

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

RECEIVED

SEP 19 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MICHAEL JACKSON,

APPELLANT

APPELLATE CASE NO. 2017-002103

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in ruling the presumption of “a reasonable fear of imminent peril of death or great bodily injury” contained in the immunity statute, S.C. Code § 16-11-420(A) was a “rebuttable presumption,” where the court could find the homeowner was not in imminent peril of the intruder regardless of the unambiguous statutory presumption?

STATEMENT OF THE CASE

Appellant was indicted by the Richland County Grand Jury for the offenses of domestic violence in the second degree, and strong-armed robbery. R. 245-248. Appellant's case was called to trial on October 2, 2017, before the Honorable Jocelyn Newman, and a jury. Adam Ruffin and Jessica Sturgill represented appellant. Meghan L. Walker was the assistant solicitor.

R. 1.

On October 3, 2017, the jury found appellant guilty on both counts. R. 225, l. 19 – 226, l. 3. Judge Newman sentenced appellant to concurrent ten-year prison sentences on the domestic violence in the second degree and the strong-arm robbery count. R. 242, ll. 14-20.

This appeal follows.

STANDARD OF REVIEW

“A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review.” State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013); see State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (recognizing that the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007); State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016).

ARGUMENT

The court erred in ruling the presumption of “a reasonable fear of imminent peril of death or great bodily injury” contained in the immunity statute, S.C. Code § 16-11-420(A) was a “rebuttable presumption,” where the court could find the homeowner was not in imminent peril of the intruder regardless of the unambiguous statutory presumption.

Relevant Facts

At the conclusion of the immunity hearing pursuant to the Protection of Persons and Property Act, the trial judge noted that the alleged victim had testified appellant invited her to his house despite the trespass warrant against her. The judge did not rule whether she found the alleged victim’s testimony credible or not credible. Regardless of the credibility of the evidence the alleged victim was invited to appellant’s house, there was evidence appellant ordered her to leave, and she then refused. Given this evidence, the judge ruled, in the alternative, if she did not believe the alleged victim’s testimony that she still found the presumption contained in S.C. Code § 16-11-420(A) was a “rebuttable presumption,” and that there was evidence rebutting the presumption, meaning a lack of evidence appellant feared for his life or great bodily injury regardless of the presumption. R. 76, ll. 5-25.

Appellant testified on August 5, 2016, he was living with his grandparents and his mother. He was in his room “making music” when his ex-girlfriend, Jasmine Roberts, arrived without prior notice. R. 29, l. 4 – 30; l. 16. Appellant had lived with Roberts in the past at two different apartment complexes. They still carried on a relationship from time to time even after they no longer lived together. R. 30, l. 23 – 31, l. 24.

Appellant testified that an argument ensued essentially because appellant had been medically advised he could not have children, and Roberts had always claimed he was the father

of her children. Appellant told Roberts that any relationship they had was now over, and he told her “countless times to leave my house. I don’t want you here. You and me ain’t got nothing else to talk about.” R. 33, l. 6 – 34, l. 20.

Appellant said Roberts refused to leave, and “she pushed me and that’s when I punched her in the face.” R. 35, ll. 2-11. Appellant said later during the immunity hearing that he touched Roberts first -- but “lightly” -- before the full fight began. R. 42, l. 25 – 43, l. 7.

Roberts testified she had dated appellant for eight years before they no longer lived together. Roberts said she told appellant she did not mind seeing him but they could no longer live together. R. 53, l. 2 – 54, l. 14. Roberts claimed that appellant invited her to his house on August 5, 2016, and that she therefore went over to his house that day. R. 54, ll. 13-17.

Roberts claimed the argument that day, conversely, was because appellant found out that she went to lunch with another man -- or he thought she had gone to lunch with another man -- and appellant was angry. Roberts claimed appellant punched her in the face during that argument, and that she fell to the floor. “At that point, Christopher got on top of me and started beating me with his fists again.” Roberts also claimed appellant threw her keys somewhere and reached into “my chest and took my cash out (of) my chest because he knew that’s where I kept my, my money and things and he told me to leave.” Tr. 55, l. 3 – 56, l. 25.

Roberts admitted that there was a trespass notice against her which ordered her not to come to appellant’s house where appellant lived with his grandparents. R. 59, l. 13 – 60, l. 24.

Investigator Michael Laurita testified that when he interviewed appellant, appellant denied that he had hit Roberts. The investigator said appellant told him Roberts suffered the injury to her eye in a fight that she was in the day before she came to his house. R. 64, l. 16 – 67,

l. 4. Laurita admitted he did not know that Roberts was on a trespass notice not to go to appellant's home at the time he was a state's witness in this case. R. 67, ll. 5-9.

At the conclusion of the hearing, defense counsel argued that appellant was immune from prosecution pursuant to S.C. Code § 16-11-440. Counsel argued that a person (Roberts) who unlawfully enters the home of another puts the person lawfully in possession, by presumption in the statute, of a fear of imminent death or great bodily harm. "I take the position in this case that once she unlawfully enters Chris's house, he can kill her; that is my reading of the Protection of Persons and Property Act." R. 67, l. 21 – 68, l. 14.

Counsel reminded the judge that Roberts was on a trespass notice, and he argued that the defense had met its burden by a preponderance of the evidence of showing Roberts was unlawfully on appellant's property, and that he was permitted by law to forcefully eject her. R. 69, l. 16 – 70, l. 5.

