STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
The Honorable J. Mark Hayes, II

Case No.: 2019-000722

State of South Carolina,

Respondent,

vs.

Adriel Nicholas Garnett,

Appellant.

FINAL BRIEF OF APPELLANT
(Including repaginated Reply to Initial Brief of Respondent)

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court erred as a matter of law by denying Appellant's motion for immunity pursuant to the protection of persons and property act (stand your ground) because there was ample evidence to support the statutory elements and case law requirements of self-defense.

II. The circuit court erred in denying Appellant's motion for directed verdict at the close of the State's case in chief due to reliance on improper case law.

STATEMENT OF THE CASE

On August 19, 2016, Mr. Garnett ("Appellant") was indicted for murder and possession of a weapon during a violent crime (Indictment 2016422120017-18, which became case number 2016-GS-42-4430). (R. p.8, line 22) Prior to trial of the case in chief, the court heard a defense motion regarding the use of the stand your ground defense under the Protection of Persons and Property Act. This motion was heard December 6 and 7, 2017 in Spartanburg, South Carolina. This motion was ultimately denied by an order issued December 18, 2017.

Appellant was subsequently tried by jury October 29 to November 1, 2018. During pretrial, defense counsel, among other motions, renewed his motion to allow the use of a stand your ground defense based on new evidence turned over by the State. After presentation of further evidence and testimony, the court maintained its ruling that the defense could not be used. (R. p.344) Upon the close of evidence, Appellant was found guilty on both counts and sentenced to life imprisonment. (R. p.837) The court granted defense ten days to make any post-trial motions, none of which were successful. (See Defendant's Motion for New Trial, dated November 7, 2017; Order Denying Defendant's Motion for a New Trial, dated April 22, 2019) Appellant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court.

Appellant filed a timely Notice of Appeal on May 1, 2019. This initial brief follows.

STATEMENT OF FACTS

On February 6, 2016, shots were fired outside of a building owned by Cecil Gilliam, in which many of his family and friends were gathered. This property was located at 405 Sharpe Street, Woodruff in Spartanburg, South Carolina. (R. p.150, line 17; R. p.428, lines 20-25) Appellant, who lived in Charleston, was in Woodruff for his grandmother's funeral. (R. p.132, lines 21-22 and p.133, lines 23-24; R. p.671, lines 21-23) After the funeral, he got sick and experienced car difficulties that kept him in the area. (R.134, lines 3-19; R. p.672, line 24-p.673, line 14) On the night of the incident, Appellant finally felt well enough to leave the house. Though he was only intending to get cigarettes and a beer, he ended up going to see a female friend and was then called by a male friend, Travis Geter, who suggested they visit one of Cecil Gilliam's properties where some people were hanging out. (R. p.135, lines 3-11; R. p.674, line 5-p.675, line 8) While at Gilliam's, he began playing pool, including with Gilliam. (R. p.136, line 19-p.137, line 6; R. p.676, lines 1-10) Things were going well, until Gilliam said he was going to charge Appellant for his drink but Appellant laughed it off and thought everything was fine. (R. p.136, line 19-p. 137, line 6 and p.141, lines 1-9; R. p.676, line 14-p.677, line 13)

Appellant eventually went outside with Travis to smoke a cigarette and sit on the porch, when eventually Gilliam came outside. (R. p..138, line 10 and p.138, lines 16-21; R. p.675, lines 8-20). Seemingly out of nowhere, Gilliam told Appellant "if [he] move[d], he gonna gut [him] like a mother fucking fish." (R. p.138, lines 22-24; R. p.678, line 21-p.679, line 3; R. p.688, lines 20-21; R. p.699, lines 20-22) Appellant put his hands in the air and took this threat seriously because Gilliam had a knife in his hand, plus about 6 inches and 60 pounds over Appellant. (R. p. 139, lines 2-11 and p.140, lines 7-14; R. p.680, line 15-p.681, line 3; R. p.706, lines 6-10; R. p. 688, lines 221-231; R. p.699, lines 23-25; R. p.706, lines 6-10) Gilliam advanced on Appellant, causing Appellant to back down a ramp off the porch toward his car. (R. p.139, lines 21-22; R.

