

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Chester County

Paul M. Burch, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MARQUAVIOUS MOORE,

APPELLANT

APPELLATE CASE NO. 2016-001429

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where (1) the deceased engaged in a high-speed pursuit of Appellant and his friends and shot at them during the chase, (2) Appellant fell from the truck in which he was riding during the chase, and (3) Appellant fired his gun at the deceased while trying to run from the deceased?

STATEMENT OF THE CASE

On June 2, 2015, a Chester County grand jury indicted Appellant for possession of a firearm during the commission of a violent crime (2015-GS-12-085) and murder (2015-GS-12-086). R. 1905-1906; R. 1908-1909. The state, represented by Julie Hall, Riley Maxwell, and Randy Newman, called the case to trial on April 18, 2016, before the Honorable Paul M. Burch and a jury. R. 50. William Frick and Devon Nielson represented Appellant. R. 50. The trial was held in Fairfield County. R. 50.¹ During the deliberations, the jury sent multiple notes to the judge requesting to hear testimony again, seeking re-instruction on self-defense, and requesting to go home for the evening and reconvene the following day. R. 1020, l. 6 – R. 1024, l. 12; R. 1024, l. 18 – R. 1028, ll. 23; R. 1029, ll. 1-14; R. 1042, ll. 1-8; R. 1900; R. 1901; R. 1902; R. 1903; R. 1904.

Nevertheless, the jury was unable to reach a verdict. R. 1038, ll. 1-11; R. 1903. Thereafter, Judge Burch gave the jury additional instructions – imploring them to reach a unanimous decision. R. 1038, l. 17 – R. 1041, l. 19. However, the jury returned to the courtroom, informing the judge that the jury was “hopelessly deadlocked.” R. 1042, ll. 19-21; R. 1904. The judge then released the jury. R. 1042, l. 22 – R. 1043, l. 19. Although Judge Burch did not formally grant a mistrial, he indicated everyone would “go back to ground zero on it.” R. 1043, ll. 20-21.

The state, represented by Julie Hall and Riley Maxwell, called Appellant to trial for a second time before Judge Burch and a jury on June 27-30, 2016. R. 1052. William Frick

¹ On December 17, 2015, the Honorable Brian M. Gibbons entertained arguments on Appellant’s motion to change venue. R. 16. Trial counsel argued that due to the media coverage, he would be unable to get a fair trial in Chester County. R. 41, l. 22 – R. 44, l. 4. Judge Gibbons took the motion under advisement. R. 48, ll. 13-22. Subsequently, Judge Gibbons granted the change of venue request and moved the trial to Fairfield County.

represented Appellant. R. 1052. This trial was also held in Fairfield County. R. 1052.² At the conclusion of the trial, the jury found Appellant guilty as charged. R. 1850, ll. 12-16. Judge Burch sentenced Appellant to life imprisonment without the possibility of parole for murder and to a five-year consecutive sentence for possession of a weapon. R. 1850, l. 24 – R. 1851, l. 2; R. 1907; R. 1910.³

On July 1, 2016, Appellant filed and served his notice of appeal. This brief follows.

² Although the transcript indicated the trial occurred in Chester County, undersigned counsel confirmed with defense counsel that the trial occurred in Fairfield County.

³ Pursuant to the statute, the “five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.” S.C. Code Ann. § 16-23-490(A). However, trial counsel did not object to the imposition of the sentence. By failing to do so, trial counsel rendered ineffective assistance of counsel.

ARGUMENT

The trial judge erred in failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where (1) the deceased engaged in a high-speed pursuit of Appellant and his friends and shot at them during the chase, (2) Appellant fell from the truck in which he was riding during the chase, and (3) Appellant fired his gun at the deceased while trying to run from the deceased.

Relevant facts

Prior to trial, defense counsel filed a motion requesting immunity from prosecution pursuant to section 16-11-450 of the South Carolina Code – the Protection of Persons and Property Act. R. 92, ll. 1-12; R. 1853 – R. 1899. In support of the motion, trial counsel provided the court with witness statements and Appellant testified. R. 92, ll. 1-12; R. R. 1853 – R. 1899. The state presented a memorandum of information regarding a statement from an individual. R. 93, ll. 3-9.