The assistant solicitor argued that the judge should reject appellant's testimony, and that "it comes into an issue of credibility, Your Honor." R. 70, l. 7 – 72, l. 3. The solicitor also argued that Roberts was not barred from going to appellant's house pursuant to the trespass warrant if she was invited by appellant to come over that day. R. 72, l. 7 – 74, l. 14.

Defense counsel then correctly argued that Roberts never claimed to the police that she was invited over that day. Counsel asked the judge to find Roberts was not credible. R. 74, l. 17 – 76, l. 4.

The judge did not make a credibility finding that she found Roberts was invited to appellant's home that day. "Even if the court were to reject that testimony and accept the defendant's testimony, the statute does provide for a presumption of reasonable fear of imminent peril. However, that is a **rebuttable presumption** and in this case I find that it is **rebutted** by

the lack of evidence or testimony that there was any fear of imminent peril. . . . So, to the extent that it is a rebuttable presumption, the presumption has been rebutted in this case and, therefore, the defendant's motion for immunity from prosecution is denied." R. 76, ll. 5-24. (emphasis added).

Discussion

South Carolina Code § 16-11-440(A)(1) provides that, "A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person: (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."

Appellant was living in his own house with his grandparents and mother. He was acting lawfully when the alleged victim violated the trespass notice, and when she refused to leave when repeatedly ordered to leave regardless of the alleged "invitation" to visit.

In State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), the Supreme Court found that the Duncan was entitled to immunity under the statute where the decedent made an improper comment about the appellant's daughter, and he was ordered to leave. The decedent left but returned to the Duncan's home a short time later, and was banging on the door trying to enter. Since Duncan could have reasonably believed that the decedent ordered to leave was not

complying with the order, and was attempting to re-enter his home again, that Duncan was entitled to immunity under the statute when he shot and killed the decedent.

There is no provision in the statute that allows the judge to disregard the presumption of reasonable fear of imminent peril of death or great bodily injury contained in S.C. Code § 16-11-440(A)(1) & (2) if the circumstances contained in the statute are met, as they were here. The judge finding the presumption in the statute was “rebuttable” if any particular judge did not think the person living in the property was actually in imminent peril was respectfully untenable.

Further, appellant would also have been entitled to immunity pursuant to S.C. Code § 16-11-440(C), since he was acting lawfully in a place he had a right to be, and he therefore had no duty to retreat when the assault began. See State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016). Here, there was testimony that the alleged victim was in violation of a trespass notice when she came to appellant’s house and unlawfully entered. She then refused to leave when ordered to do so. There was also evidence that the decedent initiated the physical contact. Again, appellant had no duty to retreat in his own home.

“The cardinal rule of statutory interpretation is to determine the intent of the legislature.” See State v. Sweat, 379 S.C. 367, 374, 665 S.E.2d 645, 649 (Ct. App. 2008). All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that the language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 S.E.2d 240, 243 (2002).

The legislature intended that the person in his own home was presumed to have a reasonable fear of imminent death or great bodily injury when he or she was attempting to remove another person against his or her will from his dwelling, residence, or occupied vehicle.

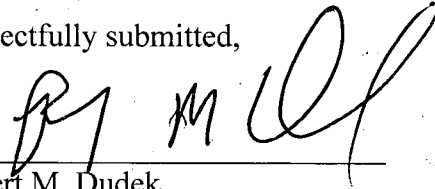
See S.C. Code § 16-11-440(A)(1). There was no evidence that the legislature intended a particular judge could ignore this presumption of imminent peril if the judge found that statutory presumption was not applicable even though the person lawfully in his own home met the requirements of the immunity statute.

The judge's ruling that the presumption in the immunity statute was "rebuttable," and that she found the presumption rebutted by other evidence violated the clear mandate of the statute. This Court should reverse the trial court, and order appellant immune from prosecution.

CONCLUSION

By reason of the foregoing argument, this Court should issue an opinion finding appellant immune from prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of September, 2018.

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Honorable Jocelyn J. Newman, Circuit Court Judge

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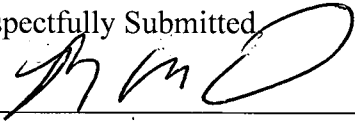
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Michael Jackson states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Jocelyn J. Newman, which was held on October 2 - 3, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Christopher Michael Jackson.

Respectfully Submitted



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 19th day of September, 2018.

STATE OF SOUTH CAROLINA
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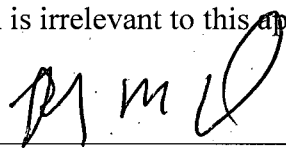
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments
- (2) Trial Transcript (October 2-3, 2017)

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

September 19, 2018



Robert M. Dudek
Chief Appellate Defender

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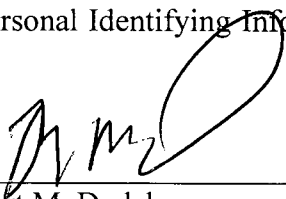
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 19, 2018.



Robert M. Dudek
Chief Appellate Defender

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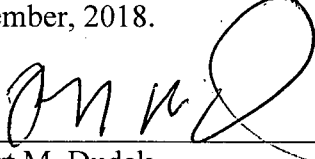
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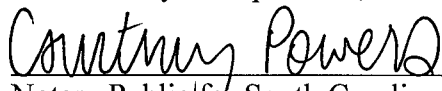
CERTIFICATE OF SERVICE

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 J. Benjamin Aplin, 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 Christopher Michael Jackson, #336849, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 19th day of September, 2018.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of September, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.