p.681, lines 4-13; R. p.689, line 24 -p.690, line 3) Gilliam was talking loudly, saying negative thing about his parents – "all that type of crazy stuff." (R. p.139, lines 17-20; R. p.687, lines 4-14; R. p.700, lines 4-8) Appellant testified Gilliam must have had the knife out before he came onto the porch because he did not see Gilliam pull it and did not do anything, to his mind, that would warrant Gilliam pulling a knife. (R. p.141, lines 16-20; R. p.680, lines 7-16; R. p.698, lines 11-21) Appellant turned to his car when he reached the end of the ramp but, when he turned back around, Gilliam was still advancing on him. (R. p.139, line 23-p.140, line 2; R. p.698, lines 19-25) At that point, Appellant felt he had no choice but to defend himself, so he began shooting. (R. p.140, lines 1-2; R. p.683, lines 11-19)

After the incident, Appellant drove back to where he was staying, the home of his Aunt Brittany Westfield and grandfather Bruce Westfield. (R. p.143, lines 6-7; R. p.684, lines 21-22) He woke Brittany and told her everything that happened, then eventually recounted the story to his grandfather, as well. (R. p.404, line 14-p.405, line 3; p.684, line 23-p.685, line 4) They both insisted that he stay in the home while they called law enforcement, which they did immediately, then again about an hour later after no response was received. (R. p.117, lines 3-7 and lines 17-22) The Westfields believed that it sounded like a case of self-defense, so they wanted Appellant to speak with law enforcement as soon as possible. (R. p. 143, lines 16-21; R. p.409, lines 19-25; R. p.415, lines 18-22) Instead, Appellant, in his fright, ran – not from law enforcement, but from the situation in general. (R. p. 144, lines 10-11; R. p.685, line 12-p.686, line 3) Appellant fled back to the Charleston area where he evaded arrest for approximately five months, though he was aware that warrants existed for his arrest. (R. p.156, line 25-p.157, line 13; R. p.686, lines 12-22) He was arrested in Columbia on unrelated charges after involvement in a bar fight. (R. p.157, lines 15-16)

STANDARD OF REVIEW

Determination of immunity and standard of review regarding the grant of immunity under the Protection of Persona and Property Act was clearly established in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Initially, it requires a pre-trial determination of the defendant's right to immunity in order to avoid a full trial. Id., 392 S.C. 409-10, 709 S.E.2d 664-65. This reasoning is based on the use and definition of "immunity" as meaning a grant of true immunity from criminal prosecution rather than the development of an affirmative defense. Id. This is in part because the legislature desired to create a true immunity from the fear of prosecution or civil action arising out of the incident. Id.

"When a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id., 392 S.C. at 411, 709 S.E.2d at 665. For this proposition, the Supreme Court turned to the Florida case of Dennis v. State, 51 So.3d 456 (Fla. 2010), which "found the grant of immunity from 'criminal prosecution' under the statute 'must be interpreted in a manner that provides the defendant with more protection from prosecution for a justified use of force than the probable cause determination previously provided to the defendant by rule.'" Duncan, 392 S.C. at 410-11, 709 S.E.2d at 665, citing Dennis, 51 So.3d at 463.

At the appellate level, immunity determinations are reviewed "'under an abuse of discretion standard.' State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013)." State v. Manning, 418 S.C. 38, 45, 791 S.E.2d 148, 151 (2016).

ARGUMENT

I. The circuit court erred as a matter of law by denying defense counsel's motion for immunity pursuant to the protection of persons and property act (stand your ground) because there was ample evidence to support the statutory elements and case law requirements of self-defense.

