

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM FLORENCE COUNTY

Thomas A. Russo, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

ANTHONY WADE,

APPELLANT

Appellate Case No. 2012-205686

RECORD ON APPEAL

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INDEX

INDEXi

IMMUNITY HEARING TRANSCRIPT1

TESTIMONY

 CASEY EDWARD STONE

 Direct Examination by Mr. Floyd4

 Cross Examination by Solicitor Hill10

 Redirect Examination by Mr. Floyd.....14

 ANTHONY WADE

 Direct Examination by Mr. Floyd17

 Cross Examination by Solicitor Hill23

CLOSING ARGUMENT BY MR. FLOYD25

RULING OF THE COURT27

INDICTMENT32

CERTIFICATE OF COUNSEL.....34

STATE OF SOUTH CAROLINA))
 COUNTY OF FLORENCE)) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
 2009-GS-21-1704

ANTHONY WADE,)

DEFENDANT.)

November 3, 2011
 Florence, South Carolina

BEFORE :

THE HONORABLE THOMAS A. RUSSO, JUDGE

APPEARANCES:

STEPHEN L. HILL, ESQ.
 Assistant Solicitor

SCOTT P. FLOYD, ESQ.
 Assistant Public Defender

FRANCES BAKIS-RAY, RPR
 Circuit Court Reporter

I N D E X

	Page
Casey Edward Stone:	
Direct examination	3
Cross-examination	9
Redirect examination	14
Anthony Wade:	
Direct examination	17
Cross-examination	23
Closing remarks by Mr. Floyd	25

1 THE COURT: We've got a motion. I believe
2 it's Defense motion, Mr. Floyd?

3 MR. FLOYD: Yes, Your Honor.

4 THE COURT: If you'd go ahead and call the
5 case and then just let me know what your motions are
6 and I'll be glad to get started.

7 MR. FLOYD: Thank you, Your Honor. Your
8 Honor, this is State versus Anthony Wade. The case
9 number is 2009-GS-21-1704. The charge in this case
10 is assault and battery high and aggravated nature.
11 And Your Honor, this is basically a hearing on my
12 motion for immunity pursuant to the procedure set
13 forth in the case of State versus Gregory Duncan.

14 THE COURT: All right, sir. I'll allow
15 you then to go ahead and present your case and/or
16 your motion and your witnesses.

17 MR. FLOYD: Thank you, Your Honor. Your
18 Honor, I would call Casey Stone.

19 THE COURT: All right. Mr. Stone, if
20 you'd please come around to be sworn, sir.

21 WHEREUPON,

22 CASEY EDWARD STONE,
23 having been duly sworn by the Clerk of Court,
24 testified as follows:

25 THE CLERK OF COURT: State your name for

DW- C. STONE - DIRECT

1 the record.

2 THE WITNESS: Casey Edward Stone.

3 **DIRECT EXAMINATION**

4 BY MR. FLOYD:

5 Q Mr. Stone, where do you live?

6 A [REDACTED], Darlington, South Carolina.

7 Q Okay. And where do you work?

8 A Roche Carolina.

9 Q What do you do for them?

10 A Manufacturing technician.

11 Q Okay. How long have you worked for Roche?

12 A Almost a year-and-a-half.

13 Q Okay. At one time you were involved in a
14 business near Florence called Cue Time?

15 A Yes, sir, I was part owner.

16 Q Okay. And what was Cue Time?

17 A Bar/nightclub, night life.

18 Q Okay. And where was that located?

19 A 2000 South Irby Street.

20 Q Was that down here at the Southgate Bowling
21 Alley?

22 A Yes, sir, right in between Southgate and
23 Wal-Mart.

24 Q Okay. And how long were you involved in that
25 club?

DW- C. STONE - DIRECT

1 A We opened in February of 2008. I sold my half in
2 I guesstimate March, 2010.

3 Q Okay. So you haven't had anything to do with it
4 since March of 2010?

5 A No, sir.

6 Q Okay. And so in June of 2009 you were an active
7 owner in that business?

8 A Yes, sir.

9 Q Okay. And did you participate in the business on
10 an active basis or ---

11 A Yes, sir, I was there -- we were open Thursday
12 through Sunday. I was there every Thursday through
13 Sunday.

14 Q I see, okay. And did you do anything in
15 particular as far as duties in the club like
16 bartending or anything like that?