In support of the motion, trial counsel argued Appellant “was acting in accord with the law at the time of the shooting.” R. 94, ll. 5-7. Trial counsel then provided an overview of the facts:

There were several gentlemen in a car that had parked on Featherstone Road in Chester County and apparently at or near the property of the decedent. You see in their statement from his wife, she lives at the end of the road, the car was parked nearby, she drives by, sees the vehicle, contacts [the decedent] and then [the decedent] comes to that property. Then there is a pursuit through town and is indicated in statements from co-defendants in the car at some point during the chase they state that they hear gunfire from behind them which were shots fired by [the decedent]. You see ultimately in there too ... there was a .32 pistol found in the driver's floorboard of [the decedent]'s car and his hands did test positive for gunshot residue clearly indicating that he did fire a firearm. Of course, that is at the very end of this. After the shots are fired, the vehicle where [Appellant] is sitting turns onto another road and there at some point - - it's not clear whether his vehicle comes to a complete stop or simply slows down. In any event, [Appellant] is exiting the vehicle, has a rifle in his hand, falls out of the car

essentially. As he falls, he injured his hand and a shot goes off. At that time, the Cadillac driving by [the decedent] continues to pursue and [Appellant] is attempting to escape. ... [Appellant] hears other gunshots and feels he has no other recourse than fire the rifle that he has, and of course, one of the bullets is a through and through shot of [the decedent], which was the fatal shot.

R. 94, l. 8 – r. 95, l. 12; see also R. 1853 – R. 1899.

Anticipating that the state would argue that Appellant was engaged in unlawful conduct, trial counsel explained that the gentlemen in the truck parked on Featherstone Road in order to cross a field to approach a home on Holmes Road. R. 95, ll. 12-20. “They went to go rob a house.” R. 95, l. 17. There was no one home so the men returned to their truck – abandoned their scheme. R. 95, ll. 20-23. Then men were leaving the area when the encounter with the deceased began. R. 95, ll. 23-24. Further anticipating the state would argue that Appellant was not lawfully armed, trial counsel that under State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999), Appellant was lawfully armed in self-defense. R. 96, ll. 7-20.

Trial counsel argued Appellant’s actions “were in response to a lengthy and, at some points, high speed pursuit” by Williams. He noted that Williams had fired upon the truck in which Appellant sat. He further argued that when Appellant fell from the truck and was “in this vulnerable position,” Williams approached. Appellant was in fear for his safety and fired upon Williams’ car. After quoting the law for self-defense, trial counsel explained how Appellant complied with each element, except the duty to retreat, which was not required under the statute. R. 1853 – R. 1899.

Appellant’s testimony

Thereafter, Appellant testified during the pre-trial hearing. On November 4, 2014, Appellant, De’Angelo Roseboro, Quinton McClinton, and Terrance Buchanan were hanging out and smoking marijuana. R. 98, ll. 5-13. Timothy Franklin and his colleagues owed them money

for “a drug deal that went bad,” but did not want to pay. R. 98, ll. 15-23; R. 118, ll. 11-13. They decided to go to Franklin’s home on Holmes Road to get what they were owed. R. 98, ll. 15-23. Armed with firearms, they got into a truck and drove to Featherstone Road, which was parallel to Holmes Road. R. 99, l. 8 – R. 100, l. 24. They parked in a little parking spot, which was almost at the end of the road. R. 101, ll. 2-5. The men got out of the truck and walked through a field toward Holmes Road. R. 101, ll. 6-10. However, no one was at home. After waiting for ten or fifteen minutes, the men abandoned their plan and walked back toward the truck. R. 101, ll. 11-21; R. 102, ll. 4-6; R. 121, ll. 7-9.

Appellant saw a car parked on the side of Featherstone Road, which the men went around to get out of the neighborhood. R. 103, ll. 1-6. Eventually, the men noticed a red car was following them. R. 103, l. 13 – R. 104, l. 3. McClinton, the truck’s driver, decided to stop to see what the pursuer wanted. R. 105, ll. 17-24. When the truck stopped, the red car stopped as well. R. 106, ll. 1-4. Buchanan recognized the car’s occupant, announcing to the group, “that’s that police, mother f-er, Odell Williams.” R. 106, ll. 6-8. McClinton sped away. R. 106, ll. 10-25. The truck took off down the road at a high rate of speed, but the car pursued. R. 107, l. 22 – R. 108, l. 4. Appellant then heard three gunshots coming from behind. R. 108, ll. 4-11. A short while later, Appellant heard three more gunshots. R. 109, ll. 2-4. Roseboro leaned out the window and fired a shot toward the car. R. 109, ll. 6-21. McClinton instructed Roseboro and the others not to fire again. R. 110, ll. 2-4.