Section 16-11-440(c) says, "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. (1976, as amended). Defense counsel's motion for immunity pursuant to this statute was proper and should have been granted because there was a preponderance of evidence that Appellant acted in self-defense while in a place he had a right to be. Defense counsel presented a preponderance of evidence at the pre-trial hearing held December 6-7, 2017, and added additional evidence tending to prove its case at the beginning of the trial. State failed to present enough evidence to refute Appellant's actions were within the purview of this statute, nor was it successful in arguing its motion that the statute is unconstitutional. For these reasons, Appellant's motion for immunity should have been granted.

A review of the elements in §16-11-440(c) show that Appellant clearly met them. He had been invited to the incident location at 405 Sharpe Street, Woodruff, Spartanburg County. While there, he had pleasant conversations and shot pool with the owner and decedent, Cecil Gilliam. Though they had a minor disagreement over whether Gilliam would charge Appellant for his drinks, Appellant testified that the two laughed this off and continued conversing. There is no evidence that at any time before the altercation, Gilliam or another individual with authority rescinded Appellant's permission to be on the premises. Further, he was not engaged in any

illegal activity – he was not fighting, selling drugs, causing a scene, or anything else that could be determined to be unlawful or even provocative.[1] The facts are clear that Appellant was in a place where he had the right to be.

The State argued during pre-trial that Appellant's right to be on the premises was withdrawn when Gilliam confronted him outside of the building and the altercation began. This is a fallacy because, as Appellant testified and as the statute and case law provide, Appellant's right to stand his ground began the moment the altercation began. An individual cannot both be required by law to leave the premises and also stand and protect himself. In the case at bar, Appellant argues that Gilliam's sudden actions prevented him from leaving the scene, even if his permission to be in the place was revoked. Primarily, this is because Gilliam said he would "gut" Appellant "like a m-fing fish" if he moved. (R. p.138, lines 22-24) Appellant had no option to leave because his life was being threatened if he so much as moved. All he could do was defend himself.

Next, as required by State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), the four elements of self-defense, "save the duty to retreat," must be met. Id., 406 S.C. at 371, 752 S.E.2d at 267. These are "1) the defendant must be without fault in bringing on the difficulty; 2) 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; 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; if the defendant actually was in imminent danger, the

[1] As revealed by the indictment, Appellant was illegally in possession of a weapon at the time of the incident due to his status as a convicted felon. The South Carolina Supreme Court, however, has held that "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." State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999).

circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow 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 this particular instance." State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994).

Initially, Appellant notes that, though not required by the statute, he did attempt to retreat. He backed down the ramp from the porch to the ground with his hands in the air while trying to reach his car and flee. (R. p.139, lines 21-22) During this attempt to flee, however, Gilliam continued his approach with knife drawn, leaving Appellant no choice but to fight for his life. This set of facts speaks to elements 2, 3, and 4 of the self-defense test: 2) he believed he was in imminent danger or actually was; 3) a reasonable person would also have believed the same in his situation, including that a fatal blow was warranted; and 4) he had no other probable means of avoiding danger. Appellant was being advanced upon by an intoxicated man[2] who was brandishing an opened switchblade knife while yelling threats and slurs about him and his family. Upon trying to reach his vehicle to flee, he realized this was not an option, so he turned and stood his ground.

[2] During trial, upon the hearing of defense counsel's renewal of his motion on this ground, additional evidence was presented regarding Gilliam's blood alcohol level. During pre-trial motions, defense counsel called Jared Castellani, the forensic toxicologist with State Law Enforcement Division (SLED) who also testified during the initial motion hearing in December 2017. At the initial hearing, Castellani testified that, while alcohol (ethanol) was present in the blood samples from Gilliam's body, the sample was compromised so greatly that it was impossible to tell how much. (R. p.293, line 25-p.81, line 5) In the interim between pre-trial motion and trial on the cases in chief, another vial of blood was found and tested. This was found to have a blood alcohol content of 0.186. (R. p.295, lines 16-18) Castellani further testified that someone with this blood alcohol level would lose inhibitions, visual acuity, and balance or coordination. (R. p.295, line 23-p.296, line 12)

