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VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Berkeley County

JAN 27 2017

Kristi Lea Harrington, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STEVEN DWAYNE MOSES,

APPELLANT

APPELLATE CASE NO. 2016-000627

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 1 (DVD OF SECURITY FOOTAGE AT NOWHERE BAR)

Sentencing
Steven Dwayne Moses
March 17, 2016

1 sure the Court will realize the importance of what I'm
2 getting ready to say to the Court.

3 Whether they are able to accept this or not at this
4 time, to the Bohannan family and to Mr. Bryant, I say to
5 you my heart does really go out to them, believe it or
6 not. I have a certain role as an advocate in this
7 courtroom to play. And I'm sure if I was your advocate,
8 you would want me to be as zealous as I was in this
9 trial. But my heart goes out to you, certainly, and I
10 hope that the rest of your lives is the best of your
11 lives after today.

12 Your Honor, in mitigation, I'm going to go through
13 some of the facts. And I understand that the jury has
14 spoken, so I'm not here to contest the jury's verdict at
15 this time. But I think, and I said this -- and I said
16 this -- and I actually said this to my client, who I
17 think subsequent to July 28, 2013, and I'm sure now, he
18 fully appreciates what I said to him is when you start a
19 fight, you never know how it's going to end. Never.
20 It's a thing you don't control. Unlike the UFC, it is
21 not a controlled environment. The parking lot at a bar
22 is not a controlled environment. There are no referees,
23 there is no bell or buzzer, there is nobody to step in,
24 there's no assurance that nobody has a gun. There is
25 none of that.

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1 Part of what I say about responsibilities, ego,
2 alcohol, and the likewise, pertains to my client as well
3 as to everyone else in this trial because I'm a member
4 of this community and I would like to see this community
5 be the best that it is. But when you combine those
6 things, good things never happen.

7 Mr. Moses knows all of that and the reason he knows
8 all of that, Your Honor, is because he went forty-one
9 years without incurring any substantial offense against
10 any person. Forty-one years.

11 He's forty-four years old. He is a graduate of
12 Goose Creek High. He was born in Charleston County.
13 Date of birth is , . He graduated from
14 Goose Creek in 1998. Although he has not attended any
15 college, he has gotten his license and he is a licensed
16 barber.

17 He's divorced and he has two children. He has a
18 twelve-year-old that's right here, goes to Westview
19 Middle School in Goose Creek. He has a twenty-two-year-
20 old daughter. So he has a twelve-year-old son in middle
21 school, he has a twenty-two-year-old daughter who is a
22 senior at South Carolina State University.

23 He lives in Goose Creek with his mother, who was
24 here during trial and who left subsequent to the jury
25 going in to deliberate. And I called her and I don't

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1 know if she's gotten the call or not. But he helps to
2 provide for his mother's household. And that is Barbara
3 Moses and she sat, in this entire trial, right by his
4 side and has been by his side during the time that he
5 hired me to represent him.

6 Along with his mother, he has two brothers in Goose
7 Creek who also live at that residence. His brother John
8 is fifty-years old, his brother Marion is twenty-four
9 years old, and they all are pretty much life-time
10 residents of Goose Creek, South Carolina.

11 When he's not cutting hair, he works as an air-
12 conditioning repair person. He is doing that and has
13 had, and still has, until today, which is going to come
14 to an end under most circumstances, several contracts
15 for air-conditioning work.

16 He has spent the last twenty years being a barber
17 and presently he was working out of a barber shop known
18 as Choices on Red Bank Road.

19 Once again, not to be arguing the case, because I
20 intend not to insult the jury's verdict, but I do want
21 to point out as mitigating circumstances: a lot of
22 alcohol was flowing that night, a lot of tempers were
23 flowing that night, not just by Mr. Moses but by all
24 parties involved. It is unfortunate as to what
25 happened. Mr. Moses did not have a weapon, did not

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1 actually threaten anyone or make an assault, but
2 unfortunately, at forty-one years old, he put himself in
3 a situation where now he's convicted of attempted murder
4 because of his behavior in a parking lot over the course
5 of we would say less than fifteen minutes of his life
6 from the time he walked in that bar until the time he
7 jumped into that Camry and drove off from that parking
8 lot.

9 I say that to say, Your Honor, that fifteen minutes
10 of a forty-four-year-old man's life should not result in
11 thirty years.

12 THE COURT: He's actually facing -- if I run it
13 consecutive, he's facing sixty-five.

14 MR. KEARSE: I understand that, Your Honor.

15 Having said it shouldn't result in thirty years,
16 I'm sure the Court knows that I would submit it should
17 not result in a sixty-five year sentence against this
18 man.