17 A No, sir, mostly I just kept eye on day-to-day
18 operations.

19 Q Okay. So you watched the money?

20 A Pretty much.

21 Q Okay. You kept track of the cash register?

22 A Yes, sir.

23 Q Okay, I understand that. Were you present in the
24 club on the evening of -- I'm sorry, June 26th,
25 2009?

DW- C. STONE - DIRECT

1 A Yes, sir.

2 Q Okay. Do you remember any disturbances in the
3 club that night?

4 A Yes, sir, I do.

5 Q Could you tell us what happened in regard to any
6 fights or anything that you remember?

7 A From my recollection we had a fight break out
8 inside the club. I want to say it was three to four
9 gentlemen. I instructed security to take it outside.
10 Mr. Wade was my head of security. He was ---

11 Q Okay, you're speaking of Anthony Wade?

12 A Yes, sir, Anthony Wade.

13 Q Is that the defendant in this case?

14 A Yes, sir, was my head of security. I want to say
15 it was three to four security guards and myself got
16 the fighters. I don't know how you, say, well, I
17 called them the people outside that are fighting.

18 Q Okay.

19 A Got them outside. As we were trying to get them
20 out the door I told the bartender to go ahead and
21 call the Sheriff's Department to get them
22 transported. She placed a call, had them outside.
23 As the fight continued they started fighting with my
24 security guards. Mr. Wade had one toward the left
25 side of the parking lot, the front of the building,

DW- C. STONE - DIRECT

1 and there was two to three more kind of in the
 2 middle of the parking lot. The next thing I'm kind
 3 of waiting for the Sheriff's Department trying to
 4 keep as much peace as I can. I hear, I'm going to
 5 get my gun and I'll take care of you. And I turn
 6 around, and as I'm turning around I see Mr. Wade
 7 engaged kind of locked up with one guy. I see the
 8 guy swinging at Mr. Wade. I can't tell you if he
 9 hit him or he didn't hit him. And the next thing I
 10 know Mr. Wade swings back and one hit the guy goes
 11 to the ground. Shortly after that, maybe a minute,
 12 two, three minutes, investigator from the Sheriff's
 13 Department pulls up. And I explained to -- I can't
 14 think of what, which deputy responded to it then.
 15 But I explained the situation to him and that's
 16 pretty much what I said. They -- I'm not sure if he
 17 took him to jail or not, took him to jail, only how
 18 it happened. But that's pretty much how it,
 19 everything went down.

20 Q Okay. And that's what you remember?

21 A That's as much as I can remember to something
 22 that was two-and-a-half years ago.

23 Q I understand. And did you know the gentleman who
 24 was in the fight with Mr. Wade?

25 A No, sir. I couldn't point him out to you in this

DW- C. STONE - DIRECT

1 courtroom.

2 Q Okay. Had you ever seen him before that night?

3 A No, sir.

4 Q Ever seen him since?

5 A No, sir.

6 Q All right. So that was the only person that you
7 saw Mr. Wade hit though?

8 A Yes, sir.

9 Q Was that one person, okay. And after that hit
10 occurred you said the Sheriff's Department arrived?

11 A Shortly I would say within a minute, two, three,
12 maybe five minutes at the max.

13 Q Okay. Was the person off the ground when they
14 got there?

15 A Yes, sir.

16 Q The person Mr. Wade?

17 A Yes, sir.

18 Q And you said you saw this person swing at
19 Mr. Wade one time?

20 A One time.

21 Q Okay. With a closed fist?

22 A Yes, sir.

23 Q But you couldn't tell whether or not he struck
24 him?

25 A No, sir, I might have been 25 feet away, 20, 25

DW- C. STONE - DIRECT

1 foot away. I couldn't tell you whether he hit him or
2 didn't hit him, but I did see a swing.