This leaves discussion of the first element – whether Appellant brought on the difficulty or injury. Appellant's undisputed testimony is that he was on the porch with one of the Geter twins when Gilliam came out and threatened his life. (R. p.138, lines 22-24) Ronald Higgins testified that he heard gunshots and saw Appellant shooting toward the ground, but he did not witness any altercation between Appellant and Gilliam and had no idea what brought on the incident. (R. p.97, line 9-p.98, line 6) Other than Appellant, the only other eyewitness was the Geter twin (presumably Tavis) who could not be located for the motion hearing or trial. (R. p.192, lines 13-15) No evidence was adduced at trial regarding Appellant attacking Gilliam or having any motive to do so.

During the pretrial hearing, the State argued that then-recent case law required a person to be actually attacked, not in fear of attack, before they could rely on the stand your ground or castle doctrine. (R. p.170, lines 3-10) The Solicitor failed to cite the case and, based on case law research, the only recent case regarding this doctrine is State v. Scott, 424 S.C. 463, 819 S.E.2d 116 (2018). There is no such holding in this case, though, as it confirms the traditional elements of self-defense apply without a new requirement that the defendant must have actually experienced an attack. In, line with this, Appellant presented this opinion during renewed argument on his immunity motion at trial, submitting it for the proposition that the case at bar met all requirements for immunity due to self-defense. Notably, he argued that there is evidence in the record that Gilliam was an aggressor. (R. p.312, line 21 – p.313, line 2) This, along with the new evidence that blood swabs regarding Gilliam holding a knife, as well as the new forensic proof that Gilliam was drunk, bolstered the Defense case that he was acting in self-defense. (R. p.313, line 3 – p.314, line 5)

At trial, the State made many arguments about forensic evidence, such as that the numbering of the shell casings, the fact that Gilliam was shot in the back, and so forth. None of these are persuasive or affect the evidence as presented by defense counsel. For example, regarding the shell casings, Deputy Coby Stepp testified that the numbers used to identify shell casings began with 1 starting farthest from the building and increasing as they neared the building. The State argued this showed Appellant advancing on Gilliam, but this is illogical as law enforcement cannot know that order the shots were fired in. (R. p.185, lines 6-11; R. p.84, lines 2-10; R. p.576, lines 13-21) Similarly, the State argued that bullet wounds in Gilliam's back showed that he was retreating, when the evidence more accurately shows that he was turned at an angle. (R. p.594, lines 1-6; R. p.608, lines 7-19)

None of the arguments provided by the State defeat the preponderance of evidence Appellant presented. He was in a location to which he was lawfully invited, he did not bring on a difficulty, he reasonably feared for his life, he acted in a way to protect his life, and he even attempted to remove himself from the altercation. Appellant recognizes that there are virtually no witnesses to the altercation, leaving his version of events the one standing; however, this does not change the fact that they happened, are supported by the physical and testimonial evidence, and have not changed in the nearly three years since this incident occurred. For these reasons, Appellant's motion for immunity pursuant to the Protection of Persons and Property Act must be granted and his conviction vacated.

II. The circuit court erred in denying Appellant's motion for directed verdict at the close of the State's case in chief due to reliance on improper case law.

At the close of the State's case in chief, Appellant moved for directed verdict based on the failure of the State to prove the *corpus delicti* of its case. (R. p.616, lines 2-6) In arguing the motion, Appellant reviewed testimony presented during the State's case, none of which included testimony from an eyewitness or conclusive physical evidence that Appellant shot Gilliam. The closest evidence was from Ronald Higgins who saw Appellant shoot the gun once, straight down. (R. p.617, lines 6-7) No storyline was put together that would make the State's case reasonable, nor could any physical evidence be linked to Appellant. (R. p.616, lines 8-12, lines 16-17; R. p.617, lines 9-11, lines 12-17)

Appellant further pointed out that self-defense had not been raised at the close of the State's case, as the only testimony regarding that was provided by Appellant's family members, just as they had provided the only testimony (though it was Appellant's words) that he had shot in self-defense. (R. p.618, lines 9-13) The State attempted to argue it had disproved the elements and the stand your ground motion should continue to be applied when, in actuality, none of that evidence had come in at trial. Appellant notably argued:

