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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lexington County

Honorable D. Garrison Hill, Circuit Court Judge

RECEIVED

JUL 07 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BILLY JOHN GEISENDORFF,

APPELLANT

APPELLATE CASE NO 2016-001901

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act where the Act provides immunity to a person who uses deadly force while in the curtilage of his residence when he reasonably believes such force was necessary is necessary to prevent imminent death or great bodily injury.

- (A) Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act because Appellant reasonably believed he was in imminent danger of losing his life or sustaining serious bodily injury.

- (B) Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act because Appellant was without fault in bringing on the difficulty and he shot the deceased while in the curtilage of his residence.

*

STATEMENT OF THE CASE

The Lexington County Grand Jury indicted Appellant for murder, and possession of a weapon during the commission of a violent crime. R. 570 – 573. On September 6, 2016, Appellant appeared before the Honorable Eugene C. Griffith, Jr. for an immunity hearing held pursuant to Protection of Persons and Property Act (the “Act”), S.C. Code Ann. § 16-11-410 et al. Judge Griffith denied Appellant immunity from prosecution. R. 110, l. 15 – 111, l. 21.

Appellant proceeded to trial before the Honor D. Garrison Hill and a jury. R. 145 – 568. Benjamin A. Stitley and Robert T. Williams represented Appellant. Assistant Solicitors Suzanne Mayes and Robert McNair represented the State.

The jury found Appellant guilty of murder and possession of a weapon during the commission of a violent crime. R. 554, l. 15 – 555, l. 18. The trial court sentenced Appellant to a total of thirty years imprisonment. R. 568, ll. 4-7.

ARGUMENT

Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act where the Act provides immunity to a person who uses deadly force while in the curtilage of his residence when he reasonably believes such force was necessary to prevent imminent death or great bodily injury.

Relevant Facts

On April 2, 2014, John Michael Williams and Bobby Christofoli left work around 5:30 p.m. Williams and Christofoli were close friends in addition to co-workers. After leaving their job site at an International Plant in Eastover, they bought a case of beer. R. 57, l. 6 – 65, l. 21.

The two friends then drove to the trailer where Williams and his girlfriend lived off Calks Ferry Road in Lexington County. This trailer and the land it sat on were owned by the girlfriend's mother, Donna Blanchett. *Id.* Blanchett was dating Appellant at the time of the fatal incident.

Blanchett and Appellant lived in a trailer on the same property as Williams and his girlfriend. *Id.* Blanchett's trailer was located closer to Calks Ferry Road. The trailer where Williams lived was located one hundred yards behind Blanchett's trailer. R. 62, ll. 1-15. The two trailers had a thick woods between them and were connected to Calks Ferry Road by a shared private road that ran close to the right side of Blanchett and Appellant's trailer. R. 75, l. 7 – 77, l. 21.

Williams and Appellant argued in the days leading up the shooting over Williams' rude treatment of Blanchett. R. 60, l. 7 -61, l. 23. Specifically, Williams accused Blanchett, who owned the roof under which he slept, of being a bad mother to his girlfriend. *Id.* Williams had used profane and contemptuous language to describe Blanchett. *Id.*

Appellant took offense to Williams's abuse of Blanchett. *Id.* While the two men never came to blows, the hostility between them continued to the day of the shooting. As Williams and

Christofoli got close to the end of their shift, Appellant began calling Williams. R. 63, l. 2 – 65, l. 21. Appellant told Williams he was still upset over Williams’s treatment of Blanchett. Appellant wanted to know when Williams would be arriving at his trailer so that they could continue their argument about his behavior. *Id.*

When Williams and Christofoli reached Blanchett’s property, Appellant shouted at them as they drove past his trailer. *Id.* In response, Christofoli – who was a stranger to Appellant – shouted at him that “you need to shut that shit up. We just got off work. We don’t need to listen to it.” R. 64, ll. 2-5.

When they reached Williams’s trailer they began drinking beer. *Id.* Williams and Christofoli watched Appellant through the woods separating the two the trailers as Appellant continued to yell about Williams’ treatment of Blanchett. R. 62, ll. 3-12.