3 Q Okay, all right. But you had instructed someone
4 inside to call 9-1-1, but before ---

5 A Yes, sir, as we were getting them outside.

6 Because I've always told my security the first thing
7 to do is bring the disturbance outside, get outside.

8 It doesn't affect anybody else. We were getting

9 there when I made a judgment and decided and

10 instructed the bartender to call 9-1-1.

11 Q Okay. But you didn't make the call yourself?

12 A No, sir. No, sir.

13 Q Okay, all right. Did you see the fight break out
14 inside the club?

15 A I couldn't tell you what happened. I saw it as
16 it was going on. I couldn't tell you how it started
17 or anything like that.

18 Q Okay. When you say you saw it going on were
19 there punches being thrown inside the club?

20 A Yes, sir.

21 Q Between your patrons?

22 A Yes, between patrons. Then once my security got
23 in the middle is when I -- they start throwing
24 punches at the security.

25 Q Okay, I see. All right. Thank you very much.

DW - C. STONE - CROSS

1 Answer any questions Mr. Hill might have for you.

2 A Yes, sir.

3 **CROSS - EXAMINATION**

4 BY MR. HILL:

5 Q Mr. Stone, was Cue Time the first bar that you
6 had had any interest in?

7 A It's the first bar I ever had a controlling
8 interest in.

9 Q In that regard had you worked in other bars or
10 clubs or how long before that day?

11 A Yes, sir.

12 Q In what capacity?

13 A I direct a bunch of pool tournaments for the
14 local bars still now and do some, I guess you would
15 call it entertainment, now. And I've done it prior
16 to.

17 Q Are fights common in those type locations?

18 A Yes, sir.

19 Q And you've seen fights in those locations?

20 A Yes, sir.

21 Q And you've heard threats made during those
22 fights?

23 A Yes, sir.

24 Q And you've heard people use words to they really
25 don't mean?

DW - C. STONE - CROSS

1 A Yes, sir.

2 Q On this particular night was Mr. Wade your chief
3 bouncer?

4 A Yes, sir.

5 Q And was he responsible for checking people for
6 weapons as they entered the club?

7 A Yes, sir.

8 Q And what is the policy regarding weapons in the
9 club?

10 A None whatsoever.

11 Q If someone came with a weapon would they be
12 allowed in the club?

13 A No, sir.

14 Q If they had a weapon they'd be turned away,
15 correct?

16 A Correct.

17 Q Do you know if Mr. Bacote, the victim in this
18 case, was turned away with a weapon before he
19 entered?

20 A No, sir, I wouldn't. It was never brought to my
21 attention if he was.

22 Q If someone came with a weapon you'd be notified
23 though; wouldn't you?

24 A Yes, sir.

25 Q And you weren't notified of that in this case?

DW - C. STONE - CROSS

1 A No, sir.

2 Q In regards to the club itself parking was
3 available both in front of the club and in the back
4 side of the club, correct?

5 A Yes, sir.

6 Q On this particular day do you recall if the cars
7 were parked in front between the door and Irby
8 Street, or were they also parked around back?

9 A To be honest I can't actually recall, but it was
10 -- I do. It was a crowded night so I'm assuming it
11 would probably be in the front and along both sides
12 of the building and the back.

13 Q All right. And when the fight started inside you
14 don't know what started it?

15 A No, sir.

16 Q And you don't know Mr. Bacote's, the victim in
17 this case, his participation in that fight inside
18 the club, do you?

19 A No, sir, I can't.

20 Q All you know is once you got outside you saw Mr.
21 Bacote and Mr. Wade?

22 A Exactly.

23 Q Once you were outside you were involved with
24 watching not only Mr. Wade and Mr. Bacote but
25 several other people, correct?

DW - C. STONE - CROSS

1 A Yes, sir.

2 Q And in fact, there was a lot ---

3 A Yes.

4 Q ---going on outside?

5 A Yes.

6 Q It was very noisy and rambunctious ---

7 A Yes.

8 Q ---boisterous? How many people were outside?

9 A Myself and the security guards and the patrons
10 they took outside, I would say in the neighborhood
11 of maybe 10 to 12.