19 Poor judgment, ego, alcohol, anger, all those
20 things I talked about in closing, aren't things he has
21 demonstrated the first forty-one years of his life, the
22 past three years of his life while on bond, with the
23 exception of what happened on July 28th, 2013, at 1:57
24 to 2:10 a.m., and I think that should be taken by this
25 Court in mitigation when sentencing this gentleman.

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1 Again, Your Honor, with him having that record,
2 I would ask that the Court run any sentence against
3 Mr. Moses concurrent.

4 I would also commend Ms. Bohannan for what she has
5 said to him in terms of forgiveness, and I would hope
6 that my client really appreciates that kind of statement
7 that she said at the end of this trial. And it seems
8 like she has really grown to appreciate what happened
9 out there. And that's a big thing for her to do, and I
10 certainly tip my hat to her for that and appreciate her
11 for that, and ask this Court to appreciate the statement
12 that she made, because she was shot, her husband was
13 shot and if she is willing to allow a forgiving heart
14 and a charitable heart for Mr. Moses, certainly I think
15 the rest of us should take that into consideration and
16 follow her lead.

17 And having said that, Your Honor, I would ask that
18 this Court, in view of Mr. Moses and what he contributed
19 on that night, would grant him a sentence no more than
20 ten years of his life for a forty-four-year-old man.
21 And that is a long time. People don't understand that,
22 some people, just how long a day in SCDC is. But that
23 is a long time for someone to spend in SCDC, especially
24 since, what, at eighty-five percent of any time he's
25 going to serve.

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1 And, certainly, not just because that is a lesson
2 -- because I'm sure he has learned his lesson every day
3 since this thing has happened -- but that that is
4 appropriate, under the circumstances, not to mitigate
5 the fact that these people got shot in that parking lot.
6 But, again, I think in view of everything that took
7 place -- because the whole -- there was a whole bunch of
8 wrong from the time they started arguing about why he
9 didn't get served to the time he jumped in that car, on
10 a lot of people's behalf. And I think that goes, too,
11 along with his lack of a record mitigation, and the fact
12 that this young lady actually stood up and by the grace
13 of God said she forgives him.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Does any family member wish to address the Court?
17 Anyone else?

18 MR. KEARSE: I see his mother here. I don't know
19 if she wants to come down.

20 THE COURT: Happy to hear from one family member,
21 Mr. Kearse.

22 MR. KEARSE: Yes, ma'am. This is his mother. If I
23 can get her to walk to wherever the Court deems it
24 appropriate, I would ask --

25 THE COURT: Would you like to address the Court,

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1 ma'am? Please come forward.

2 She can stand next to you, Mr. Kearse.

3 Ma'am, if you will please come forward and stand
4 next to Mr. Kearse.

5 If you could please state your full name for the
6 record and spell your last name.

7 MS. MOSES: My name is -- my name is Barbara Moses,
8 M-O-S-E-S.

9 THE COURT: Yes, Ms. Moses.

10 MS. MOSES: As for Steven, he just got caught up,
11 like he said, with the alcohol and the drugs. He never
12 bother anybody. He's a good person. I was a single
13 parent and I raised him. He did know right from wrong.
14 And I raised four boys, and it was not easy. And he has
15 a son he's got to raise. He has his daughter. She's an
16 A student at SU -- USC in Columbia. She graduate in
17 May, and she'll be going to her internship.

18 I ask the Court to please have mercy on him.

19 THE COURT: Thank you, Ms. Moses.

20 MR. KEARSE: I'm sorry. I mispoke, Your Honor. I
21 said South Carolina State. It is University of South
22 Carolina where she goes to school.

23 THE COURT: Anything further on behalf of your
24 client, Mr. Kearse?

25 MR. KEARSE: Again, Your Honor, I would just ask

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1 that the Court consider the length of time and the lack
2 of record of Mr. Moses.

3 You know we see a lot. You know we see a lot in
4 these courtrooms and we know that from both sides of
5 every case the devastation in every court, there are
6 very few winners that walk out of these courtrooms, and
7 that whatever happens today is going to detrimentally
8 and substantially impact the Moses family.

9 And, again, and I know this has already
10 detrimentally impacted the Bohannans and Mr. Bryant and
11 the people who were in the bar at that time.

