster town limits. (R. 24, l. 10 - 26, l. 18). He stopped at Harris' house after leaving a larger house party nearby.

While not formally invited to the small party at Harris' house, Appellant was welcomed when he arrived and was handed a beer. (R. 26, ll. 19-21). Demarcus Robinson, the decedent, was also at Harris' house. Robinson was with his fiancée Ebonie Harris. Robinson, nicknamed the "Knockout King" and the "one hitter quitter" for his ability to knockout people with a single punch, was a longtime friend of Appellant. (R. 39, l. 3 - 40, l. 6; R. 539, l. 25 - 540 l. 20).

By contrast, Appellant's nickname - reflecting his reputation in the community - was "Urk", an abbreviation of "Steve Urkle" the "nerdy" and uncoordinated T.V. character in "Family Matters". (R. 555, ll. 14-20; R. 187, l. 9 - 188, l. 11). Appellant was aware of Robinson's reputation for violence. Even Robinson's fiancée admitted at trial that he was widely known in the community as the "Knockout King" and had herself seen Robinson attack people during verbal arguments. (R. 551, l. 4 - 552, l. 1).

Appellant and Robinson first saw each other that night as Appellant approached the front yard of Harris' house. (R. 546, l. 5 - 549, l. 13). Robinson and his fiancée were leaving to go buy more beer for the party. Robinson's fiancée would recall that Appellant told Robinson "he

needed to talk to him". Robinson responded that they could talk later when he returned. (R. 401, l. 1 - 402, l. 22).

Appellant Tells Robinson about earlier confrontation by Robinson's cousin

When Robinson returned from buying beer, he went back inside Harris' residence while his fiancée took a nap in her car. (R. 402, l. 18 - 404, l. 11). She did not witness the fatal incident. It was shortly after Robinson returned to the party that Appellant spoke with him while waiting to play spades in Harris' kitchen.

Appellant told Robinson that he and Robinson's cousin, Rashawd Robinson, had a confrontation at a different party earlier that night and that Rashawd had punched him. (R. 35, l. 11 - 36, l. 23). Years earlier, Appellant had "snitched" on Rashawd regarding Rashawd's participation in an armed robbery. As a result of his cooperation, Appellant - who was the "getaway driver" - was not charged. Rashawd pled guilty and served time in prison. (R. 29, l. 4 - 32, l. 7).

Appellant would testify that Rashawd's punch was a glancing blow. Appellant was able to remain on his feet and people nearby immediately intervened to separate the two men. Appellant also reflected that, "I felt guilty because of, you know, [Rashawd] ending up having to serve prison time because of the whole incident." (R. 31, ll. 1-21).

Appellant stated he did punch Rashawd back, but decided it was better for him to simply leave the party. It was on his way home from this party that he decided to visit Harris' house when he saw several cars in the driveway. (R. 29, l. 4 - 32, l. 7). After telling Robinson about the incident with Rashawd, Appellant turned his attention to the game of spades that was about to finish as he was going to play in the next game. (R. 35, ll. 11-18).

Robinson Attacks Appellant

In the seconds before Robinson attacked him, Appellant would recall that Robinson was standing to his right and slightly behind him talking with a man named Thomas McGriff[1]. (R. 36, l. 5 - 41, l. 14). The game of spades was being played at the kitchen table, located to Appellant's left.

Thirty seconds to a minute after telling Robinson about being attacked by Rawshad, Robinson ambushed Appellant with a hard punch to the face. (*Id.*). Appellant recollected at the immunity hearing that, "I don't see [the punch] coming . . . It was pretty hard. It dazed me, it knocked me to the ground." (R. 37, ll. 1-5). The force of the blow knocked Appellant backwards out of the kitchen into the adjoining living room and off of his feet. (*Id.* at ll. 5- 21; R. 364, l. 17 - 368, l. 4; R. 560, l. 7 - 562, l. 25; R. 672, ll. 13-25).

The impact of Robinson's punch was not in dispute. The "sucker punch" took Appellant by complete surprise. (*Id.*) None of the witnesses present during the incident recalled any hostile words or threats exchanged prior to Knockout King Robinson, striking Appellant "Urk". Both men had been drinking and seemingly enjoying the party until Robinson struck Appellant.

Sindarous Wells, who was the only witness to Robinson's attack to testify, stated that Appellant was knocked out of the kitchen into the living room. Wells was unsure if Appellant fell to the ground, but said that Appellant was reeling from the blow. Just prior to Robinson punching Appellant, Wells overheard Appellant tell Robinson that Rashawd had punched him earlier that night. (R. 363, l. 25 - 364, l. 24). In contrast to Appellant's version of events, Wells claimed that Appellant told Robinson he had threatened Rashsawd with his pistol after being punched. (R. 365, l. 2 - 366, l. 24).