12 Q And because Irby Street is there it's busy with
13 traffic, correct?

14 A Yes, sir.

15 Q And it's a noisy place and sometimes difficult to
16 hear?

17 A Yes, sir.

18 Q And in fact, when you heard I believe -- I wrote
19 it quickly -- I'm going to go, I'm going to get a
20 gun and I'll take care of you. You don't know from
21 which direction that came?

22 A I could kind of tell from -- I could never
23 pinpoint to say it.

24 Q That's correct. So you don't know whether -- you
25 don't know whether Mr. Bacote made that statement or

DW - C. STONE - CROSS

1 not, do you?

2 A Correct.

3 Q Regardless who made it you don't know how far
4 away they had to go to get their weapon, do you?

5 A Correct.

6 Q And in fact, there was not a weapon found that
7 night, was there?

8 A Not on any person. Now as far as their car, if
9 the law enforcement searched or anything I have no
10 clue.

11 Q Okay. And in this particular case you did not
12 see Mr. Bacote use any force against Mr. Wade, did
13 you?

14 A Yes, sir, I saw him swing. I cannot say he hit
15 or made contact with his swing. That's all I can
16 say.

17 Q Was Mr. Bacote intoxicated?

18 A I would say to a point, yes.

19 Q Okay. And in your experience intoxicated, drunk
20 people say and do a lot of things that would ---

21 A Yes, sir.

22 Q Thank you. That's all I have.

23 THE COURT: Anything?

24 **REDIRECT EXAMINATION**

25 BY MR. FLOYD:

DW - C. STONE - REDIRECT

1 Q Yeah. Mr. Stone, you said your security people
2 checked patrons for weapons before they come in the
3 bar?

4 A Before entering the bar, yes, sir.

5 Q But they don't check their automobiles, do they?

6 A No, sir.

7 Q Okay. So if one of your patrons has the gun in
8 the automobile, your security people have no way to
9 know that?

10 A No, sir.

11 Q Okay. Now ---

12 A We take it very seriously with the guns because
13 if -- it was only a couple months prior we had a
14 shooting that happened actually in the parking lot.

15 MR. HILL: Your Honor, I object to this
16 line of questioning. I object to it, but I think the
17 answer he's given isn't relevant to this particular
18 case. I don't know the time and frame of the
19 experience he's expressing, talking about. I don't
20 think it's relevant to this particular case.

21 THE COURT: All right.

22 MR. HILL: Especially as to the mind of
23 the person Mr. Wade and what effect that might have
24 had on his actions on that night. Otherwise I ask
25 that his answer is speculative and not be allowed.

DW - C. STONE - REDIRECT

1 THE COURT: I'm gonna sustain the
2 objection as to the actions of Mr. Wade. I don't
3 think so he's qualified to testify as to what was
4 going through Mr. Wade's mind.

5 MR. FLOYD: Certainly, Your Honor.

6 BY MR. FLOYD:

7 Q And you testified that you couldn't be certain if
8 Mr. Bacote stated he was going to his car to get a
9 gun or going somewhere to get a gun; is that
10 correct?

11 A Yes, I can't actually say that I know he said it.

12 Q Right. But it came from his general direction?

13 A From the general direction, yes, sir.

14 Q Or -- all right. And but you did see him swing
15 with a closed fist at Mr. Wade?

16 A Yes, sir. As when I heard the remark is when I
17 turned and as I was turning Mr. Bacote was swinging
18 at Mr. Wade, and I watched the retaliation punch I
19 guess you would call it.

20 Q Okay, all right. Thank you very much.

21 MR. HILL: Nothing further.

22 THE COURT: Thank you very much, sir. You
23 may step down. Call your next witness.

24 MR. FLOYD: Thank you, Your Honor. Yes,
25 sir, I call Anthony Wade.

DW - A. WADE - DIRECT

1 THE COURT: Mr. Wade, if you'd please come
2 around to be sworn, sir.

3 WHEREUPON,

4 ANTHONY WADE,
5 having been duly sworn by the Clerk of Court,
6 testified as follows:

7 THE CLERK OF COURT: Please be seated.
8 State your full name for the record.

9 THE WITNESS: My name is Anthony Dileo
10 Dicks Wade.

11 **DIRECT EXAMINATION**

12 BY MR. FLOYD:

13 Q Mr. Wade, where do you live now?

14 A [REDACTED] Lake City, South Carolina.

15 Q Okay. And are you employed?

16 A Yes, sir.

17 Q Where do you work?

18 A Previously I was employed with Audi Brown
19 Superstore on Cashua, just recently moved to Raceway
20 Ford in Darlington, South Carolina.