12 So I just ask that you consider all those things,
13 Your Honor.

14 THE COURT: Thank you, Mr. Kearse.

15 Mr. Alfaro, I'm going to sentence -- I want to hear
16 about Mr. Gourdine and then I'm going to issue my
17 sentence as to both defendants at the same time. So let
18 me hear from Mr. Gourdine, if there's anything
19 additional.

20 MR. ALFARO: Your Honor, Mr. Gourdine was properly
21 served with life without parole notice.

22 THE COURT: Is that correct, Mr. Davis?

23 MR. DAVIS: That's correct, Your Honor.

24 MR. ALFARO: Based upon that and the conviction in
25 this case, he is eligible for and should be sentenced to

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1 life without parole.

2 THE COURT: And what were his previous convictions?

3 MR. ALFARO: His convictions, he has from 1992
4 three counts of breaking and entering a motor vehicle,
5 three counts of grand larceny. And the charge that
6 makes him eligible for life without parole is accessory
7 before the fact of armed robbery in 1994.

8 THE COURT: Any additional? Anything additional
9 from the State?

10 MR. ALFARO: No, Your Honor.

11 I forgot to mention during the presentation before,
12 although Mr. Bryant and Mr. Bohannon did not wish to
13 address the Court regarding the sentencing of either
14 defendant, Mr. Bryant and I did discuss that the thirty-
15 year sentence, the State is requesting a thirty-year max
16 on the attempted murders was -- we were both in
17 agreement with that and that's what the recommendation
18 would be. I just wanted to clarify that on Mr. Moses'
19 sentencing.

20 THE COURT: Thank you.

21 MR. DAVIS: May it please the Court, Your Honor?

22 THE COURT: Yes, Mr. Davis. Happy to hear from you
23 on Mr. Gourdine.

24 My first question to you: did you explain to your
25 client that these three attempted murders are violent

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and most-serious offenses?

MR. DAVIS: We were put on notice from that some time ago by the solicitor in this matter, Your Honor.

THE COURT: And you agree that you were properly served with, and your client was properly served with, a notice of life without the possibility of parole?

MR. DAVIS: We appeared in this court in front of a circuit court judge and was advised of that, Your Honor.

THE COURT: Mr. Davis, you have advised your client of his right to appeal and that he must do so within ten days of today's date?

MR. DAVIS: I have, Your Honor.

THE COURT: I am happy to hear from you, your client, and anyone else regarding sentencing.

MR. DAVIS: Judge, as you are fully aware, I was a prosecutor in this court for ten years and I really take serious this thing we call justice. Being a prosecutor for ten years, I was involved with many very serious cases -- but only one case in reference to a person receiving the death penalty -- but this is the first case I've ever been involved with where an individual has been sentenced to life without parole for an incident when he was about twenty-two years of age.

I have a same relationship to -- your first case is primarily sometimes the most important case. And in

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1 hindsight now, when he was twenty-two years of age, some
2 lawyer allowed him to plead to time served to accessory
3 before the fact of armed robbery. Little did he know at
4 that particular time that the consequences that would
5 throw from that would put us where we are today some
6 twenty years later. I would say that's a far cry from a
7 twenty-two years old.

8 Jason is not that same kid. He has been an
9 electrical -- electrician twenty years and worked the
10 same job with a company called MCD where he's the
11 supervisor. He is the father of a three-year-old
12 daughter by the name of R. . He's the father of two
13 fine boys, sixteen and fifteen, D'Angelo and Jason, Jr.
14 And he's a son, a brother, nephew, uncle, and friend.

15 With this coming Palm Sunday coming Sunday, it's
16 going to be very difficult. I shared with you earlier
17 that I am associated in my church somewhat as a lay-
18 speaker and the pastor has given me -- asked me to
19 provide the message on Sunday. And I've known about
20 this for some period of time.

21 I'm not no preacher, even though the victims want
22 to suggest that. I'm not no preacher at all, Ms.
23 Bohannan. I live by the rule of basically what my --
24 try to be right and wrong. I try not to make
25 distinction in reference to color or ethnicity in

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1 reference to the truth and what's right or wrong.

2 Definitely what transpired on that day just -- it's
3 just horrific in reference to the events that unfold.
4 But, you know, I think if everybody would have to go
5 back and do something different, not -- you know, I kept
6 asking that question, would they do something different.
7 I don't -- I hope so. I know my people would.

8 And he could not apologize because of all the
9 aspects of the constraints for the judicial system put
10 in place.

11 But I had already somewhat decided what I wanted to
12 speak about Sunday, but I think you have given me what I
13 want to speak about. But it's sad in a sense, because
14 it involves a process of mercy. And I think it's very,
15 very sad that we have a system in place where someone
16 who engages in something when he's twenty-two years of
17 age, comes in front of a judge, that's you, to impose
18 sentence and you are straight-jacketed in reference to
19 what you can decide. You cannot even, in my estimation,
20 grant any mercy to this young man -- that's sad --
21 irregardless of what the particular facts may be.