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[1] McGriff did not testify at the immunity hearing or the trial.

Wells recalled that Robinson did not immediately react to Appellant's story, "[h]e wasn't -- he wasn't really saying nothing, he wasn't saying anything. We was just standing right there and we was still talking. And then out of nowhere he just swung and hit Allen." (R. 365, ll. 21-24). The hit busted Appellant's lip and caused him to fall backwards into the living room out of Wells' line of sight. Robinson followed in pursuit. According to Wells, Robinson was still standing up when Appellant shot him. (R. 366, l. 4 - 378, l. 4).

With Robinson lunging at him after knocking him to the ground, Appellant shot Robinson with a .32 caliber revolver he was carrying that night. (R. 42, l. 2 - 44, l. 4). Appellant would testify that as he lay on the floor, with Robinson closing in on him for another punch, he believed that Robinson intended to inflict serious injury or kill him. (R. 37, l. 2 - 39, l. 23). "I look up and I see him coming at me, he's cocking back and about to, you know, reach down and hit me again." (*Id.*).

During the immunity hearing, Appellant attempted to describe Robinson's demeanor:

> I looked in his face and it kind of reminded me of watching Animal Planet and seeing a lion hunt. You see that fierce look in his face and you see he's determined to, you know, make the kill. And it's like, you know, when you see that look in that face, you know, that lion is not coming at you to lick you or to rub up against your leg, you know, it's coming to do damage.

(R. 38, ll. 17-23). Appellant knew Robinson's reputation, having witnessed Robinson knock "quite a few people out." (R. 39, ll. 3-21). Appellant believed that Robinson had "bad intentions" towards him as he sat unprotected on the floor of Harris' living room. (R. 42, ll. 20-22). In contrast with the earlier punch by Rashawd, nobody at the house intervened to stop Robinson.

As a result of prior convictions for unlawful carry of a pistol, Appellant could not legally own a gun. (R. 54, l. 1-20). Nevertheless, Appellant had carried a gun for self-defense for over

three years prior to the incident with Robinson after the fatal shootings of two good friends (R. 40, ll. 13-24).

After shooting Robinson, Appellant panicked and ran from the residence. (R. 46, l. 23 - 50, l. 24). Distraught, Appellant called Robinson's brother shortly after the fatal incident and "told him that I hated what had just happened and especially how it happened, you know, because I never expected anything like that to take place. But I still felt like I didn't have any choice." (R. 47, l. 19-22). Law enforcement did not find any weapons on Robinson and none of the witnesses testified that he was armed.

Appellant then called a friend who drove him to her house in Pageland where he spent the night. He did not immediately call the police because "in some circles the Lancaster Police Department doesn't have the best reputation" and because he was afraid that the police would look at the tragic incident as "just being another black on black crime." (R. 48, l. 11 - 49, l. 12).

The next day, Appellant contacted his sister and explained what happened. At Appellant's request, and to minimize the risk of a violent response from law enforcement, Appellant's sister arranged for him to surrender to police at the Lancaster Police Department. (R. 50, ll. 3-24; R. 99, l. 19 - 103, l. 11). With these arrangements made, Appellant turned himself law enforcement on the afternoon of October 13th. He was accompanied by his sister and mother. He also turned over the .32 caliber revolver to police.

Captain Scott Grant and Lieutenant Phillip Hall of the Lancaster Police Department interrogated Appellant after he turned himself in. (R. 264, l. 21 - 267, l. 13). During the interrogation the officers repeatedly asked Appellant what was the difference between the earlier confrontation with Rashawd and the later attack by Robinson. (R. 821, l. 21 - 823, l. 3).

Appellant explained to police that, unlike Rashawd, Robinson had knocked him to the ground. He did not believe he could escape Robinson and he was afraid that Robinson would hit him again. (R. 825, l. 20 - 827, l. 8). At trial, the State would stress - during both closing argument and during Captain Grant's testimony - that Appellant failed to say the "magic words" of self-defense: "I was scared." (*Id.*).

Hearing to determine immunity from prosecution under the Protection of Persons and Property Act

The defense moved for a pre-trial hearing to determine if Brown was entitled to immunity under Protection of Persons and Property Act ("the Act"). A two day hearing was held on March 30-31, 2015.

