

STATE OF SOUTH CAROLINA)
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COUNTY OF GREENVILLE)
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STATE OF SOUTH CAROLINA)
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vs.)
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MARQUEZ DAVON GLENN)
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)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

Warrant #: 2013A2330203356, 3357

13-6789

**ORDER DENYING DEFENDANT'S
MOTION FOR STATUTORY IMMUNITY
FROM PROSECUTION**

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SC Court of Appeals

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Paul Wickhamer, Clerk

This matter came before the Court on Order of Remand from the South Carolina Supreme Court filed December 18, 2019. Prior to trial in this matter, a hearing for statutory immunity under S.C. Code Ann. § 16-11-410 et seq. [the “Protection of Persons and Property Act”] was held before the Honorable John C. Hayes. This Court has reviewed the transcript from the pretrial hearing and found that the transcript provided an adequate record of the facts. The State and Defendant have consented that an additional immunity hearing with further witness testimony is not necessary. The Court then received supplemental briefs from counsel regarding the applicable law on May 5, 2020, and subsequently took this matter under advisement. After review of the briefs and all relevant facts, evidence, and legal authorities, the Court finds that the Defendant is not entitled to immunity from prosecution under the Protection of Persons and Property Act.

To receive statutory immunity from prosecution under the Protection of Persons and Property Act, “there must be a pretrial determination where the accused must demonstrate the elements of self-defense, save the duty to retreat, to the satisfaction of the circuit court by a preponderance of the evidence.” State v. Marshall, 428 S.C. 11, 18–19, 832 S.E.2d 618, 622 (Ct.



App. 2019) citing State v. Curry, 406 S.C. 364, 370–71, 752 S.E.2d 263, 266 (2013). The accused must therefore show:

[H]e was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; and (3) if his defense was based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have held the same belief, or if he actually was in imminent danger, the circumstances “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.”

Id. citing Curry at 371 n.4, 752 S.E.2d at 266 n.4.

In the present matter, the record reflects that the Defendant was without fault in bringing on the difficulty with Kevin Bruster, the victim Elphonso Bruster’s uncle. It is indisputable that Kevin Bruster threw a single punch before the Defendant fired his gun at Elphonso Bruster, who also was without fault in bringing on the difficulty that transpired that night. None of the witnesses for the State and Defendant testified that the Defendant provoked Kevin into punching him. Moreover, none of them testified that Elphonso encouraged his uncle’s behavior.

With regard to the remaining elements of self-defense, the record reflects that the Victim did not actually take part in any direct physical altercation with the Defendant. The testimony regarding whether or not the Victim was seen holding a gun is inconsistent among witnesses and no gun was ever found on the Victim.¹ After the shooting, Defendant did not seek assistance from Deputy Stan Whitten who had left the scene but was only seconds away. Instead, Defendant jumped in a car and fled the scene, passing Deputy Whitten as Defendant left. Defendant did inform Deputy Hobart Lewis that “someone got shot,” but failed to mention Defendant’s involvement or any perception that Defendant had been in danger or fear for his life.

¹ “Just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act.” State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019).



Therefore, the Court finds that the Defendant has failed to show by a preponderance of the evidence that he actually was in imminent danger. Moreover, had the Defendant believed himself to be in imminent danger, the Defendant has failed to prove by the preponderance of the evidence that a reasonably prudent man of ordinary firmness and courage would have held the same belief and acted in kind in inflicting great bodily injury to the Victim.

On the night he shot Elphonso Bruster, the Defendant was on no trespass notice at the Spring Grove apartment complex where this altercation occurred. A few years before this incident, the Defendant had been evicted from Spring Grove Apartments and issued a no trespass notice the same year as his eviction. Though he was a guest of another tenant the night of the shooting, that tenant had no authority pursuant to her lease to invite him to the property. Therefore, the Defendant had no right to be where he was standing when he fired his gun. However, this Court must determine if the Defendant's unlawful act of trespassing was proximately related to his shooting of Elphonso Bruster.² The record reflects no evidence of a causal connection between the shooting and the Defendant's status as a trespasser. This Court finds that the Defendant's shooting of Elphonso Bruster was not proximately related to whether he was trespassing at the time he fired his gun. The Defendant's shooting of Elphonso Bruster, instead of Kevin Bruster who actually struck the defendant, had no proximate connection to whether he was unlawfully trespassing at Spring Grove.

The Defendant must satisfy all of the elements of self-defense, except the duty to retreat, to secure immunity. Based upon the foregoing, the accused has not demonstrated all of the elements of self-defense by a preponderance of the evidence. Defendant's "claim of self-defense

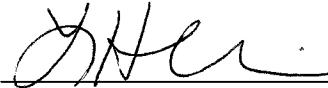
² The Supreme Court held in State v. Glenn that "... a proximate cause analysis must be applied to the unlawful activity element of subsection (C)" of S.C. Code Ann. § 16-11-440. Glenn, 838 S.E.2d 491.



presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.” See Curry at 372.

THEREFORE, Defendant’s Motion for Statutory Immunity from Prosecution is DENIED.

IT IS SO ORDERED.



Letitia H. Verdin
Judge, Thirteenth Judicial Circuit

6/15, 2020
Greenville, South Carolina