22 And I understand -- I don't know the issue with the
23 solicitor. I think the solicitor's position in
24 reference to the notice for LWOP was an attempt to try
25 to force, coerce, a different result in reference to my

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client pleading guilty to some different offenses. But even that carry a sentence of over seventy-five years, you know. So in reality, it was a rock in a difficult place because the consequences of life without parole when you're forty-two years of age. And twenty-five or thirty years really is much more in the same equivalence, to be honest with you.

I have great faith in this system. Sometimes I question this system in reference to whether we have the same value of individuals. I call it a value gap. When is the system caught up that everybody have the same value in relationship to how decisions are rendered? I say that because I've been on both sides, as a prosecutor and now as defense. But I still think, at the end of the day, the ultimate goal in all of these instances is to see where justice can be defined.

I believe this jury easily could have, if they wanted to, determine that the injuries were such that it was assault and battery of a high and aggravated nature, separate and apart from any attempt to kill anyone.

We have opened a depiction of the facts in relationship to what we know now are common-day endeavors about how these things happen, that when folks are bent, enraged, they have no concern. They're indiscriminate in how they inflict melee.

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1 My theme throughout the case really was, in
2 complete sincerity, where I said that I believe cooler
3 heads should have prevailed but that there was also
4 reference to alcohol, drugs, or egos. And that suggests
5 that everybody shared some responsibility for what
6 happened out there. Everybody.

7 But I do not agree that my clients had any intent
8 to kill anyone that night, especially the Bohannans and
9 Mr. Bryant. I really don't believe they did. Now, you
10 may say, Mr. Davis, you're quibbling with the jury.
11 Well, we're all human. And there are a lot of twelve
12 jurors that have made mistakes in my lifetime.

13 There's not much more to add, Your Honor.

14 THE COURT: All right. Anyone else?

15 MR. DAVIS: You can inquire of the family if anyone
16 wants to.

17 THE COURT: If you'll just inquire. I'll hear from
18 one family member, Mr. Davis.

19 MR. DAVIS: Anybody want --

20 THE COURT: Ma'am, please come forward to the
21 podium.

22 MR. DAVIS: Give your name, now.

23 THE COURT: I need you to state your full name for
24 the record, and please spell your last name.

25 MS. GOURDINE: My name is Georgia Ann [phonetic]

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1 Gourdine. G-O-U-R-D-I-N-E.

2 He's a wonderful, loving son. He's got three
3 wonderful kids. Somehow, someday, if you would have a
4 little mercy for him. I don't feel he should have to
5 spend the rest of his life in prison. He's such a
6 wonderful person. Please have some mercy on him.

7 THE COURT: Thank you, Ms. Gourdine.

8 MS. GOURDINE: Yes. I appreciate everything.

9 THE COURT: Anything further, Mr. Davis?

10 MR. DAVIS: Nothing further, Your Honor.

11 But I do want to commend the Bohannans for having a
12 giving heart. I think everything starts at that
13 process. And I don't think this young man has any ill
14 will towards them at all.

15 Thank you.

16 THE COURT: Thank you. Anything further from the
17 State?

18 MR. ALFARO: No, Your Honor.

19 THE COURT: Anything further, Mr. Kearse?

20 MR. KEARSE: Nothing further, Your Honor.

21 THE COURT: Is it Gourdine?

22 MR. GOURDINE: Gourdine.

23 THE COURT: Mr. Gourdine, please stand.

24 [Whereupon, Mr. Gourdine complies]

25 THE COURT: Mr. Gourdine, you understand you have

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1 the right to appeal the sentence I'm about to impose?

2 MR. GOURDINE: Yes, Your Honor.

3 THE COURT: That you or your attorney must do so
4 within ten days of today's date. Do you understand
5 that?

6 MR. GOURDINE: Yes, Your Honor.

7 THE COURT: The jury has convicted you on three
8 counts of attempted murder, which are classified as
9 violent and most-serious offenses. Do you understand
10 what that means?