Forensic pathologist Janice Ross, who conducted Robinson's autopsy, testified that he was killed by a single gunshot below his right pectoral that caused hemorrhaging inside of his abdomen leading to a fatal loss of blood. (R. 131, l. 24 - 133, l. 25. At the time of death he was 5' 10" tall and weighed two hundred and twenty pounds. (R. 488, ll. 2-18).

Dr. Ross further testified that the trajectory of the bullet was consistent with Robinson being bent over when he was shot and with the bullet being "fired [upward] from a lower position". (R. 142, l. 1 - 143, l. 1). Dr. Ross also stated that, at the time of death, Robinson had a blood alcohol level ("BAC") of .159 and also tested positive for Tetrahydrocannabinol ("THC"). (R. Tr. p. 145, l. 5- 146, l. 9). When asked by the defense, Dr. Ross averred that a single blow to the head could result in serious damage to the victim. (R. 147, l.2-12).

Appellant's cousin, Malika Harris, and her fiancée, Shonettia Hunter, also testified at the hearing. Hunter was Robinson's cousin. Both were in the hall bathroom when Appellant shot Robinson in their living room. They agreed that, had Appellant told them he was carrying a pistol, they would not have let him into their house. (R. 311, ll. 3-15; R. 342, ll. 2-12).

Harris testified that she left the bathroom before Hunter and saw Appellant "tussling" with Robinson in the kitchen. (R. 311, l. 5 - 315, l. 22). She believed that both men were standing when Appellant shot Robinson.[2] (R. 317, ll. 18-24). Hunter, who left the bathroom after Harris, only saw Appellant run out of the house and did not witness Robinson punch Appellant or the shooting. (R. 343, ll. 17-25).

Argument by Counsels

In arguments after the close of testimony, the defense maintained that Appellant was without fault in bringing on the difficulties as the evidence showed that "Mr. Massey was struck in an unprovoked attack." (R. 423, l. 2 - 431, l. 20). Defense counsel posited that Appellant had been stunned by Robinson's "sucker punch" and that it was reasonable - given Robinson's well known reputation for violence - for Appellant to fear he was in imminent danger of serious bodily injury or death. (*Id.*). Moreover, the trajectory of the bullet and Wells' testimony corroborated Appellant's testimony. (R. 428, ll. 4-25).

In its reply, the State proffered that Appellant was not acting lawfully at the time of the shooting because it was illegal for him to possess a gun and it is illegal to discharge a firearm under the influence of alcohol. (R. 431, l. 22 - 446, l. 4). The State repeatedly stressed that, had Appellant informed Harris and Hunter that he had a gun with him, they would have made him leave. Under the State's reasoning, Appellant's failure to tell the women that he was carrying the gun meant that Appellant did not have a right to be in the residence and indicated that he maliciously armed himself in hopes of a confrontation. (R. 434, ll. 12-25).

The State also pontificated that a reasonable person of ordinary firmness would not fear imminent bodily injury or death under the circumstances because Robinson only hit Appellant

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[2] At trial, she contradicted herself, testifying that both men were on the ground, but that Robinson was on top of Appellant. (R. 562, ll. 13-25).

once. According to the State, Appellant - while not having a duty to retreat - had chosen to retreat from his earlier confrontation with Rashawd and, thus should not be allowed claim self-defense when later attacked by Robinson. (R. 437, l. 16 - 440, l. 5). The State emphasized that Appellant and Robinson had no history of ill-will and that Appellant even told police that he and Robinson were friends prior to the fatal incident. (*Id.*)

Trial Court's Oral Ruling Denying Appellant Immunity from Prosecution

Judge Hill denied Appellant immunity. (R. 461, ll. 13-23). Relying on Wells' testimony, the court concluded that Appellant "to some extent" brought on the difficulties if he in fact told Robinson that he had "pulled a gun" on Rashawd earlier that night. (R. 460, ll. 4-14).

The court also ruled that Appellant did not actually in fear of imminent great bodily injury or death. (R. 460, l. 14 - 12, l. 5). The court noted that Appellant never expressly told law enforcement during his post-arrest interrogation that he was scared of Robinson or that he believed he was in imminent danger of losing his life or sustaining serious bodily injury. (*Id.*). Moreover, the court believed a "reasonably prudent man of ordinary firmness" would have endured more than a "busted lip" before shooting Robinson. (*Id.*).

Discussion

The Protection of Persons and Property Act (the "Act"), provides in relevant part that, "[a] person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . ***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***" § 16-11-440(C) (*emphasis added*).

In passing the Act, the General Assembly stressed, "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*).

Our Courts have determined that, in order to be granted immunity from prosecution under the Act, a defendant must prove all the elements of self-defense, except the duty to retreat, by a preponderance of the evidence. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).

