STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAEFORD DERRANE WIDEMAN,

APPELLANT

APPELLATE CASE NO 2017-002470

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion for immunity from prosecution pursuant to the Protection of Persons and Property Act?

STATEMENT OF THE CASE

On July 21, 2015, the Anderson County Grand Jury indicted Appellant, Raeford Derraine Wideman, for murder, indictment #2015-GS-04-01191. On November 13, 2017, Appellant proceeded to jury trial before the Honorable R. Lawton McIntosh. Scott David Robinson represented Appellant at trial. Stanford Lee Overby and Morgan Dawn Page prosecuted the case. The jury returned a verdict of guilty. On November 16, 2017, Judge McIntosh sentenced Appellant to thirty (30) years in prison. A timely notice of intent to appeal was served on November 27, 2017. This appeal follows.

STANDARD OF REVIEW

A claim of immunity under the Protection of Persons and Property Act requires a pretrial determination using a preponderance of the evidence standard, which the Appellate Court reviews under an abuse of discretion standard of review. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011).

ARGUMENT

The trial court erred in denying Appellant's motion for immunity from prosecution pursuant to the Protection of Persons and Property Act.

The jury found Appellant guilty of the fatal shooting of Ryan Oneill Tatum. Appellant moved prior to trial for immunity from prosecution pursuant to the Protection of Persons and Property Act, S.C. Code §16-11-410-450. [the Act]. (R. pp. 43-124). During the hearing Appellant testified that at 3:00 AM on March 15, 2015, he was awakened by a loud noise coming from the front yard of the house where he lived with his mother and father. (R. p. 44, lines 16-18). Appellant saw two men he did not recognize in his front yard. (R. p. 44, lines 18-21). Appellant armed himself with his registered handgun and went outside where he saw his cousin, Brianna Ware Blassingame, who had been with Appellant's sister, Taquana Blassingame, earlier that day. (R. p. 45, lines 1-15). Brianna the cousin was initially nonchalant about the whereabouts of the sister but finally told Appellant that his sister was in her own car over to the left. (R. p. 45, lines 16-25). Appellant looked in the backseat and saw his sister passed out and unresponsive. (R. p. 46, lines 11-16). Appellant testified, "I didn't know what exactly was wrong with her. I didn't know if she was hurt, if she was injured. I didn't know, you know, exactly what was wrong with her, but I know she wasn't responding when I called her name." (R. p. 46, lines 21-25).

Tatum got in the driver's side of the sister's car and started the car. (R. p.46, lines 6-9). Appellant asked Tatum to turn off the car twice and the second time Tatum responded with "F" you. (R. p. 47, lines 12-14). Appellant testified that as he was reaching in to get his sister out of the backseat, Tautm stepped on the gas. (R. p. 47, lines 17-19). Appellant admitted having his gun in his left hand, even though he is right handed, and admitted firing the gun. (R. p. 47, lines

16-21). Appellant testified that when the car went in reverse, the door hit him and he fired more shots than he wanted to. (R. p. 47, lines 19-23).

When asked why he was in fear, Appellant testified, "We have a pretty long driveway. And it's like a big molt, you know, where the car was at. And that the car could have, you know, backed up and I could have went up under the car, up under the tires. And – and not just that, but the car could have went over that big ditch – that big molt and fell on top of me or, you know, or could have crushed me or could have hurt me or could have hurt all of us." (R. p. 51, lines 15-22).

The cousin, Brianna, testified that she told Appellant that Tatum was the sister's boyfriend and that they were about to go home and were okay. (R. p. 68, lines 16-23). The sister did not live at the house with Appellant and their parents. The coroner testified that Tatum's blood alcohol came back two twenty-nine. (R. p. 93, line 10 – p. 94, line 1).

At the close of the immunity hearing the judge denied the motion and stated:

> As to the Castle Doctrine defense, I think there's just too much conflict in evidence in the case, and that's just going to be a question for the jury under the self-defense, depending on what the state of the evidence is during the course of trial. And somewhat, I feel, the Curry case has all the different burdens that would have happened in this case. It's similar and akin to that. Even under the most favorable view of it, this just doesn't seem that it amounts to it, and as such your client has not met his burden of proof by a preponderance of the evidence that the Castle Doctrine applies. I'm not going to prohibit him from raising self-defense. I think that depends on the facts and the evidence.

(R. p. 119, lines 8-16).

The following day counsel for Appellant made additional arguments in favor of immunity. (R. pp. 121-123). The judge noted that Appellant made conflicting statements to police as to what happened. (R. p. 123, lines 3-4). The judge again denied the motion stating. "That he was trying – the gun went off when he was trying to, you know, get out of the car

backing up on him. But in this situation, I just don't think the Castle Doctrine is appropriate. And, you know, depending on the testimony we hear during the trial, which I think we will, that a self-defense or accident very well may be appropriate, but I'm going to deny your motion." (R. p. 124, lines 2-9).