11 MR. GOURDINE: Yes, Your Honor.

12 THE COURT: You also have been properly served with
13 a life without parole notice. Do you understand?

14 MR. GOURDINE: Yes.

15 THE COURT: Anything you wish to tell me before I
16 impose sentence?

17 MR. GOURDINE: [Indicates negatively]

18 THE COURT: Mr. Moses, please stand.

19 [Whereupon, Mr. Moses complies]

20 THE COURT: You understand you have been convicted
21 by the jury of three counts of attempted murder?

22 MR. MOSES: Yes, ma'am.

23 THE COURT: I can sentence you up to thirty years
24 on each count.

25 MR. MOSES: Yes, ma'am.

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1 THE COURT: You also have been convicted of a
2 conspiracy. I can sentence you up to five years on that
3 charge. Do you understand?

4 MR. MOSES: Yes, ma'am.

5 THE COURT: Do you understand you have the right to
6 appeal this sentence I'm about to impose but you or your
7 attorney must do so within ten days? Do you understand?

8 MR. MOSES: Yes, ma'am.

9 THE COURT: And the attempted murder is a violent
10 and a most-serious offense. Do you understand what that
11 means for you in your future?

12 MR. MOSES: Yes, ma'am.

13 THE COURT: Anything you wish to tell the Court
14 before I impose sentence?

15 MR. MOSES: No, ma'am.

16 THE COURT: Mr. Bryant, Mr. and Ms. Bohannan, I
17 wish to commend you, as well, for your professionalism
18 and your respect to the system, to the solicitor's
19 office, to Mr. Davis, and to Mr. Kearse. You appeared
20 to understand that we all have roles to do. And I
21 appreciate your compassion and your very kind words here
22 today and throughout this trial. I wish you three the
23 best.

24 To the families of Mr. Moses and Mr. Gourdine, I
25 wish you also the best. I thank you for your courtesy

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1 and your professionalism and respect to the Court and to
2 the process. You all have been very respectful to my
3 staff, that I've observed throughout this process, and I
4 wish you only the best, as well.

5 There is no winner. And I'm about to impose
6 sentence on Mr. Moses and Mr. Gourdine. And I thank all
7 of you. Mr. Davis and Mr. Kearse have asked for mercy
8 and justice. What is justice to one and what is mercy
9 to another is going to depend on how you view, and what
10 side of the aisle you were on here today.

11 Mr. Moses and Mr. Gourdine, you have been
12 represented by two very zealous advocates who were
13 professional and competent in their representation of
14 you. They allowed you to be given the absolute best
15 defense, self-defense and defense of others. You were
16 given the opportunity to have several lesser included
17 offenses for which the jury to consider. And the jury
18 has spoken. They viewed the videotape, as did I. Based
19 upon my viewing of the videotape, which I can only
20 assume corresponds with the sentence -- or the verdict
21 of the jury, is that everyone in that bar was happy and
22 having a good time and did not have an evil heart. They
23 were a heart of peace, as Mr. Davis has been saying,
24 until the two of you showed up. And from that point on,
25 the next fifteen minutes were because of your actions.

State vs. Moses and Gourdine
Sentence of Mr. Gourdine
March 17, 2016

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SENTENCE OF MR. GOURDINE

I am taking into consideration -- Mr. Gourdine, I have absolutely no way to give you mercy. I have shown you all the courtesy that I can give you, as a judicial officer, and I have given you the benefit of every possible charge and ruling that I could under the law. But the law allows me no other sentence but to sentence you on indictment 2014-GS-08-1719, 1720, and 1721, to the Department of Corrections for a term of life without the possibility of parole.

It's the order of the Court on 2014-GS-08-1722 that you be committed to the State Department of Corrections for a term of five years. Give you credit for time you have served. Good luck to you, Mr. Gourdine.

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LASER BOND FORM A PENGAD - 1-800-631-6985 • www.pengad.com

State vs. Moses and Gourdine
Sentence of Mr. Moses
March 17, 2016

SENTENCE OF MR. MOSES

1
2 THE COURT: It's the order of the Court -- Mr.
3 Moses, I am taking into account your prior record, the
4 fact that you have been out on bond for three years.

5 Is that correct? He's been out significant --

6 MR. ALFARO: Yes, Your Honor.

7 THE COURT: And no instance?

8 MR. ALFARO: No, Your Honor.

9 THE COURT: I'm going to take that into
10 consideration, Mr. Moses, but I cannot overlook the fact
11 of the seriousness of the charge, what you did, and the
12 actions on that evening.

13 It's the order of the Court on 2014-GS-08-1713,
14 1714 and 1715 that you be committed to the State
15 Department of Corrections for a term of twenty years.
16 It's the order of the Court on 2014-GS-08-1716 that you
17 be committed to the State Department of Corrections for
18 a term of five years. Those will run concurrent. Give
19 you credit for time served. Good luck to you, sir.