Thus, to be entitled to immunity the defense must prove: (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).

(A) Appellant is entitled to immunity from prosecution under the Act where Appellant was without fault in bringing on the difficulty.

An individual who provokes or initiates an assault may not assert self-defense. *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). "Any act of the accused in violation of law and *reasonably calculated to produce the occasion* amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide." *Id.* (*emphasis added*)

Appellant was without fault in bringing on the difficulty. The evidence presented at the immunity hearing established that, at the very worst, Appellant told Robinson that he and Robinson's cousin, Rashwad, had been in an altercation earlier that night, that Rashwad had wanted to fight Appellant, that Appellant had threatened Rashwad with a gun, and that Appellant had left that party as a result of the altercation. (R. 384, l. 17 - 385, l. 18).

Appellant did not display or point the gun at anyone during the party at Harris' house. *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"). Moreover, Robinson's reaction to Appellant's story about his confrontation with Rashawd showed that Robinson had a period of contemplation, during which he spoke with Thomas McGriff, prior to ambushing Appellant. (R. 36, l. 5 - 41, l. 14).

At the immunity hearing, Solicitor Collins asked Sindarous Wells, the only witness to Robinson's "sucker punch" other than Appellant:

> Q: And at that point -- up to that point how had Marcus been toward the defendant?
>
> A: He wasn't -- he wasn't really saying nothing, he wasn't saying anything. We was just standing right there and we was still talking. **And then out of nowhere he just swung and hit Allen.**
>
> Q: Okay. When you said he, who?

A: Marcus [Robinson].

(R. 365, l. 19 - 376, l. 2). Robinson and Appellant were long-time friends. This made Robinson's ambush attack all the more unexpected. (R. 39, l. 3 - 40, l. 6; R. 539, l. 25 - 540 l. 20).

Appellant telling Robinson about his earlier altercation with Rashawd was not the proximate cause of Robinson's shooting. The proximate cause of the difficulties was Robinson attacking Appellant. *State v. Frazier*, 401 S.C. 224, 235, 736 S.E.2d 301, 306-307 (2013) (holding that defendant's argument with a third party was not the proximate cause of his difficulties with the deceased). Rashwad's conviction for armed robbery, which was the root of Rashwad's animosity towards Appellant, occurred several years before the fatal incident and Robinson presumably knew of Appellant's involvement.

In *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 214), Douglas was arrested for fatally shooting a longtime friend, Charles Smith, following a day of drinking. 411 S.C. at 312, 768 S.E.2d at 236. The two men had started fighting over Douglas' anti-anxiety medicine. *Id.* at 314, 768 S.E.2d at 236. Smith won the fight.

After the fight was over, Douglas went into his bedroom and grabbed a gun. He demanded Smith leave. Smith refused and advanced on Appellant with a "possessed look" in his eyes. *Id.* A terrified Douglas shot the approaching Smith once in the chest, killing him. *Id.* Unlike Appellant, Douglas was granted immunity from prosecution and the State appealed.

In affirming the trial court's grant of immunity, this Court ruled that Douglas was without fault in bringing on the difficulties that led to Smith's death. Specifically, "Smith's violent behavior was an **unreasonable reaction** to a reasonable demand for Smith to return Respondent's medicine." *Id.* at 321-322, 768 S.E.2d at 240-241. (*emphasis added*)

Here, there is simply nothing in Wells' testimony or in anyone else's testimony that evidences how Appellant telling Robinson about this prior confrontation with Rashwad was reasonably calculated to arouse Robinson to, "out of nowhere," violently strike Appellant in the face. *Cf: State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007) (holding defendant was not without fault when he entered on-going fight he was previously not involved in with a loaded weapon).

Appellant did not "bring on the difficulty." Robinson's unreasonable reaction to Appellant's story initiated the difficulty that led to his death. The law allowed Appellant "to meet force with force". S.C. Code Ann. § 16-11-440(C). "We was just standing right there and we was still talking. **"And then out of nowhere he just swung and hit Allen."** (R. 365, l. 19 - 366, l. 2) (*emphasis added*); *see also State v. Graham*, 260 S.C. 449, 449, 196 S.E.2d 495, 496 (1973) (holding that because of ill-will between the parties it could be inferred that they had armed themselves to settle their differences; the apparent willingness of each to engage in the armed encounter prevented a plea of self-defense).

Therefore, the court committed an error of law in concluding that Appellant "possibly" brought on the difficulty that necessitated the use of deadly force by informing Robinson of Appellant's earlier confrontation with Robinson's cousin. (R. 460, ll. 4-14).