21 Q Okay. And were you formerly employed at Cue
22 Time?

23 A Yes, sir.

24 Q And how long did you work there?

25 A I'm not sure, maybe a year.

DW - A. WADE - DIRECT

1 Q Maybe a year?

2 A Yes, sir, I'm not exactly sure.

3 Q Okay. When did you start working there?

4 A Not exactly sure.

5 Q Okay. Were you working there on June 26th of
6 2009?

7 A Yes, sir.

8 Q Okay. And what was your position when you were
9 working there?

10 A Bouncer, I was the lead bouncer.

11 Q Okay. And do you recall any particular
12 disturbance that happened that night in the club?

13 A Yes, sir.

14 Q Okay. Could you tell me, were you in the club
15 when a disturbance broke out?

16 A Yes, sir.

17 Q Were you inside?

18 A Yes, sir.

19 Q Can you tell me what you saw?

20 A Actually I was standing inside the club by the
21 door leaning up against the bar talking to a male
22 and female friend. The disturbance occurred in the
23 back of the club where the — where the dance floor
24 is. At that point the security was in the back on
25 the dance floor. They started escorting people out

DW - A. WADE - DIRECT

1 of the door. I went outside and they brought the
2 people that were fighting outside.

3 Q Okay. So you didn't actually remove anyone out
4 of the club yourself?

5 A No, sir.

6 Q Okay. How many other security people worked with
7 Cue Time?

8 A I say maybe four or five.

9 Q Okay. And do you remember how many people they
10 brought out after that disturbance broke out?

11 A I don't know exactly how many it was. Multiple
12 people, you know, you know, three, four, five. I
13 don't really know exactly.

14 Q I understand. Okay. When they brought the
15 people out did you start speaking to Mr. Bacote?

16 A Yes, sir.

17 Q Okay. Did you know him ---

18 A No, sir.

19 Q ---before that night?

20 A No, sir.

21 Q Okay.

22 A I wouldn't know what he looks like right now.

23 Q Okay, all right. Where did you start speaking to
24 him the first time?

25 A Actually he walked out the door. It was toward

DW - A. WADE - DIRECT

1 the right which will be on the left side of the
2 building. We had a guy there that used to cook
3 steaks and so and so forth outside on the grill. Me
4 and Mr. Bacote as the security brought him out. I
5 think he was one of the first ones brought out. I
6 was asking him, you know, what happened, who did he
7 have an altercation with, what was going on, because
8 I wanted to make sure that all the parties involved
9 were removed, you know, from the establishment. At
10 that particular point, you know, Mr. Bacote said,
11 you know, I don't want to talk to you, I don't have
12 to talk to you. I said that was fine. The security
13 was still escorting people out, okay. Mr. Bacote
14 started saying as soon as I get away from here I'm
15 gonna go to my car, and I'm going to go to my car
16 and I'm gonna shoot everybody out here, and you
17 first.

18 Q Okay.

19 A And that —

20 Q After he said that what did you do?

21 A I just looked at him. Once he said that though
22 he made the initiative to turn like he was getting
23 ready to return, okay. He was standing to my left.
24 So when he went to run from me I grabbed, I reached
25 for his shirt. As I reached for his shirt he swung

DW - A. WADE - DIRECT

1 and hit me on the left side of my jaw. In reflex I
2 hit him back.

3 Q All right. Did you hit him one time?

4 A Yes, sir.

5 Q And which side? Do you remember which hand you
6 swung?

7 A Swung with my right hand.

8 Q Your right hand?

9 A Yes, sir.

10 Q Okay. So did you hit him on the left side of his
11 face?

12 A I don't remember exactly what side of his face I
13 hit him on. I just remember him swinging. He hit me
14 left side of my jaw and I reached across. I hit him
15 and he went -- he fell to the ground.