After some distance was created between the truck and the car, Appellant asked McClinton to stop so that he could throw his gun into a ditch. R. 110, ll. 7-22; R. 123, ll. 14-20. Appellant opened the truck door and had one foot out when the truck started to move away. R. 110, l. 24 – R. 111, l. 2. Appellant fell into the roadway. R. 111, ll. 2-3. Appellant’s gun fired.

R. 111, ll. 3-4. When Appellant was getting up, he saw the red car fast approaching. R. 113, ll. 13-21. Appellant ran. R. 113, l. 23. There was nowhere for him to hide – no trees, no bushes. R. 115, ll. 7-10. He heard two shots, and began firing back. R. 113, l. 24 – R. 114, l. 16.

Terrance Buchanan's statement

According to Terrance Buchanan, he was with Appellant, Moore, Dixon, and McClinton on November 4, 2014. The men discussed their problems with some other men in town. The group decided to rob the home of another man. The five men left in a truck, which McClinton had borrowed. All of the men had guns. R. 1853 – R. 1899.

They parked the truck on Featherstone Road and walked toward Holmes Road, which was their ultimate destination. They waited for someone to arrive at the Holmes Road residence. Buchanan claimed he saw a car drive by their truck at a slow rate of speed, and that he told the others it was time to leave. The men walked back to the truck and proceeded to leave. R. 1853 – R. 1899.

On their way out of the neighborhood, Buchanan saw the car he had seen earlier parked on the side of the road. Buchanan recognized the occupants – “Odell Williams’ wife and his daughter,” but he did not relay this to anyone else in the truck. Arriving in a red Cadillac was Odell Williams, whom Buchanan also recognized. The men continued driving down the road. A short while later, the group realized they were being followed by the red Cadillac. After being pursued for some length of time, the men stopped at a barber shop to see what Williams wanted. Buchanan claimed he told everyone in the car that Williams was the driver of the Cadillac, and that everyone knew who Williams was. R. 1853 – R. 1899.

McClinton drove away before Williams could approach the men. Williams got back into his car and continued his pursuit. Buchanan heard gunshots “coming back toward the truck from

behind.” Buchanan heard “two or three shots.” Buchanan claimed no one fired back at Williams. R. 1853 – R. 1899.

After McClinton put some distance between the truck and Williams, Appellant requested to get out. However, Appellant fell out of the truck and his gun fired upon hitting the ground. The four men in the truck left Appellant on the ground in the middle of the road. Buchanan later heard about seven shots. Eventually, McClinton parked the truck, and the four men went in separate directions. R. 1853 – R. 1899.

While hiding his guns in the neighborhood, Buchanan saw Appellant arrive on foot. The two ran together before separating again. Eventually, Buchanan called a friend for a ride out of that neighborhood. R. 1853 – R. 1899.

Derrick Dixon's statement

Dixon's statement was very similar to Buchanan's. Like Buchanan, Dixon explained the men drove to Featherstone Road with the intent of robbing occupants of a home on nearby Holmes Road. Unlike Buchanan, Dixon stated he did not see a car pass by the parked truck and no one mentioned a car. Instead, Dixon claimed the men aborted their robbery plan when they realized no one was home. All five returned to the parked truck and began to leave the neighborhood. R. 1853 – R. 1899.

Dixon also recalled seeing a parked car near the stop sign and a Cadillac pull onto the road as the men were leaving. When the Cadillac began following them, Dixon recalled Buchanan saying the driver of the Cadillac was “on police stuff” and that the driver had coached Buchanan in football. Dixon also heard multiple gunshots “behind” them when the Cadillac was following them. Dixon even saw gunfire. Dixon also explained that Roseboro, one

of the men in the truck, leaned out of the truck window and fired toward the Cadillac. R. 1853 – R. 1899.

Dixon also claimed that McClinton was able to put some distance between the truck and the Cadillac and that Appellant stated he was getting out of the truck. Dixon stated Appellant fell out of the truck and his gun “went off by accident.” Dixon saw the Cadillac approaching Appellant and heard “lots of gunshots.” McClinton then parked the truck, and the four remaining men got out. Dixon and Roseboro ran together, arriving Roseboro’s friend’s house, but no one was home. After Dixon and Roseboro hid their guns, Appellant arrived. Appellant used Dixon’s phone to call Lashonda Wray for a ride. When Wray arrived, she picked up the three men and took them to Dixon’s house. R. 1853 – R. 1899.