Appellant did not testify at trial. The judge instructed the jury on the law of murder and the lesser included charges of voluntary manslaughter and involuntary manslaughter. (R. pp. 374-378). The judge also instructed the jury on the law of self-defense, defense of others and accident. (R. pp. 381-387). The judge abused his discretion in refusing to find that Appellant was entitled to immunity pursuant to the Act.

S.C. Code §16-11-440 provides:

> (A) 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:
>
> (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (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.
>
> (B) The presumption provided in subsection (A) does not apply if the person:
>
> (1)against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or
>
> (2)sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or
>
> (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement

(C) 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.

Appellant is entitled to immunity under subsection (C) of the Act. Appellant was not engaged in an unlawful activity and was attacked in his yard, where he had a right to be, by Tatum backing up the sister's car. Appellant had a right to stand his ground and meet force with force as he reasonably believed it was necessary to prevent death or great bodily injury to both himself and his sister.

The trial judge's reliance on State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) is misplaced. In Curry the testimony of the Appellant and the testimony of the State's witnesses varied substantially. In contrast, in the present case both Appellant and the State's witness, cousin Brianna, testified that Tatum drove the car in reverse rather than stopping the car and allowing Appellant to remove the sister who was passed out. (R. p. 70, lines 8-12). Appellant's initial varied statements to the police should not preclude him from immunity.

In State v. Douglas, 411 S.C. 307, 318, 768 S.E.2d 232, 238 (Ct. App. 2014), the South Carolina Court of Appeals wrote, "Our supreme court has recently emphasized that immunity under the Act 'is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence,' save the duty to retreat. Curry, 406 S.C. at 371–72, 752 S.E.2d at 266–67." During the hearing Appellant demonstrated that he met the elements of self-defense. As the Court of Appeals wrote in Douglas:

There are four elements required by law to establish a case of self-defense:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, 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. If the defendant actually was 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. Fourth, 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 this particular instance.
>
> Id. at 371 n. 4, 752 S.E.2d at 266 n. 4 (citation omitted). Again, the last element, i.e., the duty to retreat, need not be shown when seeking immunity under the Act. Id. at 371, 752 S.E.2d at 266.

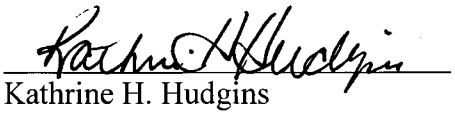
411 S.C. at 318, 768 S.E.2d at 238–39.

Appellant was without fault in bringing on the difficulty. Appellant actually believed he was in imminent danger of losing his life or sustaining great bodily injury and he actually was in such imminent danger. A reasonably prudent man of ordinary firmness and courage would have entertained the same belief and 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. Pursuant to the Act, Appellant had no duty to retreat.

The present case is more similar to Douglas where the trial court found by a preponderance of the evidence that Douglas reasonably believed shooting was necessary and acted in self-defense. The Court of Appeals affirmed the finding by the trial court. In the present case the trial judge abused his in refusing to find by a preponderance of the evidence that Appellant reasonably believed that shooting was necessary and acted in self-defense. The record from the immunity hearing supports the finding that Appellant acted in self-defense and is entitled to immunity pursuant to the Act.

CONCLUSION

Based on the argument above, this Court should reverse the conviction and remand to the lower court for a finding that Appellant is immune from prosecution pursuant to the Act.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of November, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAEFORD DERRANE WIDEMAN,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Raeford Derrane Wideman states:

1. She is 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 trial before Judge R. Lawton McIntosh, which was held on November 14 - 16, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She 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, She asks the Court to relieve her as counsel for Raeford Derrane Wideman.

Respectfully Submitted,

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 28th day of November, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

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Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAEFORD DERRANE WIDEMAN,

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 and sentencing sheet;
(2) Trial transcript;
(3) Court's Exhibit #1 – Jury note;
(4) Court's Exhibit#2 – Stipulation to chain;
(5) Court's Exhibit #3 – Stipulation to autopsy;
(6) Court's Exhibits #4, #5, #6, #7 and #8 – Jury notes;
(7) State's Exhibits #7 and #19 – DVDs of statements –
TO BE TRANSPORTED TO THE COURT.

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

November 28, 2018

Kathrine H. Hudgins
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South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

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."

November 28, 2018.

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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 Melody J. Brown, 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 Raeford Derrane Wideman, #374579, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 28th day of November, 2018.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of November, 2018.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.