16 Q Okay. So you hit him one time?

17 A One time.

18 Q Did you hit him anymore times?

19 A No, sir. I never touched him after I hit him.

20 Q Did you kick him when he was on the ground?

21 A Never touched him, had any contact with him after
22 I hit him.

23 Q Okay, all right. After he went down what did you
24 do?

25 A After he went down I kind of, you know, looked to

DW - A. WADE - DIRECT

1 see what the other security were doing. I was aware
2 that the police were already called. You know, I
3 just stayed there and wait on police to come. You
4 know, as police started arriving, you know, they
5 questioned me, questioned the owners. At that
6 particular time Mr. Bacote had -- I noticed it was a
7 tendon cut, a tendon in my hand. The police came
8 and asked me what happened. I gave them a
9 statement. They took pictures of my hand, took some
10 pictures of him, and they left.

11 Q That was that night?

12 A Yes, sir, that was that night.

13 Q Okay, all right. And subsequent to that night
14 did you speak to anybody else with law enforcement
15 after this?

16 A About two months or so later I want to say a
17 sheriff deputy came back to the establishment and
18 made -- he had a warrant for my arrest in this
19 controversy, this incident.

20 Q Okay. And after you were arrested did you give
21 another statement?

22 A I spoke with Officer Cooper, Mr. Jamie Cooper.

23 Q Okay. I think that's all that I have for you at
24 this time. Thank you.

25 A Yes, sir.

DW - A. WADE - CROSS

1 THE COURT: Mr. Hill, cross-examination.

2 MR. HILL: Thank you.

3 **CROSS - EXAMINATION**

4 BY MR. HILL:

5 Q Mr. Wade, whenever you were outside with Mr.
6 Bacote did you have a hold of his body? Did you
7 hold on to him?

8 A No, sir.

9 Q At what point did you grab him?

10 A As he bolt to run away after he made remarks
11 going to get a weapon.

12 Q And which direction did he run? Towards the
13 street or toward the back of the club?

14 A He was actually -- he actually bolted toward his
15 left which would have been in the direction of
16 Southgate Bowling Center.

17 Q And there's a street between Southgate Bowling
18 Center?

19 A Yes, sir.

20 Q And Cue Time?

21 A Yes, sir.

22 Q And there were no cars parked between where you
23 and Mr. Wade were between where you and Mr. Bacote
24 were standing and those parked at the bowling alley?

25 A No, sir, there were no cars there.

DW - A. WADE - CROSS

1 Q Was there a distance between where you were
2 standing around the cars at the bowling alley?

3 A 20-yards maybe.

4 Q So you're right at the street?

5 A Yes, sir.

6 Q Okay.

7 A I was on the far -- if you're facing the building
8 I was at the far left corner of the building.

9 Q Let's just get straight down to it. If I wrote
10 it down correctly you hit the victim out of reflex?

11 A Yes, sir, I hit him after he hit me.

12 Q Yeah, but you hit him out of reflex?

13 A Correct.

14 Q Okay. That's all I have. Thank you.

15 THE COURT: Anything further?

16 MR. FLOYD: Nothing further, Your Honor.

17 THE COURT: Thank you very much.

18 Mr. Wade, you may step down, sir.

19 MR. FLOYD: Your Honor, that's all the
20 witnesses that I have.

21 THE COURT: Okay. I'm gonna -- Mr. Hill.

22 MR. HILL: I'm not certain if we treat
23 this as the point where the opposing side would make
24 a motion for directed verdict.

25 THE COURT: Well, it's --

1 MR. HILL: I have matters I can bring that
2 I'd like to bring to the Court's attention before I
3 present my witnesses in the case and directed
4 verdict motion.

5 THE COURT: What I'm going to do is at
6 this point I'm going to hear from Mr. Floyd about
7 his position as to his motion to dismiss for under
8 the statute that his client is immune from
9 prosecution. Then I'm gonna share my thoughts and
10 then, I don't know, we'll see at that point whether
11 we need to hear from the State or not.