Dixon claimed Appellant said he “and the old man were shooting at each other and the man was shooting back at him.” Appellant’s hand was bleeding, and he had it wrapped to stop the bleeding. Eventually, Appellant and Roseboro left Dixon’s home. R. 1853 – R. 1899.

DeAngelo Roseboro’s statement

Roseboro also told the police about the plan to rob the occupants of the home on Holmes Road, and the men driving in a truck to Featherstone to accomplish this goal. Roseboro claimed he saw a car drive by their parked truck and told the others they needed to leave. Roseboro saw the car parked on the side of the road and saw the Cadillac turn into the neighborhood as the men were leaving. According to Roseboro, a woman in the stopped car began pointing at the truck when the Cadillac approached her car. R. 1853 – R. 1899.

Roseboro also noticed the Cadillac was following the truck. According to Roseboro, Buchanan indicated he knew the driver of the Cadillac as Odell Williams. Roseboro also heard a couple of shots. He claimed that Dixon attempted to fire at the Cadillac, but that Dixon’s gun

would not fire. Dixon then instructed Roseboro to shoot, and he did. Roseboro also claimed that Appellant wanted out of the truck, and when the truck slowed down, he fell out of the truck. Appellant's gun discharged when he fell. When the Cadillac approached Appellant, the men drove away. R. 1853 – R. 1899.

Subsequently, Roseboro heard multiple shots. McClinton parked the truck and the men got out. Roseboro and Dixon went to Roseboro's friend's house, where they hid their guns. Appellant arrived shortly thereafter. Appellant called for a ride, and the three men left the area. R. 1853 – R. 1899.

Anna Louise Williams' statements

Anna Williams lived on Featherstone Road and was married to Odell Williams. On November 4, 2014, she, her daughter, and her granddaughter left Williams' home to go to Wal-Mart. Upon leaving, Anna noticed a truck parked in the driveway of the lot beside hers. The lot was owned by Williams. Anna called Williams to inform him about the truck, and Williams told her he would check it out. Instead of proceeding to Wal-Mart, the three women pulled to the side of the road to wait for Williams. Shortly, Anna saw the truck, which had been parked in the driveway, approaching them. The truck arrived at the stop sign at the same time that Williams arrived to the road. The three women started pointing at the truck, and Anna told Williams that was the truck to which she was referring. Williams then pulled off in the same direction as the truck. R. 1853 – R. 1899.

The women then went to Wal-Mart, and while shopping, they learned that Williams had been shot. R. 1853 – R. 1899.

Kira Bagley's statement

Kira Bagley told police that she heard multiple gunshots while sitting in her car in front of her home. Seconds later, she saw a truck drive past her. A red Cadillac was chasing the truck. She saw both vehicles run the stop sign. Shortly thereafter, she heard “machine gun type of shots.” R. 1853 – R. 1899.

Jennifer Lowery's statement

Jennifer Lowery saw a red Cadillac, which she recognized as belonging to Williams, chasing a truck. She also heard two to three gunshots fired. R. 1853 – R. 1899.

Forensic testing results

According to the SLED forensic services laboratory report, particles of gunshot residue were found on the palm and back of Williams' right hand. Round particles associated with gunshot residue were found on the palm and back of Williams' left hand. R. 1853 – R. 1899.

Williams' arrest

Williams was arrested in March 2014 for two counts threatening the life of a public official. According to the arrest warrant, he threatened the police chief and police major in the restroom at city hall. He used racial slurs, told the men he did not like them, and stated he ““would take them out”” while placing his hand on his pocket “implying that he had a weapon on him at the time and that he knew how to use it.” During the investigation, Williams essentially admitted to the allegations contained in the warrants, but he denied implying he had a gun and using racial slurs. R. 1853 – R. 1899.

Ruling on the motion

In ruling on the motion for immunity, Judge Burch explained he had “already reviewed the statements and glanced back over them,” but noted he did not “want to get too deep into the

finding or state findings here, because for obvious reasons about the comment on the facts.” R.

139, ll. 12-16. He then ruled:

[I]t appears there was a conspiracy, guns were involved, they were on property they shouldn't have been on apparently and some type of robbery or larceny was planned and the only way I know how to determine a conspiracy, but laying all that aside, there's just not enough clarity, Counsel Frick, for me to step in and grant your motion. There's just not enough there for me to make a finding that he was in imminent danger or position that he thought his life was going to be taken, no more than what I've heard here. So it appears to me it's just going to have to be left up for the jury to decide, so I'm going to deny the motion.

