

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA,)

ORDER GRANTING CRIMINAL AND CIVIL IMMUNITY

Plaintiff

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vs.

JAN 29 2018

2016GS4205238 / 2016GS4205239

ADAM KEITH LUNSFORD,

SC Court of Appeals

Defendant.

This matter comes before the Court on the Defendant's Motion to Dismiss and/or for Immunity under the Protection of Persons and Property Act, S.C. Code § 16-11-410, et. seq. (Supp. 2010) and State v. Duncan, 703 S.E.2d 662 (2011). The Defendant is charged with Attempted Murder and Assault and Battery of a High and Aggravated Nature. A hearing was held on the Defendant's motion on July 19, 2017 at 2:00 p.m., and the Defendant was present with his attorneys, Christopher D. Kennedy and N. Douglas Brannon, and the State was present represented by Derrick Balsa, Deputy Solicitor for the Seventh Judicial Circuit.

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The Court has carefully reviewed the transcript and considered the demeanor and credibility of the witnesses who testified at the hearing. The Court has also reviewed the few appellate cases applying the Protection of Persons and Property Act and scrutinizing the provisions of the Protection of Persons and Property Act.

It is undisputed through testimony of the parties that the Defendant was not engaged in an unlawful activity, driving on the road with a valid driver's license at the time this incident began. It is also undisputed that Defendant was in a place that he had a right to be, specifically that is, in his own vehicle on a public roadway in his neighborhood. Therefore, the court must grant immunity under the act if it decides that the Defendant reasonably believed it was necessary to

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use deadly force to prevent death or great bodily injury to himself and that he was actually under attack.

Here, the facts indicate that the Defendant reasonably believed it was necessary to use deadly force. The Defendant points to the fact that he had been continuously harassed by the Victim on the road starting when the Victim got behind the Defendant on Union Street in Spartanburg County, South Carolina. Due to the flashing of lights, erratic driving, passing on a double yellow and sudden stop made by the Victim, the Defendant was under the impression that the Victim intended to do the Defendant harm. The Defendant showed Victim the firearm in his possession, and the Court notes that the Defendant has a valid Concealed Weapons Permit issued by the State of South Carolina. Further, the Defendant argues that because the Victim knew Defendant had a gun and still exited his vehicle and advanced towards the Defendant, it was reasonable for the Defendant to believe the use of deadly force was necessary to prevent an attack on himself. Each of these acts by the Victim, taken together, indicate that the Defendant acted reasonably under the belief that the use of deadly force was necessary to prevent any further attack on himself.

Further, the Defendant was under attack at the time he defended himself. Even if one believes the Victim's testimony that the Victim did not make multiple passing attempts and had not been harassing Defendant until the final pass occurred, it is clear that the Defendant was under attack. The Victim abruptly stopping his vehicle and advancing towards Defendant is a sign of an attack especially considering that from the Victim's driver's side door to the Defendant's driver's side door, the parties were at their furthest point only seventeen (17) feet from each other. Moreover, the Victim admits that his intent was to engage in a physical altercation with the Defendant. Further, it is undisputed that Victim was aware of Defendant


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being in possession of a firearm. This Court finds that there is no fathomable reason for a person who knows another driver has a firearm to block the firearm carrier's vehicle other than to engage in an altercation with the firearm carrier. This Court further finds that a person in possession of the firearm could only presume that the person stopping him wants to cause him harm by confrontation. Therefore, the Defendant was under attack at the time he used deadly force to defend himself, and under the law, the legislature intended that he was not required to retreat before using deadly force.

Based upon the foregoing, this Court finds that the Defendant, Adam Keith Lunsford, acted lawfully, and **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendant is granted immunity from criminal prosecution and civil liability under the Protection of Persons and Property Act.

IT IS SO ORDERED.


The Honorable J. Mark Hayes, II
Circuit Court Judge
Seventh Judicial Circuit

September 28, 2017

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