> [A]t this point self-defense has not been raised because the only testimony that the Court -- has been provided to the jury is the testimony of Bruce and Brittany Westfield. Judge, they can't have it both ways. That's a sword that's gonna cut both ways. Either we have evidence that Adriel Garnett shot Cecil Gilliam because that's what he told Brittany and Bruce, and then we have evidence that he acted in self-defense because that's what he told Brittany and Bruce, or, as the State pointed out yesterday during a bench conference when we were discussing jury charges, that's just a conclusionary statement and that doesn't meet the standard of evidence that's required of me to get a self-defense charge. But the State can't have it both ways. If it's not enough evidence to get that jury charge on self-defense, it's also not enough evidence to meet their burden for a directed verdict.

(R. p.620, line 21-p.621, line 14)

At conclusion of this argument, the court stated that it pulled the opinion in State v. Oates in anticipation of making a ruling. See State v. Oates, 421 S.C. 1, 803 S.E.2d 911 (Ct. App. 2017). Without any explanation, even when asked for some by Appellant, the court held that the standards in Oates applied to the case at bar because it was "a murder case that also had the assertion of self-defense, as well as stand your ground." (R. p.623, lines 1-24)

The trial court's reliance on this case was in error in two main ways. Initially, there are several differences in the procedural posture of the cases. In Oates, the motion for directed verdict was made after the close of testimony by both sides. Therefore, both sides had presented their arguments and evidence in full, theoretically leaving no questions unanswered.[3] In the case at bar, the directed verdict motion was made at the close of the State's case in chief, before any presentation by the defense. As noted by Appellant, there was no evidence presented that he actually shot Gilliam. There was evidence Appellant was at the scene, he was outside, he shot a gun, Gilliam was shot, and eight bullets were involved, but nothing definitively linking Appellant to the wounds that killed Gilliam. Though the perception of the State and the trial judge may have been skewed, as they had participated in the earlier hearing on the motion for immunity, there was no evidence presented regarding self-defense and Appellant had not had an opportunity to use it as an affirmative defense. Certainly, incorrect perceptions do not excuse errors of law, just as denying a motion for directed verdict based on facts not in evidence is inexcusable.

Also, key in the differences between this case and Oates is in how self-defense was presented. In Oates, there were eyewitnesses who were highly involved in the altercation and

[3] Though this was not stated explicitly in the opinion, there is a large portion of Appellant's testimony included, thus allowing a reader to conclude that the defense had rested at the time the motion was made. Oates, 421 S.C. at 9-10, 803 S.E.2d at 916.

could testify regarding their recollection. Similarly, because the defense's case was presented in full, the defense could flesh out the motives, conflicting information, and differing recollections. In the case at bar, though, self-defense was only presented off-handedly by the State – it was not presented to the jury as an affirmative defense promulgated by Appellant. Therefore, the only indication that Appellant's actions may have been in self-defense was left hanging as it was not refuted or changed, whether by prosecution or defense. As Appellant argued, if his statement to family members regarding shooting in self-defense is not strong enough for him to use it as an affirmative defense, it is also not enough to deny a motion for directed verdict. For these reasons, Appellant's motion for directed verdict must be granted and his conviction vacated.

CONCLUSION

For the above stated reasons, Appellant respectfully requests that this Court reverse his convictions.

Respectfully submitted,

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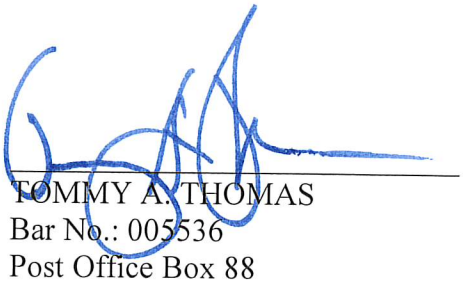
CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

September 23, 2020



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