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May 28 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WALTER MURREY,

APPELLANT

APPELLATE CASE NO. 2019-001795

INITIAL REPLY BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEYS FOR APPELLANT

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ARGUMENT IN REPLY

Despite any insinuations to the contrary, Appellant Walter Murray was a hardworking laborer at Shaw Airforce Base who was innocently residing at the hotel where he and his co-workers stayed when not working at night. Conversely, the decedent was a violent, threatening drug dealer, who had no legal or legitimate reason to be on the hotel property at the time he created the fatal encounter. It was error not to grant Appellant Murray immunity because evidence was “conflicting,” where Appellant Murray was acting lawfully in a place he had a right to be – where he had no duty to retreat – and he shot the threatening drug dealer while fearing for his life and that of his co-workers.

A close and fair reading of the record shows that the state’s attempt to insinuate Walter Murray was also somehow at fault for the fatal encounter is false. Walter Murrey was home in Louisiana when he received a call from his friend Rafael Rodriguez, who told Murray his background check had gone well. Therefore, Murray could come to Sumter to work on the Shaw Air Force Base job the two men had earlier discussed. Rafael promised to pay for Murray’s bus ticket to get him to Augusta where Rafael would pick him up and drive him to Sumter. Murray, in return, promised to pay Rafael back out of his first check from the Shaw Air Force Base job. Tr. 44, l. 21 – 45, l. 9.

Rafael, and his co-worker, Caleb Gomez, then picked up Murrey at the Augusta Greyhound bus station as arranged. While they drove to Shaw Air Force Base from Augusta, Caleb told Murray to be careful while at their hotel because drug dealers or gang members came to that hotel. Murray testified that he told Caleb he was not worried about these bad characters because he understood their team would be at the Air Force base most of the time working and that they would only use the hotel to sleep and to clean up. However, Caleb told Murray that he

knew someone who had been robbed by one of these men, and he in essence reiterated that they needed to be careful while at the hotel. Tr. 44, l. 21 – 47, l. 6.

On the night of the fatal incident at the hotel, the state asserted that Murray and his co-workers “were all drinking ‘a good bit.’” Brief of Respondent at 3. However, Murray specifically denied to the solicitor on cross-examination that he had “a few beers” that night. In fact, appellant told the solicitor, “I had one beer after I ate...That’s it.” Tr. 86, ll. 9-14. The solicitor later got Rafael Rodriguez to say that **he**, Rafael, “had been drinking a good bit” that evening. Tr. 139, ll. 12-23.

When Murray saw Caleb Gomez backed up against the wall by the decedent drug dealer that night at the hotel, Murray intervened to deescalate the situation. As will be seen infra, this occurred near Murray’s hotel room. That is when the decedent “exploded saying this is my town. This [is] my hotel. I run this. Y’all [are] not from around here. They don’t have no cameras. I’m going to be back. **All you gonna hear is gunshots [the decedent said while] clapping his hands** as he walked going past our rooms towards the back.” Tr. 55, l. 23 – 56, l. 25 (emphasis added).

The decedent’s continuous clapping of his hands was correctly interpreted to mean that gunshots were going to be fired. Tr. 56, ll. 20-25. The state’s assertion that the drug dealing decedent only “said he’d be back the next day and said he was leaving” simply ignores all the other evidence of the threats made by the drug dealing decedent that night. See Brief of Respondent at 15-16. Argument of the solicitor at Tr. 163, ll. 12-15. Further, as stated, Rafael Rodriguez testified that the threats and the drug dealer clapping his hands happened near Murray’s hotel room. Tr. 130, l. 22 – 131, l. 13.

Murrey was shaken up after this confrontation because the drug dealer was reaching into his pockets and Murray did not know “[w]hat he can have. At that point, when I got towards the end corner of the building, he had done already disappeared. When I got to the corner, I seen him coming back, and, fearing for [my] life –” Murrey shot him. It appeared the decedent had something in his hands, and Murray feared being shot and killed because he logically believed the drug dealing, threatening decedent was armed. Tr. 56, l. 25 – 58, l. 23.

The decedent’s girlfriend, Lashay Andrews, admitted the decedent dealt cocaine, but she claimed he only bought marijuana. She further asserted that the decedent did not also sell marijuana. Despite the strange purported limitations on his drug dealing, Andrews admitted the decedent went to the Quality Inn at 9:15 p.m. on May 16, 2017 to deal in drugs. While she claimed the decedent was not armed at the time, the undisputed evidence of the decedent’s threats and his bullying behavior suggested otherwise to any objective person. Andrews was not a credible witness. Tr. 159, ll. 6-19.

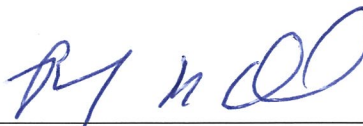
Pursuant to S.C. Code § 16-11-440(C), Murrey was entitled to immunity. See State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016); State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019). He was not engaged in unlawful activity. He was in a place where he had a right to be – the hotel where he stayed with his co-workers – and Murray and his co-workers were being threatened by the drug dealing decedent. Murray legitimately felt he and his co-workers faced death or great bodily harm given the drug dealer’s threats and his actions. The trial court erroneously reasoned appellant had a duty to retreat, and it erroneously reasoned “conflicting evidence” made self-defense a jury issue. See State v. Cervantes-Pavon, 426 S.C. 442, 449, 827 S.E.2d 564, 567-68 (2019).

As stated in Murray's initial brief, the trial court committed two errors of law by reasoning appellant had a duty to retreat and by reasoning conflicting evidence made the self-defense element of immunity a "jury question." See State v. Cervantes-Pavon, 420 S.C. 442, 449, 827 S.E.2d 564, 567-68 (2019); State v. Glenn, 429 S.C. 108, 117-118, 838 S.E.2d 491, 496 (2019); State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018); State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016).

Murray was a hardworking man on a job at the Shaw Air Force Base and staying at night with his co-workers at a hotel where they had the right to be. The drug dealing, violent decedent had no legal or legitimate reason to be at the hotel that night where he was making threats to kill appellant and his co-workers. Immunity should have been granted to appellant under these circumstances, as the legislature intended when S.C. Code § 16-11-440(C) was enacted. Appellant's conviction should be reversed.

CONCLUSION

Based on the arguments in the initial brief of appellant, and in this reply brief, appellant's conviction should be reversed.



Robert M. Dudek
Chief Appellate Defender

Lara M. Caudy
Appellate Defender

ATTORNEYS FOR APPELLANT

This 28th day of May, 2021.

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Appeal from Sumter County

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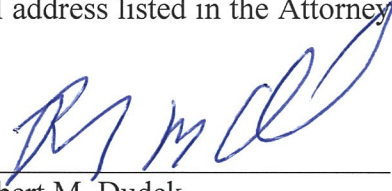
V.

WALTER MURREY,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Reply Brief of Appellant in the above-referenced case has been served upon Julianna E. Battenfield, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 28th day of May, 2021.



Robert M. Dudek
Chief Appellate Defender

Lara M. Caudy
Appellate Defender

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