Sometime after their first beer, Christofoli – annoyed by Appellant’s yelling – decided to confront Appellant and walked up the private road connecting the two trailers. When he reached Appellant’s trailer, roughly a hundred yards away from Williams’ trailer, he threatened Appellant to “just come out in the dirt road and we’ll fight like [men].” R. 217, ll. 16-20.

Appellant declined to fight Christofoli, who was at least ten years younger than Appellant and significantly larger. Williams eventually got Christofoli to stop yelling at Appellant and head back to Williams’s trailer. “Once I finally got [Christofoli] calmed down and got him back to the house,” Christofoli informed Williams that he had seen Appellant with a gun. R. 66, ll. 2-7; R. 218, ll. 2-16.

In effort to reduce tensions, Blanchett asked Christofoli to leave her property. Christofoli refused telling Blanchett that she had no right to ask him to leave her property. R. 262, l. 5 – 264,

1. 22. Blanchett would tell police that Christofoli's conduct "egged on Appellant" and made the situation worse. *Id.*

Christofoli eventually agreed to have his wife come and pick him up so that he would not drive home drunk. *Id.* While waiting for his ride, Christofoli decided to confront Appellant again. For a second time, he walked up the road the hundred yards to Appellant's trailer. Williams, standing next to Christofoli's truck, watched Christofoli threaten and cuss at Appellant.

The last words Williams' heard Christofoli yell was "well, big boy, if you're gonna pull it out, you better use it." R. 89, ll. 11-25. Blanchett would recall that she was standing near Christofoli when she heard Appellant yell "gun." In response she started running away from Christofoli. Four gunshots rang out. Christofoli fell to the ground. Williams called police.

Christofoli died at the scene after sustaining four gunshot wounds. R. 476, l. 1 – 480, l. 19. Police found Appellant under a crawl space of a nearby abandoned trailer. R. 321, l. 3 – 323, l. 16. After he was arrested, law enforcement recovered a .22 caliber, nine shot revolver. *Id.* The bullets in the revolver matched those recovered during Christofoli's autopsy. R. 420, ll. 2-9.

Appellant moved pre-trial for immunity S.C. CODE ANN. § 16-11-410 et al. After hearing the evidence, the trial court refused to grant Appellant immunity. "There is insufficient evidence at this stage that would prove by the greater weight of the evidence that Mr. Geisendorff is entitled to immunity." R. 110, l. 15 – 111, l. 21. The Court concluded that Appellant had failed to prove that "his conduct was objectively reasonable" and failed to prove that he was not without fault in bringing on the difficulty. *Id.*

Discussion

Prior to trial, Appellant moved for immunity from prosecution under the Protection of Persons and Property Act (the “Act”), S.C. CODE ANN. § 16-11-410 et al. The Act provides that “[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: . . . (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.” § 16-11-440(A)(2).

In addition, the Act provides states, “[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.” § 16-11-440(C) (*emphasis added*).

In signing the Act into law, the General Assembly stressed that, “no person or victim of crime should be required to surrender his personal safety to a criminal, ***nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.***” § 16-11-420(E) (*emphasis added*). 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 the following elements: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have

actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; and (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013).

The trial court denied Appellant immunity under the Act because the court believed that Appellant's conduct was not objectively reasonable and because it concluded that Appellant was not without fault in bringing on the difficulty. R. 110, l. 15 – 111, l. 21. These rulings constituted a legal error.

(A) Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act because Appellant reasonably believed he was in imminent danger of losing his life or sustaining serious bodily injury.

Without question, Appellant believed he was in actual danger of losing his life or sustaining serious bodily injury and reasonably so. A person of ordinary firmness would have entertained the same belief. *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011) (holding defendant entitled to directed verdict on self-defense where it was uncontroverted that decedent was highly intoxicated, acting aggressively, and advanced on defendant).

A person has the right to act 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 (quoting *State v. Harvey*, 220 S.C. 506, 68 S.E.2d 409 (1951)).

In addition, under the Act, Appellant was entitled to a presumption that he had a reasonable fear of imminent peril of death or great bodily injury because he was in the curtilage of his residence and Christofoli was a belligerent trespasser who refused to leave. R. 262, l. 5 – 264, l. 22; § 16-11-410(A)(2); *Cf. Curry*, 406 S.C. 364, 752 S.E.2d 364 (holding that a social guest not entitled to presumption because decedent had equal right to be in residence).