12 MR. FLOYD: All right.

13 THE COURT: Mr. Floyd.

14 MR. FLOYD: Okay, Your Honor. Thank you,
15 Your Honor. Your Honor, in reading the Section
16 16-11-440 in Subsection C to that statute which does
17 not apply to someone who is in a house or occupied
18 vehicle, and what it says is a person who is not
19 engaged in unlawful activity and who is attacked in
20 another place where he has a right to be, including
21 but not limited to a place of business, has that
22 duty to retreat and has the right to stand his
23 ground and meet force with force, including deadly
24 force, if he reasonably believes it is necessary to
25 prevent death or great bodily injury to himself or

1 another person or to prevent the commission of a
2 violent crime as contained in Section 16-1-60. And
3 Your Honor, my position would be that Mr. Wade
4 certainly had a right to be where he was at the time
5 this occurred. He was an employee of Cue Time. He
6 was not inside the building at the time that he was
7 apparently on Cue Time's property. According to the
8 testimony he was performing basically his job
9 activities which was provide security for the club.

10 Your Honor, according to the testimony of
11 Mr. Stone and Mr. Wade a punch was thrown towards
12 Mr. Wade. Mr. Wade says the punch connected and he
13 punched back. Your Honor, it would be my contention
14 that he met the force that he got, and he gave the
15 same kind of force. He threw a punch for a punch.
16 Obviously it appears that his punch might have been
17 a little more potent than the one that he got, but
18 regardless, he met force with force. Your Honor, it
19 would be my position under that section of statute
20 that he was entitled to do that. I understand that
21 this is the last sentence that I read where it talks
22 about being reasonable -- having a reasonable belief
23 that this is necessary to prevent great or great
24 bodily injury to another person or to prevent the
25 commission of a violent crime. But Your Honor, my

1 argument would be that that particular sentence does
2 not apply if you don't use deadly force, which
3 Mr. Wade didn't do. He met force with force.

4 THE COURT: Okay. I'm gonna tell you my
5 position and then I'm gonna explain it. Because of
6 that very reason, I don't think this section applies
7 at all. Let me tell you, I'm gonna explain where
8 I'm coming from. I'm not saying I'm right; I'm
9 telling you my looking at the statute.

10 MR. FLOYD: Yes, sir.

11 THE COURT: When you look at — you look
12 at a statute you got to look at it as a whole.

13 MR. FLOYD: Sure.

14 THE COURT: And this whole section, which
15 is Article 6, deals with the protection of persons
16 and property. And the early part of the statute,
17 the 410, 420, 430 gives the intent of the general
18 assembly in 420. 430 is simply a definition
19 section. 440 is the section which you've cited
20 which I think we're under. And if you look at that
21 section, though, the caption of that section is the
22 presumption of reasonable fear and imminent peril
23 when using deadly force against another unlawfully
24 entering a residence, occupied vehicle, or place of
25 business. I think the entire portion of this

1 statute, this section, applies when the use of
2 deadly force is used. I don't think it applies to
3 hand to hand combat. And if you look -- and I
4 realize you cited Section C and there's not really a
5 connector for Section C so you think, well, if
6 there's no connector connecting it to A or B, then
7 it stands on its own. But it stands on its own
8 under Section 16-11-440 which is the presumption of
9 reasonable fear and imminent peril when using deadly
10 force. So I think this section only applies in
11 instances where deadly force is used.

12 Now, to take it further, if I'm wrong about
13 that I look at Section C. Section C, the way I read
14 Section C, and I understand where you're coming
15 from, Mr. Floyd, 'cause I think depending on how you
16 read it you can read it maybe one or two ways. But
17 it says -- I'm not gonna read the whole thing. But
18 I'm gonna get down to the point where it goes, has
19 no duty to retreat and has the right to stand his
20 ground and meet force with force, including deadly
21 force, if he reasonably believes that it is
22 necessary to prevent death or great bodily injury to
23 himself or to others. There's -- when you read the
24 section on definitions and you see the definition of
25 great bodily injury, the facts in this case and

1 there's, no matter how you stretch it, Mr. Wade was
2 not in fear of great bodily injury. The guy, you
3 know, the guy with a closed fist took a swing at
4 him, hit him in the jaw. Mr. Wade reacted as I
5 probably would have done and hit him back. That
6 just doesn't fit this statute. He may very well
7 have an outstanding self-defense defense. The State
8 may want to closely review this case to see if it
9 even has prosecutorial merit, period, based on what
10 I've heard. But for it being under this statute I
11 don't think this statute applies under these facts
12 because it is this Court's opinion that 16-11-440
13 applies when there's been a use of deadly force.