20 MR. KEARSE: Your Honor, he's done -- I know you're
21 giving him credit for any time he's done. I believe
22 it's ninety days. I just want to put that in the
23 record.

24 Is that correct?

25 MR. MOSES: [No response]

State vs. Moses and Gourdine
Sentence of Mr. Moses
March 17, 2016

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THE COURT: Good luck to you, sir.

MR. KEARSE: Thank you, Your Honor.

THE COURT: Again, Mr. Alfaro, Mr. McNeely, Mr. Davis and Mr. Kearse, thank you.

MR. DAVIS: Thank you, Judge.

MR. KEARSE: Thank you.

[JURY TRIAL CONCLUDES AT 8:26 P.M.]

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State vs. Moses and Gourdine

C E R T I F I C A T E

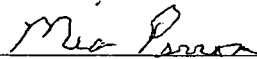
STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Thursday, March 17, 2016.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 18th day of June, 2016.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-784-

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FILED

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STATE OF SOUTH CAROLINA)
MARY P. BROWN)
COUNTY OF BERKELEY)
CLERK OF COURT)
BERKELEY COUNTY, S.C.)

IN THE GENERAL SESSIONS COURT
NINTH JUDICIAL CIRCUIT

Docket No.: 2014-GS-08-1713-1718

STATE,)
)
v.)
)
STEVEN MOSES,)
)
Defendant.)

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS
(Att. Murder x3)

PLEASE TAKE NOTICE that Defendant, Steven Moses, by and through his undersigned counsel, respectfully moves this court to dismiss multiple criminal charges, to wit, attempted murder x 3, conspiracy to commit attempted murder x 3, and possession of a weapon. For the reasons set forth below, Defendant, Steven Moses, is entitled to statutory immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act S.C. Code Ann. § 16-11-410 et seq. (2015).

STATEMENT OF FACTS

On, July 28, 2013, Mr. Steven Moses along with his co-defendant, Jason Gourdine, stopped by The Nowhere Bar & Grill. The Nowhere Bar & Grill appeared to be open for business. Consequently, the two men entered the bar and grill.

Mr. Gourdine and Mr. Moses, entered the bar as patrons. During their time inside the bar, they were rudely advised that they would not be served. Both individuals, Mr. Gourdine and Mr. Moses, were attacked without provocation while trying to leave the bar. During the altercation, Mr. Gourdine and Mr. Moses were physically assaulted and forced out of the bar by individuals who were unknown to them at that time.

Subsequent to the attack in the bar and while in the bar's parking lot, Mr. Moses made an inquiry about the individual who spearheaded the attack against him and Mr. Gourdine. Immediately, Mr. Moses was approached in a very threatening manner by two of the individuals who had been a part of the group of people who initially assaulted him. Without fully addressing his reason for approaching them, the men pursued Mr. Moses in a manner that appeared to indicate the initiation of another attack against his person. Again, these were the same aggressors who had assaulted Mr. Moses while exiting the bar.

The surveillance video taken at the time of the incident unquestionably shows Mr. James Bryant, and Mr. David Bohanan coming towards Mr. Moses in a very aggressive and threatening manner. The video also shows an unarmed Mr. Moses retreating towards Mr. Gourdine's vehicle. Mr. Gourdine exits his vehicle as the men quickly approach Mr. Moses and the vehicle and commences to fire in the direction of the attackers. Mr. Moses submits that any shots fired by Mr. Gourdine can easily be interpreted as being fired out of the fear for Mr. Moses and Mr. Gourdine's safety. Clearly, this was an effort by Mr. Gourdine to protect the two men from further harm. The alleged victims did not incur any life-threatening injuries.

ARGUMENT

State law provides that a law-abiding citizen need not wait until an attacker injures him, his family members, his friends, his fellow citizens or others. A clear time frame of events that supports immunity from prosecution is outlined in South Carolina Code of Laws, §16-11-410. The second amendment of the United States Constitution gives every citizen the right to bear arms. Furthermore, a citizen has a right to remain unmolested and not be threatened while he or she is enjoying his life, his liberty, and/or his or her pursuit of happiness.