(B) Appellant is entitled to immunity from prosecution under the Act where Appellant actually and reasonably believed he was in imminent danger of sustaining serious bodily injury.

In denying Appellant immunity, the trial court ruled that Appellant had failed to prove a by a preponderance of the evidence that he actually feared for his life when he shot Robinson. (R. 460, l. 14 - 12, l. 5). This ruling was in error. Without question, Appellant believed he was in actual danger of losing his life or sustaining great bodily injury. (R. 38, l. 17-23 - 42, l. 22).

Moreover, a person of ordinary firmness would have entertained the same belief given the totally unexpected nature of the attack and Robinson's acknowledged reputation as the "Knockout King". *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011) (defendant entitled to directed verdict on self-defense where it was uncontroverted that decedent was highly intoxicated, acting aggressively, and advanced on defendant).

The law provides that a person has the right to act in self-defense on appearances, even if the person's belief is ultimately mistaken. *State v. Fuller,* 297 S.C. 440, 443–44, 377 S.E.2d 328, 331 (1989). "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." *State v. Starnes,* 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000) (*citing State v. Hendrix,* 270 S.C. 653, 244 S.E.2d 503 (1978)). "[W]ords accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense." *Fuller,* 297 S.C. at 444, 377 S.E.2d at 331 (1989) (*quoting State v. Harvey,* 220 S.C. 506, 68 S.E.2d 409 (1951)).

Great bodily injury is defined in the Act as, "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ)." S.C. Code Ann. § 16-11-430(2).

Robinson's unexpected "sucker punch" placed Appellant at a substantial disadvantage, effectively rendering him defenseless. The force of the blow knocked Appellant from the kitchen into the living room. Appellant testified that he fell onto his back and was attempting to sit up when Robinson advanced on him. (R. 37, ll. 1-21).

Sindarous Wells – the only other witness to Robinson's surprise attack who testified - recalled that Robinson's "out of nowhere" punch caused Appellant to fall back out of the kitchen

and into the living room. (R. 365, l. 21 - 368, l. 4). While Wells could not tell if Appellant fell down, he comfirmed that Robinson immediately pursued a staggering and stunned Appellant.

Contrary to the ruling of the trial court, Appellant did not have to wait until Robinson inflicted severe injuries on him prior to shooting. (R. 460, l. 14 - 12, l. 5). In so ruling the court committed an error of law.

Furthermore, there is absolutely no evidence that, having landed a thunderous opening salvo on an unsuspecting Appellant, Robinson was going to stop his attack. *State v. Gandy,* 113 S.C. 147, 148, 101 S.E. 644 (1919) (holding that a man, may act in self-defense on appearance); *see also* S.C. Code Ann. § 16-11-420(E) ("The General Assembly finds 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"); *see also* S.C. Code Ann. § 16-11-440(C).

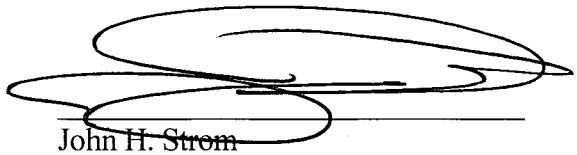
Appellant, known as "Urk" for his awkward demeanor, feared for his life and reasonably so. He could not know Demarcus "the Knockout King" Robinson's intentions. As "Urk" reeled from the completely unexpected strike by his longtime friend, he had every reason to believe that he was imminent danger of great bodily injury or worse and that meeting force with force was necessary to prevent becoming the victim of a violent crime. S.C. Code Ann. § 16-11-440(C).

Accordingly, the trial court erred in denying Appellant's motion for immunity from prosecution under the Protection of Persons and Property Act where Appellant was without fault in bringing on the difficulty and reasonably believed he was in imminent danger of sustaining serious bodily injury.

CONCLUSION

Based on the foregoing reasons, Appellant is entitled to a grant of immunity from prosecution under the Protection of Persons and Property Act.

Respectfully Submitted,



John H. Strom
Appellate Defender

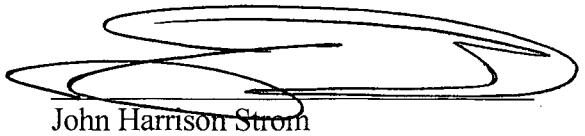
ATTORNEY FOR APPELLANT

This 22nd day of March, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 22, 2017



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THE STATE,

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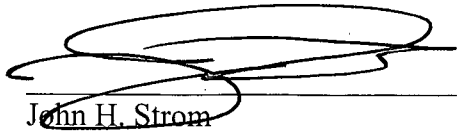
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blitch, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of March, 2017.



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of March, 2017.

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