R. 139, l. 16 – R. 140, l. 2

Preservation of motion during second trial

When Appellant was called to trial for the second time, trial counsel again moved for immunity from prosecution pursuant to the statute. R. 1083, l. 24 – R. 1084, l. 9. Defense counsel relied upon the documents previously submitted and Appellant's previous testimony to support his request. R. 1084, ll. 12-16. Trial counsel argued that although Appellant was “engaged in some activity prior to this event,” his argument was that the murder did not occur until the deceased began to pursue the truck in which Appellant and others were riding. R. 1084, ll. 1-6. Additionally, trial counsel highlighted the evidence that the deceased fired at the truck in which Appellant was a passenger. R. 1085, ll. 6-11. Defense counsel maintained that Appellant fell out of the truck as the deceased was approaching. R. 1085, ll. 11-14. Appellant heard shots fired and discharged his firearm in response. R. 1085, ll. 14-16. Defense counsel concluded Appellant “was in an area that he had a right to be and was proper in acting as he acted.” R. 1086, ll. 2-4. Also, he argued Appellant's illegal possession of a firearm due to his probation did not defeat his claim of self-defense. R. 1087, l. 24 – R. 1088, l. 6.

The state argued first that Appellant was on probation and was not “supposed to be in possession of a gun.” R. 1086, ll. 9-10. Maintaining that Appellant voluntarily exited the truck,

the state argued his actions “were reasonably calculated to produce the occasion.” R. 1086, ll. 10-12; R. 1086, ll. 18-19. It was the state’s position that Appellant “brought on the difficulty by having an assault rifle and exiting the car that he was riding in which was perfectly safe.” R. 1086, ll. 12-14. The state also argued that Appellant brought on the difficulty by going to the deceased’s property, parking on the property with the intent to commit a crime at the adjacent property, and being armed at the time. R. 1087, ll. 5-12. According to the solicitor, Appellant had been trespassing and “somebody in the car [in] which he was riding ... fired a shot back toward the [deceased].” R. 1087, ll. 15-17.

The judge ruled “[b]ased on [his] memory of the first hearing and the transcript.” R. 1088, ll. 7-13. He saw “no reason why [he] would rule differently in this trial even though it is a new trial.” R. 1088, ll. 10-13. It was his opinion that the matter “should be left up to the jury to determine guilt or innocence of the charges.” R. 1088, ll. 13-16.

Discussion

In 2006, the South Carolina General Assembly adopted the Protection of Persons and Property Act. S.C. Code Ann. § 16-11-410, et seq. The General Assembly explained its intent was to “codify the common law Castle Doctrine which recognizes that a person’s home is his castle and to extend the doctrine to include an occupied vehicle and the person’s place of business.” S.C. Code Ann. § 16-11-420(A). The General Assembly recognized “that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.” S.C. Code Ann. § 16-11-420(D). Finally, the General Assembly explained “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.” S.C. Code Ann. § 16-11-420(E).

To effectuate this intent, the General Assembly created a statute providing for immunity from prosecution to “[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law.” S.C. Code Ann. § 16-11-450(A). One of the provisions of the Act provides:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C).

“A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard.” State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). During the pretrial hearing, a defendant must set out “a valid case of self-defense must exist,” excluding the duty to retreat prong, “and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity.” Id. at 371, 752 S.E.2d at 266.

To establish self-defense, four elements must be present: (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; (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; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or

sustaining serious bodily injury than to act as he did in the particular instance. State v. Hendrix, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); see also State v. Davis, 282 SC. 45, 46, 317 S.E.2d 452, 453 (1984).

The South Carolina Supreme Court recently affirmed a grant of immunity in State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016). Jones and her boyfriend, Eric Lee, shared a residence. Id. at 287, 786 S.E.2d at 134. On the evening of November 1, 2012, Jones and Lee were involved in a physical altercation. Id. Jones left the residence and returned when she had “cooled down.” Id. at 288, 786 S.E.2d at 134. While Jones gathered her things, Lee yelled at her and followed her around. Id. at 288, 786 S.E.2d at 135. Jones grabbed a knife for protection. Id. Lee grabbed Jones, shook her, and told her it was over. Id. Believing Lee was going to hit her again, Jones grabbed the knife out of her shirt and stabbed him once in the chest. Id. Although Jones initially left Lee, she and a friend shortly returned to the residence and took Lee for help. Id. However, Lee later died at the hospital. Id.

