

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Georgetown County

Honorable Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2021-UP-086 (S.C. Ct. App. Filed June 15, 2021)

Lower Court Case No. 2016-GS-22-00793

THE STATE,

PETITIONER,

V.

M'ANDRE COCHRAN,

RESPONDENT.

APPELLATE CASE NO. 2021-000697

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI

Did the trial judge commit a clear error of law by granting immunity to Respondent Cochran pursuant to the South Carolina Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410, et seq. (Supp. 2018), where he was not entitled to immunity as a matter of law because he could not validly raise a claim of self defense, since there was evidence he was not without fault in bringing on the difficulty, and moreover, there was no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury at the time he inflicted the mortal wounds; there was no evidence that he actually was in such imminent danger; and a reasonably prudent man of ordinary firmness and courage would not have entertained the belief that he was in fear of death or serious bodily injury?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES

Did the Court of Appeals properly apply the standard of review to the trial judge's grant of immunity to M'Andre Cochran where ample evidence showed Cochran was attacked in his own bedroom, in the dark, by an unknown man?

STATEMENT OF THE CASE

On August 31, 2016, a Georgetown County grand jury indicted Respondent M'Andre Cochran for murder. R. 124. On May 21, 2018, the Honorable Benjamin H. Culbertson held an immunity hearing. R. 1. Richard D. Todd represented the State. R. 1. Francis A. Humphries, Jr. represented Cochran. R. 1. On May 22, 2018, Judge Culbertson granted Cochran immunity from prosecution. R. 120. The State appealed and the Court of Appeals affirmed. App. 1. After denial of its petition for rehearing, the State now seeks certiorari in this Court.

STANDARD OF REVIEW

The standard of review for a trial judge's grant of immunity is abuse of discretion. State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). "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." Id.

ARGUMENT

The Court of Appeals properly applied the standard of review to the trial judge's grant of immunity to M'Andre Cochran where ample evidence showed Cochran was attacked in his own bedroom, in the dark, by an unknown man.

The State asks this Court to review this immunity grant as if it were a trial judge evaluating a defendant's directed verdict motion. The State essentially argues that if there is any evidence that could disprove self-defense, the case must go to the jury. This Court's principal decisions in immunity cases—all of which were cited by the Court of Appeals in its unpublished Opinion—mandate a deferential standard. The trial judge followed this Court's decisions, weighed the evidence, and ruled for M'Andre Cochran because both his testimony and that of his wife demonstrated he was entitled to immunity. Cochran was attacked in his own bedroom, in the dark, by an unknown man. The State countered this evidence with speculation. The Court of Appeals determined that evidence supported the trial judge's decision and he did not abuse his discretion under the correct standard of review. No reason exists for this Court to grant certiorari.

Factual Background

As the trial court found, the key facts were undisputed below. R. 120-122. Cochran, his wife, Casandra Cochran ("Casi"), and their three small children lived in their home in rural Georgetown County on which Cochran made the mortgage payments. R. 9, l. 8 – 10, l. 22. Cochran worked long shifts at a factory. R. 10, l. 23 – 12, l. 7. The factory allowed him flexibility in working overtime, and in the days leading up to the incident, Cochran worked extra hours to save money for his wife's birthday. R. 12, l. 1 – 13, l. 15.

The State called Ronnie Smith, Cochran's co-worker at the factory. R. 73, l. 8 – 75, l. 9. The night of the incident, Cochran left the plant early. R. 75, l. 13 – 77, l. 3. Smith confirmed

Cochran's testimony that he fell asleep while working that night and Smith had to wake him up. R. 78, ll. 1 – 4 (Smith); R. 16, l. 10 – 17, l. 12 (Cochran).

Smith did not remember having words with Cochran, but Cochran testified that he and Smith had a dispute because Cochran was sleeping. R. 16, l. 10 – 17, l. 17. Because he was "tired and aggravated," Cochran decided to go home. R. 16, l. 1 – 17, l. 15. Cochran left the factory at approximately 5:00 AM. R. 68, ll. 1 – 6.

Cochran did not call his wife on his way home.¹ R. 17, ll. 18 – 20. He expected her and his kids to be home. R. 17, ll. 21 – 25. Instead, when he pulled into his driveway, he saw a car he did not recognize in addition to his wife's car. R. 19, l. 4 – 20, l. 15.

In the early morning hours when Cochran got home, it was still dark. R. 21, ll. 9 – 15. Cochran found his front door cracked open, which was unusual. R. 20, l. 16 – 21, l. 8. No lights were on in his house. R. 22, ll. 3 – 6.

Defense counsel asked Cochran what was his "state of mind then after having seen a vehicle you didn't recognize and your front door open." R. 22, ll. 7 – 9. Cochran replied, "To protect my family because I had three kids and a wife. So I'm, I'm assuming was a, a break in. That's the first thought that came to mind." R. 22, ll. 10 – 12.