14 And let me -- and this isn't the basis of the
15 Court's decision but I just throw it out as an
16 editorial comment. The statute is confusing because
17 the statute at first seems to require a forced entry
18 or an unlawful entry; but then when you read Section
19 C, I don't know if it does or not. But that's
20 really not the basis of my decision. My decision,
21 the basis of it is simply that the defense -- well,
22 it's not a defense, it would be an immunity. I
23 think the immunity in this case and reading the
24 section as a whole, the section is titled
25 presumption of reasonable fear of imminent peril

1 when using deadly force against another unlawfully
2 entering a residence, occupied vehicle, or place of
3 business. When you read that it seems to require an
4 unlawful entry. In this case you have a business
5 and a fight breaks out. It's taken outside, and it
6 continues in the parking lot. I don't think this
7 statute fits that set of circumstances at all, and
8 so I'm gonna respectfully deny the motion to assert
9 the immunity. Okay.

10 MR. HILL: I think, Your Honor, there are
11 matters I'd like to take up outside of the
12 courtroom's presence.

13 THE COURT: Let's just take a few minutes
14 if everybody -- if y'all want to grab something to
15 drink we'll start back in just a moment.

16

17

18 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 22nd day of February, 2012.

Frances B. Ray

FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

WITNESSES

Jamie Cooper

Florence County Sheriff

DOCKET NO. 2009-GS-21-1704

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2009

THE STATE

vs.

ANTHONY WADE

STEPHEN L HILL

ARREST WARRANT NUMBER

M270062

ACTION OF GRAND JURY

TRUE BILL

Indictment for

ASSAULT AND BATTERY
HIGH AND AGGRAVATED NATURE

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

VERIFIED: A TRUE COPY
Mia K. Spain
CLERK OF COURT CP&SS
FLORENCE COUNTY, S.C.

2009 DEC -3 PM 2:02

3

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
ASSAULT AND BATTERY
HIGH AND AGGRAVATED NATURE

At a Court of General Sessions, convened on DECEMBER 3, 2009 the Grand Jurors of FLORENCE County present upon their oath:

DECEMBER 3, 2009
COURT OF GENERAL SESSIONS
FLORENCE COUNTY, SOUTH CAROLINA

COUNT ONE - ASSAULT AND BATTERY HIGH AND AGGRAVATED NATURE

That ANTHONY WADE did in Florence on or about June 26, 2009, violate Common Law and Section 17-25-0030 of the Code of Laws of South Carolina (1976), as amended, in that he did commit an assault and battery upon one DARRELL BACOTE, constituting an unlawful act of violent injury to the person of the said, DARRELL BACOTE, accompanied by circumstances of aggravation, to-wit: in that he did hit DARRELL BACOTE and caused him to suffer injuries to his face, jaw, and nose which required medical attention and care, in violation of the Common Law Crime of Assault and Battery of a High and Aggravated Nature

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

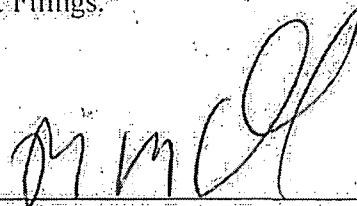


E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 6th, 2013



Robert M. Dudek
Chief Appellate Defender

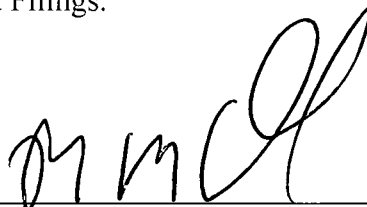
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Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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