The Court found there was “nothing in the record to suggest that Jones was at fault in bringing on the difficulty” because she attempted to leave the apartment before the first altercation, returned to the apartment to gather her belongings, and called her friends to pick her up. Id. at 301-302, 786 S.E.2d at 142. Jones told police that she believed Lee “was going to hit her again and that had she not acted as she did, then she would have been killed.” Id. at 302, 786 S.E.2d at 142. Next, the Court held Jones’ belief that she was in imminent danger of losing her life or sustaining great bodily injury was reasonable in light of Lee having punched her earlier in the night and in Lee grabbing Jones and shaking her immediately prior to the stabbing. Id. Finally, the Court held that Jones had no duty to retreat pursuant to the Act because she was attacked in her home. Id.

This Court affirmed a grant of immunity in State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014).⁴ Douglas and his friend, Charles Smith, had spent the day on the golf course drinking. Id. at 312, 768 S.E.2d at 236. After leaving the golf course, the two went to Douglas' home and continued drinking. Id. at 313, 768 S.E.2d at 236. Smith found a bottle of Douglas' anti-anxiety medicine and began teasing Douglas about it. Id. When Douglas grew angry, Smith "snapped" and "went crazy." Id. Smith grabbed Douglas by his arms and threw him against the refrigerator. Id. When Douglas fell to the floor, Smith got on top of him and struck him in the eye. Id. at 314, 768 S.E.2d at 236. Although Douglas told Smith to leave, Smith refused, but did go into another room. Id. Douglas crawled to his bed and got a pistol from the nightstand. Id. Douglas, returning to the kitchen, again told Smith to leave. Id. Instead, Smith advanced toward Douglas. Id. Douglas lifted the pistol to scare Smith. Id. When Smith was two feet away, Douglas fired the pistol. Id. A bullet hit Smith, and he died within minutes. Id.

This Court held Douglas proved by a preponderance of the evidence that he reasonably believed shooting Smith was necessary to prevent great bodily injury to himself, and that he acted in self-defense. Id. at 319, 768 S.E.2d at 239. The physical evidence was consistent with Douglas' testimony, showing that Smith was in close proximity when the pistol was fired. Id. at 319-320, 768 S.E.2d at 239. This Court noted that Douglas was injured in the altercation prior to the fatal shot, and that in light of Smith's lack of serious injury, Douglas' believe that Smith was about to inflict serious bodily injury upon him if he did not act to protect himself was reasonable. Id. at 320, 768 S.E.2d at 240. This Court also considered evidence that several years prior to the shooting, Smith assaulted Douglas by slamming him against a wall and choking him. Id. According to this Court,

⁴ The South Carolina Supreme Court granted certiorari on November 5, 2015. However, on July 13, 2016, the Court dismissed the petition as improvidently granted. State v. Douglas, 416 S.C. 427, 788 S.E.2d 686 (2016).

Douglas was not at fault in bringing on the difficulty where “Smith’s violent behavior was an unreasonable reaction to a reasonable demand for Smith to return [Douglas]’s medicine.” Id. at 321, 768 S.E.2d at 240. Further, this Court found that after Smith attacked Douglas and Douglas retreated to his bedroom, his “reappearance at the kitchen’s threshold with a loaded pistol by his side was lawful, as he had a right to defend his home and demand that Smith leave.” Id.

In light of the immunity statute’s incorporation of the elements of self-defense save the retreat prong, an examination of South Carolina’s self-defense jurisprudence is necessary and helpful. 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. “[T]he mere unlawful possession of a firearm, with nothing more, does not automatically bar a self-defense charge.” State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). In Slater, the Court determined the defendant was not entitled to a charge on self-defense because he was not without fault in bringing on the difficulty where the defendant was “in unlawful possession of a weapon; he carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement.” Id. at 71, 644 S.E.2d at 53.

In State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008), the South Carolina Supreme Court held a defendant’s statement that it was either “her or me” after the defendant took the gun from the victim established that the defendant believed he was in imminent danger. The Court determined this belief was reasonable in light of the defendant’s testimony that in the preceding weeks the victim had been acting jealous, had followed him, and told him that if she caught him with another woman it was “going to be messy.” Id.