Cochran armed himself with a knife from his kitchen. R. 22, l. 13 – 23, l. 2. He first checked in his son's bedroom. R. 23, l. 3 – 24, l. 21. His nine-year-old son was not there, which was unusual. R. 23, l. 3 – 24, l. 21. He then checked on his two daughters, ages seven and four, and they were not in their room, which was unusual. R. 23, l. 24 – 25, l. 12. No one had called out to Cochran. R. 25, ll. 15 – 16.

¹ The State failed to introduce any telephone records into evidence at the hearing. The State presented no evidence that Cochran knew a stranger was at his home with his wife, other than speculation derived from Cochran leaving the factory early.

Cochran went to his bedroom. R. 25, ll. 17 – 18. He called out to his wife, Casi, in a loud voice. R. 26, ll. 8 – 16. She did not respond. R. 26, ll. 8 – 16. He went into the bedroom which was extremely dark because the couple had blackout curtains to help them sleep during the day when they worked night shifts. R. 27, ll. 6 – 7. R. 89, ll. 11 – 14. Casi still had said nothing. R. 27, ll. 11 – 16. He could not see who was in the bed or what their condition was. R. 28, ll. 1 – 4.

Cochran made it to the foot of his bed and a man jumped out of the bed and said, “Who the fuck is you?” R. 28, ll. 8 – 12. Cochran replied, “Who the fuck is me, who the fuck is you? This is my house.” R. 28, ll. 8 – 12. The unknown man swung at Cochran. R. 28, ll. 8 – 12. The man was approximately four or five inches taller than Cochran. R. 28, ll. 18 – 21. R. 47, ll. 3 – 7. Cochran’s bedroom was too dark to see if the stranger attacking him had any weapons. R. 28, l. 22 – 29, l. 10.

Cochran defended himself. R. 28, l. 8 – 31, l. 17. The fight ended when the unknown man jumped out of the bedroom window. R. 31, ll. 13 – 15. Casi called 911 and Cochran called his parents and waited on the police to arrive. R. 46, ll. 12 – 22. R. 31, ll. 18 – 19.

The unknown man who attacked Cochran and then jumped out the window was Emmett Kelly, Casi’s co-worker and paramour. R. 85, l. 24 – 86, l. 15. The police found Kelly in the road not far from the Cochran’s home. R. 106, ll. 14 – 23. Kelly died from his wounds. R. 114, ll. 3 – 17.

Casi worked that day and texted and called Kelly, who had the day off, and invited him to come to her house. R. 86, ll. 11 – 21. She told Kelly she would leave the door unlocked for him. R. 88, ll. 11 – 21. Kelly came over and Casi remembered him waking her up telling her someone was at the door. R. 89, ll. 3 – 10. Kelly was already standing up when Cochran came into the

room. R. 91, ll. 6 – 8. She admitted she never said anything to Cochran until after the fight began. R. 101, ll. 8 – 20.

Casi gave a statement to the police, some of which may have been captured by the police's cameras. R. 96, l. 19 – 97, l. 5. Defense counsel asked, "Now, do you recall when law enforcement asked you when [Cochran] called out in the house that you did not answer him?" R. 101, ll. 8 – 10. Casi first responded, "No. I don't recall it, but I didn't say anything." R. 101, l. 11. Defense counsel then asked, "So you don't recall having told law enforcement in the yard that when [Cochran] called out you did not say anything?" R. 101, ll. 12 – 14. Casi then testified, "Yeah. I could have—yeah. I would have told them I didn't say anything because I didn't say anything." R. 101, ll. 15 – 16.

Casi admitted Cochran never met Kelly and would not have recognized Kelly. R. 97, ll. 16 – 18. R. 103, ll. 9 – 11. She said it was "completely dark" in their bedroom and said "they started fighting" right when Cochran entered the room. R. 89, ll. 3 – 14. Casi said, "They started fighting, like they were both swinging." R. 90, ll. 19 – 24. She tried to break it up and Kelly said, "What the fuck, he stabbed me or shot me" and then jumped out the window. R. 90, ll. 19 – 24. Casi only then turned on the light, saw blood, and saw Kelly jump out the window. R. 91, ll. 11 – 17. The fight stopped at that point. R. 91, ll. 12 – 13.

The police interviewed Cochran after the incident. R. 114, ll. 2 – 17. He was not intoxicated. R. 114, ll. 18 – 20. When they told Cochran that Kelly was dead, he became "very emotional" and ended the interview. R. 114, ll. 3 – 17.

The Trial Court's Ruling and the Court of Appeals' Application of the Standard of Review

Relying on the above-stated evidence, the trial court granted immunity to Cochran. R. 120.

The court wrote:

The undisputed facts in this case are that: 1) the defendant arrived at his residence at 5:30 a.m.; 2) a car the defendant did not recognize was at the residence; 3) the front door to the residence was open; 4) the defendant's children were not in their bedrooms; and, 4) immediately upon the defendant's entry into his bedroom, he was assaulted by the victim.

R. 122. The court found that Cochran's "fear of death or great bodily injury was reasonable" and that he could stand his ground and use deadly force. R. 122.