The South Carolina Protection of Persons and Property Act, S.C. Code Ann. 16-11-410 et seq. (2015), allows immunity from criminal prosecution and civil liability where the use of force was justified in protection of the person or the person's home. See S.C. Code Ann. § 16-11-420; 450(A); *State v. Duncan*, 392 S.C. 404, 410, 709, S.E. 2d 662, 665 (2011). A person who uses deadly force, as permitted by the Act, is also immune from criminal and civil action for the use of force even when it is deadly force S.C. Code Ann. § 16-11-450 (A). In *State v. Duncan*, the court established that immunity under the Act must be determined prior to trial. *Id.* at 410, 709 S.E.2d at 665 (2011). When a party raises the question of statutory immunity, the proper method for the Court to determine immunity is at an independent hearing applying the standard of "by preponderance of the evidence." *Id.* at _____.


The legislature intended to create true immunity, and not simply an affirmative defense under the Act. *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.* The Act expresses the General Assembly's intent and 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. Ann. § 16-11-420 (B); see *State v. Duncan*, 392 S.C. 404, 407-08, 709 S.E.2d. 662, 66__ (2011).

The facts show that the alleged victims were actually the aggressors. The alleged victims were charging towards Mr. Moses while he was retreating in the direction of the Mr. Gourdine's vehicle. Fearing for his safety and the safety of his friend, Mr. Gourdine defended them both against the attackers. It is readily apparent that the alleged victims were in hot pursuit of Mr. Moses. Mr. Gourdine retrieved his weapon and discharged it in an effort to defend against the impending threat of harm and possible danger. The "Act" protects Mr. Gourdine's actions which were intended to prevent injury to Mr. Moses and himself. Under the circumstances, there was no duty to retreat on his behalf.

Mr. Gourdine and Mr. Moses were not engaged in any unlawful activity. They were attacked in a place where they had the right to be. Consequently, Mr. Gourdine had the right to stand his ground and meet the threat of force with equal or greater force. There is clear and cogent evidence to support a motion for dismissal of the criminal charges against Mr. Moses and Mr. Gourdine. Therefore, Mr. Moses would request an Order finding the shooting justifiable and would ask for immunity from criminal prosecution pursuant to Section 16-11-450 of the South Carolina Code of Laws.

DATED this 29th day of September, 2015.

RESPECTFULLY SUBMITTED:


Kevin D. Kears
Attorney for Steven Moses

P. O. Box 365
Moncks Corner, S.C. 29461
(843)-899-5111
(843)-899-5112(fax)
kdk@attorneykevindkearse.com

1027

ALF2013-08-01996

WITNESSES

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

2013-07034139

ARREST WARRANT NUMBER

2013A0810401142

DATE OF ARREST

August 1, 2013

ACTION OF GRAND JURY

True Bill

Thomas Martin

Foreperson of Grand Jury
Date: 11-4-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801713

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

STEVEN DWAYNE MOSES

DOB: B/M

Indictment for

Attempted Murder

§16-03-0029

CDR: 3410

DEPT. OF CORRECTIONS
FACILITY # 10107
FILE #
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2014 GS 0801713

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 4, 2014 the Grand Jurors of Berkeley County present upon their oath:

Attempted Murder

That in Berkeley County, South Carolina, on or about July 28, 2013, the Defendant, STEVEN DWAYNE MOSES, while at the Nowhere Bar & Grill located at 7128 Henry E. Brown Boulevard, Goose Creek, South Carolina, willfully, knowingly, unlawfully, feloniously and with malice aforethought, while acting in concert with a co-defendant, discharge a firearm at the victim, James Bryant, with the intent to kill said James Bryant. This action is in violation of Section 16-03-0029, South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BRYAN A. ALFARO
 DEPUTY SOLICITOR

1029

ALF2013-08-01996

WITNESSES

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

2013-07034139

ARREST WARRANT NUMBER

2013A0810401143

DATE OF ARREST

August 1, 2013

ACTION OF GRAND JURY

True Bill

Thomas Mark R

Foreperson of Grand Jury

Date: 11-4-14

VERDICT

Foreperson of Petit Jury

Date

INDICT

DOCKET NO. 2014GS0801714

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

STEVEN DWAYNE MOSES

DOB:

B/M

Indictment for

Attempted Murder

§16-03-0029

CDR: 3410

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 4, 2014 the Grand Jurors of Berkeley County present upon their oath:

Attempted Murder

That in Berkeley County, South Carolina, on or about July 28, 2013, the Defendant, STEVEN DWAYNE MOSES, while at the Nowhere Bar & Grill located at 7128 Henry E. Brown Boulevard, Goose Creek, South Carolina, willfully, knowingly, unlawfully, feloniously and with malice aforethought, while acting in concert with a co-defendant, discharge a firearm at the victim, Stacy Bohanan, with the intent to kill said Stacy Bohanan. This action is in violation of Section 16-03-0029, South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 BRYAN A. ALFARO
 DEPUTY SOLICITOR