After being asked to leave and refusing to do so, Christofoli unnecessarily left a place of safety to confront Appellant. R. 262, l. 5 – 264, l. 22. At the time that he did so, he knew that Appellant was armed. R. 66, ll. 2-7; R. 218, ll. 2-16. Mere seconds before Appellant shot him, Christofoli was menacing Appellant and was completely unconcerned about Appellant being armed. *Id.*

The only reasonable conclusion that a person of ordinary firmness would draw from Christofoli's behavior is that Christofoli must be armed himself. *See Starnes*, 340 S.C. at 322, 531 S.E.2d at 913. Appellant had every right to act on this imminently reasonable inference based on Christofoli's appearance.

Blanchett, who was remarried and thoroughly disliked Appellant by the time of trial, testified that Appellant yelled "gun" prior to shooting Christofoli. R. 89, ll. 11-25. Despite later claiming that she never saw Christofoli with a gun, Blanchett admitted that once she heard Appellant shout "gun," she immediately ran away from Christofoli. Clearly at the time of the shooting, she believed there was a strong possibility Christofoli was armed. *Id.*

(B) Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act because Appellant was without fault in bringing on the difficulty and he shot the deceased while in the curtilage of his residence.

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.* See *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232, n. 8 (2014) (“[o]ne who merely does an action that affords an opportunity for conflict is not thereby precluded from claiming self-defense.”); see also:

Here, Appellant was without fault in bringing on the difficulty. The evidence a trial established that Christofoli unnecessarily interjected himself in a verbal dispute between Williams and Appellant. As noted *supra*, Christofoli twice left Williams’ trailer and walked over a one hundred yard to confront and yell at Appellant. *Cf. State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007) (holding that defendant not without fault when he entered an on-going fight he was previously not involved in with a loaded weapon).

When asked by the property owner to leave. Christofoli refused and instead confronted Appellant for a second, despite knowing that Appellant was armed. R. 66, ll. 2-7; R. 218, ll. 2-16; see *State v. Wiggins*, 330 S.C. 538, 548 n. 15, 500 S.E.2d 489, 494 n. 15 (1998) (holding the absence of a duty to retreat also extends to the curtilage of one’s home, which includes the dwelling’s yard).

Christofoli’s death was tragic. However, he could have been easily avoided the fatal encounter. He could have refrained from needlessly involving himself in a dispute that he was not a party to. He could have refrained from twice threatening an armed man standing on his own

property. *See State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (“the defense of habitation provides, defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection.”).

Appellant had no duty to retreat in his own yard and did not “bring on the difficulty”. § 16-11-440(A)(2). Christofoli was the sole initiator of the difficulty and Appellant was allowed “to meet force with force”. § 16-11-4 40(C). Therefore, the trial court’s determinations that Appellant brought the difficulty on himself and acted unreasonably in the using deadly force was unsupported by the evidence and constituted an abuse of discretion amounting to an error of law. R. 110, l. 15 – 111, l. 21.

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,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above a solid horizontal line.

John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY JOHN GEISENDORFF,

APPELLANT

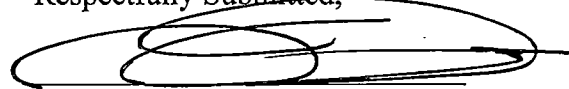
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Billy Geisendorff states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge D. Garrison Hill, which was held on September 8, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Billy Geisendorff.

Respectfully Submitted,



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

This 7th day of July, 2017.

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APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s); and
- (2) Trial Transcript (September 6-8, 2016).

I certify that this designation contains no matter which is irrelevant to this appeal.

July 07, 2017



John H. Strom
Appellate Defender

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ATTORNEY FOR APPELLANT

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

July 07, 2017.



John H. Strom
Appellate Defender

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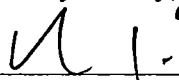
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Billy Geisendorff, 369685, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of July, 2017.



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2017.

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

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JUL 07 2017

SC Court of Appeals