A panel of the Court of Appeals consisting of Judges Konduros, Geathers, and McDonald issued an unpublished per curiam decision affirming Judge Culbertson's grant of immunity. State v. Cochran, Op. No. 2021-UP-086 (S.C. Ct. App. Mar. 17, 2021). The court wrote, "The trial court did not abuse its discretion because evidence supports the three required elements of self defense."

Id. The court cited this Court's major immunity decisions. Id.

Discussion

In order to reverse, Judge Culbertson's findings and conclusions must be "without evidentiary support." State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). The State cannot overcome this standard of review because the court's grant of immunity is supported by both Cochran and Casi's testimony.

The State first claims in its petition that Cochran "was not without fault in bringing on the difficulty." Pet. Cert. at 15-16. It concedes, as it must, that Cochran could not be at fault for entering his home and arming himself after seeing an unknown car and an open door. Pet. Cert. at 16. But the State then faults Cochran for "stealthily" creeping through his house and not turning

on lights. Pet. Cert. at 16. It then argues that “it is not clear that [Cochran] was without fault, as found by the trial judge.” Pet. Cert. at 16.

The trial judge is required to evaluate immunity claims using a preponderance of the evidence standard. State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). The trial judge’s evaluation of Cochran and his wife’s testimony provides ample support for Cochran being without fault in bringing on the difficulty. Post-hoc speculative criticisms of Cochran’s lawful actions could not surmount the evidence presented by Cochran and accepted by the trial court and certainly now cannot surmount the appellate standard of review. To rule in the State’s favor on this point would mean deciding as a matter of law that a homeowner must expose himself to danger from an intruder by turning on lights and announcing his presence.² Logic, common sense, and the law weigh heavily against adopting the State’s position. See State v. Rash, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936) (holding that a person does not have to wait for his assailant to get the drop on him before defending himself).

The State also asserts that Cochran “*initiated a confrontation with the victim,*” but evidence supports the trial judge’s finding to the contrary. Pet. Cert. at 16 (emphasis in original). The State’s claim is based on the fact that Cochran entered his own bedroom, something that he had an absolute right to do. Casi never testified Cochran initiated the confrontation. Cochran expressly testified that Kelly cursed at him and was the first to throw a punch. The trial judge’s finding is supported by the evidence and the State’s claim lacks any support in the record.

The State also claims in its petition that no evidence existed that Cochran had a reasonable belief that he was in danger of death or great bodily injury. Pet. Cert. at 17-21. Cochran submits that being attacked in the dark in your own home by a unknown man who is five inches taller

² Cochran did announce his presence by calling out to Casi. R. 26, ll. 8 – 16.

creates far more than a reasonable belief of death or great bodily injury. See State v. Scott, 424 S.C. 463, 819 S.E.2d 116 (2018). The immunity statute seems tailor-made for such a terrifying event. In Scott, the Court affirmed a grant of immunity to a man defending his home and his daughter from attackers in a car. Id. The Court affirmed because the lower court’s findings were supported by the evidence and “our standard of review requires that we uphold them.” Id. at 471, 819 S.E.2d at 119. A person “has the right to act on appearances, even if the person’s belief is ultimately mistaken.” State v. Dickey, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011). Cochran testified that he thought his house had been broken into and he needed to protect his wife and children. He was then attacked by an unknown man in his dark bedroom. The trial judge’s finding that Cochran’s fear was reasonable is supported by the evidence.

The State also argues that the trial judge could not have granted immunity because Cochran’s response was disproportionate. Pet. Cert. at 20-21. The State’s argument centers on Cochran being armed with a knife and Kelly being unarmed. Pet. Cert. at 20-21. This argument fails because Cochran had no idea whether Kelly was armed. The bedroom where Kelly attacked Cochran was not only dark because of the time of day, it was outfitted with blackout curtains. Casi testified it was so dark that she did not see that Cochran had a knife. R. 101, ll. 21 – 25. Cochran testified he could not see whether Kelly was armed. R. 31, ll. 16 – 17. Under these circumstances, had Cochran used a howitzer instead of a knife, his actions still would have been proportionate and justified.

In Jones, the Court affirmed a grant of immunity to a defendant who stabbed the decedent with a knife who she knew to be unarmed because she was afraid he “was getting ready to hit her again.” Jones at 286, 786 S.E.2d at 135. Here, Cochran did not know that Kelly was unarmed and had already been hit by Kelly when he defended himself. Jones shows that a person is entitled to

use a knife when threatened with being hit—or, in Cochran’s case, actually being hit. The State has successfully prosecuted individuals for murder resulting from a single punch. See, e.g., State v. Otts, 424 S.C. 150, 154, 817 S.E.2d 540, 543 (Ct. App. 2018). Cochran waited until he was attacked before he used the knife to defend himself and, as far as he knew, his wife and children. He was not required to put the knife away and engage in a dangerous fistfight to defend himself. The trial judge’s finding that deadly force was reasonable is supported by the evidence and its inferences. No reason exists to grant certiorari and the State’s petition should be denied.

CONCLUSION

No reason exists to grant certiorari in this case. The State's petition should be denied.

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This 2nd day of August, 2021.