

IN THE SUPERIOR COURT OF BULLOCH COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

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vs.

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Case No. SUCR2020000358

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WILLIAM MARCUS WILSON

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BRIEF ON DEFENDANT'S MOTION FOR IMMUNITY

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STATEMENT OF FACTS

In the early morning hours of June 14, 2020, five young adults, Mason Edward Glisson, Luke Harry Conley, Marci Elizabeth Neagley, Haley L. Hutcheson, and Ashton Robert DeLoach traveled together in one pick-up truck. The Chevy Silverado was elevated by a lift kit and large tires. The party drove from Claxton, Georgia to various places in and around Statesboro where they purchased or were provided alcohol that they consumed. The party drank significant amounts of alcohol throughout the evening. Specifically, they admitted to consuming a twelve (12) pack of beer and several Smirnoff vodka-based wine coolers. All occupants of the truck were underage and not permitted to consume alcohol under Georgia law.

Before heading back to Claxton, Georgia, the Party stopped to use the restrooms at Parker's on Brampton Avenue in Statesboro, Georgia. While at Parker's, they saw two Claxton High school students that they knew, Marijane Swanson and Mikaela McClain. Swanson and McClain were with Damien Blair, Alison Purvis, Amber (surname unknown), Angel McNeal, and Angel's boyfriend (name unknown). The party admitted to seeing Swanson and her friends leave Parker's. However, the party of teenagers did not speak to Swanson and her friends. When questioned by law enforcement about not being acknowledged by her classmates, McClain informed police that "those boys (referring to Luke Conley, Mason Glisson, and Ashton DeLoach) don't like black people." Damien Blair is a black male.

The Party returned to the truck to leave Parker's. The seating arrangement of the occupants of the truck was Glisson (driver), DeLoach (front seat passenger), Neagley (driver side back passenger), Hutcheson (middle back seat), and Conley (back seat passenger side). The Party decided to get some food before returning to Claxton, Georgia. The Party drove to McDonald's on Northside Drive but the facility was closed. They went to Waffle House on Northside Drive.

After leaving Waffle House the group drove by a blue Ford, 4-door sedan preparing to leave the parking lot of Taco Bell on Northside Drive. The occupants of the Ford were Defendant, William Marcus Wilson, and his girlfriend Emma Rigdon. As Wilson and Rigdon prepared to exit the parking lot of Taco Bell, they observed the truck “zooming past” them at a high rate of speed, and Wilson and Rigdon commented to each other that the occupants were probably drunk.

On the way back to Rigdon’s apartment, Wilson and Rigdon pulled up to a traffic light where the Party were waiting for the light to change. The Party saw the sedan driven by Wilson pull up next to them at the light and mistakenly thought that Rigdon was Marijane Swanson, their Claxton high school classmate. Swanson, who they had seen shortly before at the Parker’s with her black friends. As the light turned green and both vehicles pulled off, the Party began hanging out of the window and yelling racist remarks, including calling Wilson, a “nigger” and stating “your lives don’t matter.” Wilson and Rigdon attempted to ignore the Party and continued on their way home.

Within seconds of pulling from the traffic light where the Cracker Barrel could be seen from the right of the roadway, the Party began to swerve in their Truck towards Wilson’s sedan in an attempt to run Wilson and Rigdon off the road. Wilson steered towards the shoulder to prevent his vehicle from being struck by the Party’s truck but realized there was a steep embankment off the shoulder of the road. This area of the road has no lighting. Additionally, there are no guard rails on this portion of the roadway. Wilson felt the rumble strips on the shoulder as he drove off the road to avoid being hit. Wilson rolled down his window and repeatedly yelled for the truck to “back off.” In her interview with Detective Travis, Rigdon described the incident: “We were at the red light and they went zooming past us and they were swerving, and we were like ok, they’re drunk, whatever. And then they started hanging out the

window, like flipping us off . . . throwing their hands all different kinds of ways, swerving at us. It kinda looked like they were trying to run us off the road.”

Instead of backing off, the Party’s truck continued to swerve closer towards Wilson’s sedan. The Party began to throw objects from the truck at Wilson’s sedan. At this time, while driving, Wilson grabbed his legally possessed handgun and shot a warning shot under the Party’s truck. However, the Party continued swerving towards them and throwing objects, so Wilson fired two more warning shots. Deloach admits to seeing Wilson shooting towards the ground. After the three warning shots, the truck went back to their side of the road and slowed down, falling behind Wilson’s sedan. Wilson continued driving. Yet, before he could put the gun away, Rigdon yelled to him that the truck was speeding back towards them. In her interview with Detective Travis, Rigdon states “[w]ith everything going on right now, [Wilson] honestly thought that they were trying to run him off the road and I was like Marc, I’m scared.”