1031

ALF2013-08-01996

WITNESSES

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

2013-07034139

ARREST WARRANT NUMBER

2013A0810401144

DATE OF ARREST

August 1, 2013

ACTION OF GRAND JURY

True Bill

Thomas Mauldin

Foreperson of Grand Jury
Date: *11-27-14*

VERDICT

Foreperson of Petit Jury

Date

INDICT

DOCKET NO. 2014GS0801715

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

STEVEN DWAYNE MOSES

DOB:

B/M

Indictment for

Attempted Murder

§16-03-0029

CDR: 3410

FILED
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CLERK OF COURT
FILE 8:0014

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 4, 2014 the Grand Jurors of Berkeley County present upon their oath:

Attempted Murder

That in Berkeley County, South Carolina, on or about July 28, 2013, the Defendant, STEVEN DWAYNE MOSES, while at the Nowhere Bar & Grill located at 7128 Henry E. Brown Boulevard, Goose Creek, South Carolina, willfully, knowingly, unlawfully, feloniously and with malice aforethought, while acting in concert with a co-defendant, discharge a firearm at the victim, David Bohanan, with the intent to kill said David Bohanan. This action is in violation of Section 16-03-0029, South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BRYAN A. ALFARO
DEPUTY SOLICITOR

1033

ALF2013-08-01996

WITNESSES

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

2013-07034139

ARREST WARRANT NUMBER

2013A0810401146

DATE OF ARREST

August 1, 2013

ACTION OF GRAND JURY

Thomas Martin P.
Foreperson of Grand Jury
Date: 11-4-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801716

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

STEVEN DWAYNE MOSES

DOB:

B/M

Indictment for

Criminal Conspiracy

§6-17-0410

CDR: 0049

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 4, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Conspiracy

That in Berkeley County, South Carolina, on or about July 28, 2013, the Defendant, STEVEN DWAYNE MOSES, did combine, conspire, confederate, agree or have tacit understanding with another, for the purpose of committing a crime, to wit: Attempted Murder. This action is in violation of Section 16-17-04-10, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BRYAN A. ALFARO
DEPUTY SOLICITOR

1035

ALF2013-08-01996

WITNESSES

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

2013-07034139

ARREST WARRANT NUMBER

2013A0810401147

DATE OF ARREST

August 1, 2013

ACTION OF GRAND JURY

True Bill

Thomas Mactor
Foreperson of Grand Jury

Date: *11-4-14*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801717

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

VS.

STEVEN DWAYNE MOSES

DOB:

B/M

Indictment for

Criminal Conspiracy

§16-17-0410

CDR: 0049

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 4, 2014, the Grand Jurors of Berkeley County present upon their oath:

Criminal Conspiracy

That in Berkeley County, South Carolina, on or about July 28, 2013, the Defendant, STEVEN DWAYNE MOSES, did combine, conspire, confederate, agree or have tacit understanding with another, for the purpose of committing a crime, to wit: Attempted Murder. This action is in violation of Section 16-17-0410, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BRYAN A. ALFARO
DEPUTY SOLICITOR

1037

ALF2013-08-01996

WITNESSES

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

2013-07034139

ARREST WARRANT NUMBER

2013A0810401148

DATE OF ARREST

August 1, 2013

ACTION OF GRAND JURY

[Handwritten]

Thomas Martin

Foreperson of Grand Jury
Date: 11-4-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801718

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

STEVEN DWAYNE MOSES

DOB:

B/M

Indictment for

Criminal Conspiracy

§16-17-0410

CDR: 0049

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CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

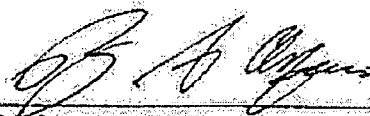
INDICTMENT

At a Court of General Sessions, convened on November 4, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Conspiracy

That in Berkeley County, South Carolina, on or about July 28, 2013, the Defendant, STEVEN DWAYNE MOSES, did combine, conspire, confederate, agree or have tacit understanding with another, for the purpose of committing a crime, to wit: Attempted Murder. This action is in violation of Section 16-17-0410, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

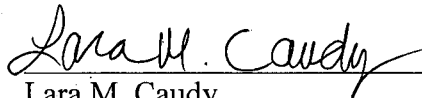


BRYAN A. ALFARO
DEPUTY SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 27th day of January, 2017.

RECEIVED
JAN 27 2017
SC Court of Appeals