An individual has the right to act on appearances. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000); see also State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955). The South Carolina Supreme Court held the trial judge erred in failing to instruct the jury that the defendant had the right to act on appearances concerning one of the shootings. Starnes, 340 S.C. at 320, 531 S.E.2d at 912. In Starnes, one of the potential drug buyers, Wellborn, pointed a gun at the defendant, cursed him, and questioned where he was going. Id. The Court held the defendant was not entitled to a charge on the right to act on appearances concerning Wellborn because his claim to self-defense arose from an *actual* threat. Id. However, concerning the shooting of the other potential buyer, Champlin, the Court held the defendant was entitled to an appearances charge. Id. at 321, 531 S.E.2d at 912. The pertinent fact noted by the Court was that “[i]mmmediately prior to the shooting, [the defendant] observed Champlin hold a gun to [another]’s head and threaten to shoot him, apparently because the intended drug deal, which [the defendant] had arranged, had gone awry.” Id. The Court held the defendant was entitled to an appearances charge even though the defendant did not testify that he thought he saw a weapon in Champlin’s hand at the time of the shooting. Id.

Additionally, “words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense” from State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951). Furthermore, “when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.” Hendrix, 270 S.C. at 661, 244 S.E.2d at 507. In Douglas v. State, 332 S.C. 67, 72-73, 504 S.E.2d 307, 309-10 (1998), the Supreme Court noted the judge had charged that if the defendant was justified in firing the first shot he was justified in continuing to shoot until any danger to his life and body had ceased.

The trial judge erred in failing to grant Appellant immunity from prosecution under the statute. Appellant satisfied the Act and the elements of self-defense. First, Appellant was not

engaged in unlawful activity and was not at fault for bringing on the difficulty. Appellant's conduct was the direct result of the deceased's high speed pursuit of Appellant and his friends through the city. Appellant's conduct was the direct result of the deceased firing multiple gunshots at the truck in which Appellant was riding and upon Appellant after Appellant fell from the truck. The plan to rob the occupants of the home on Holmes Road was abandoned by Appellant and his friends. When the men went back to the truck, they were leaving the neighborhood with the intent to return to their homes. There was no harm or threat of harm to the deceased or his family. Rather, the deceased chose to follow Appellant and his friends through the city at a high rate of speed and even firing upon their truck. By abandoning their prior plan to rob the occupants on Holmes Road and driving away, Appellant was not engaged in unlawful activity. Further, Appellant was not at fault in bringing on the difficulty.

Contrary to the state's argument at trial, Appellant was not in unlawful possession of a firearm because he was armed in self-defense. See State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). "[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." Id.

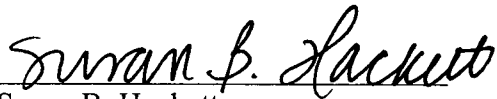
Appellant was attacked in a place where he had a right to be – it was undisputed that the shooting occurred on a public roadway. Appellant was entitled to stand his ground and meet force with force, including deadly force. As explained by Appellant and the witness statements, Appellant believed his actions were reasonably necessary to prevent death or great bodily harm to himself. The deceased was in a car traveling at a high rate of speed. The deceased had already fired multiple shots at Appellant just minutes prior to the fatal confrontation. Based on the undisputed evidence, Appellant was in actual imminent danger of losing his life or sustaining serious bodily injury, or, at a minimum, he believed he was in imminent danger of losing his life or sustaining

serious bodily injury, and a reasonably prudent person would have entertained the same belief.

Therefore, Appellant was entitled to immunity from prosecution.

CONCLUSION

Appellant respectfully requests this Court reverse the trial court's decision and grant him immunity from prosecution pursuant to Protection of Persons and Property Act. See S.C. Code Ann. § 16-11-410, et seq.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of May, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MARQUAVIOUS MOORE,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

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MAY 19 2017

SC Court of Appeals

Counsel for Christopher Marquavious Moore states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trials before Judge Burch, which were held on June 27-30, 2016, and April 18-23, 2016. In her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Christopher Marquavious Moore.

Respectfully Submitted,



Susan B. Hackett

Appellate Defender

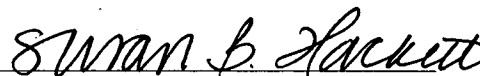
ATTORNEY FOR APPELLANT

This 19th day of May, 2017.

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."

May 19, 2017.



Susan B. Hackett
Appellate Defender

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