Again, seconds later after the warning shots, Rigdon observed the truck speeding towards them and suddenly something hit the sedan. The object made a large noise on impact causing Wilson to believe that a bullet struck the sedan. Rigdon told the detective: “I don’t know if they threw something at the car or if they hit the car. . . I don’t know, but there was a loud noise against the car.” Fearing for Rigdon’s life, Wilson made the split-second decision to fire two shots. Wilson expressed his fear after experiencing something strike the vehicle to the Detectives, “I had no clue what hit me. I thought that they were shooting at me. She was scared, she was freaking out. She had her dog with her. Officer, when I tell you . . . I don’t know, I just know that I was terrified. I was terrified. I’m not one to really get scared but I was scared for my life that night.”

Wilson did not know if any of his shots actually hit the vehicle. He continued driving to a friend's house fearing the truck might follow him to continue the attack. Unbeknownst to Wilson or Rigdon, during the second round of shots, one of the bullets entered the vehicle and hit Hutcheson in the back of the head. She was taken to East Georgia Regional Medical Center where she passed away.

During the police's questioning of Conley at the hospital, he is heard telling his mother that he did not have any interactions with Swanson because, "they're nasty hoes, niggerlovers." The occupants of the truck initially claimed that they only waved at Wilson and Rigdon. However, on numerous occasions, their stories significantly changed. In addition, law enforcement discovered evidence of objects on the road matching alcoholic beverages being consumed by the Party. This evidence was found beyond the location where the initial warning shots were fired. Further, Conley was charged with obstruction of justice because of his concealment of evidence. Detective Travis Kreun testified during the preliminary and bond hearing that he arrested Conley for obstruction, "based upon his statements to other people that he had seen somebody in that car and his statements to detectives that he had not seen anybody in the car." Conley's story did not match the other occupants in the vehicle and his latter story did not match his own initial story.

ARGUMENT AND CITATION OF AUTHORITY

This matter comes before this Honorable Court pursuant to the Defendant's motion for immunity from prosecution based on self-defense and defense of habitation. The law applicable to these defenses is found in O.C.G.A. § 16-3-24.2 which states that "[a] person who uses threats of force in accordance with Code Section § 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24 shall be immune from criminal prosecution therefor unless, in the use of deadly force, such person

utilizes a weapon the carrying or possession of which is unlawful by such person under Part 2 or 3 of Article 4 of Chapter 11 of this title.” O.C.G.A. § 16-3-21 addresses the use of force in defense of self and provides that:

“[a] person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other’s imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.”

O.C.G.A. § 16-3-21(a).

Further, O.C.G.A. § 16-3-23 provides that:

“[a] person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to prevent or terminate such other’s unlawful entry into or attack upon a habitation; however, such person is justified in the use of force which is intended or likely to cause death or great bodily harm only if:

- (1) The entry is made or attempted in a violent or tumultuous manner and he or she reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any

person dwelling or being therein and that such force is necessary to prevent the assault or offer of personal violence; . . .

- (3) The person using such force reasonably believes that the entry is made or attempted for the purpose of committing a felony therein and that such force is necessary to prevent the commission of the felony.”

O.C.G.A. § 16-3-23.1 provides that “[a] person who uses threats or force in accordance with Code Section 16-3-21, relating to the use of force in defense of self or others, Code Section 16-3-23, relating to the use of force in defense of habitation, has no duty to retreat and has the right to stand his or her ground and use force as provided in said Code sections, including deadly force.” Finally, O.C.G.A. § 16-3-24.1 defines habitation as “any dwelling, motor vehicle, or place of business...”

In State v. Yapo, 296 Ga. App. 158, 674 S.E.2d 44 (2009), the Court of Appeals addressed the procedure for trial courts when a motion for immunity from prosecution based on the affirmative defenses was filed in a case. The Court held that the trial court must determine whether or not a defendant is immune from prosecution prior to the commencement of the trial of that person. (Citing Boggs v. State, 261 Ga. App. 104, 106, 581 S.E.2d 722 (2003).) The Yapo court stated that the burden is on the defendant to show by a preponderance of the evidence standard that he is entitled to immunity. See also State v. Bunn, 288 Ga. 20, 701 S.E.2d 138 (2010).

In Bunn, the Supreme Court defined preponderance of the evidence, holding that it “means that superior weight of evidence upon the issues involved, which, while not enough to free the mind wholly from a reasonable doubt, is yet sufficient to incline a reasonable and impartial mind

to one side of the issue rather than to the other.” There is no requirement that all factual disputes, as a matter of law, be eliminated but only that the fact finder be inclined by the evidence toward one side or the other. Id at 22.

The issue before this Honorable Court is whether or not Marcus Wilson was acting in defense of himself and/or his habitation. The evidence clearly shows that Wilson’s vehicle was being attacked by the truck occupied by Party. The evidence clearly shows the racial animus exhibited by the Party. Wilson attempted to ignore the truck’s initial encroachment of his vehicle lane of travel. However, the truck continued in its violently aggressive advancement causing Wilson to fear for his life and the safety of his passenger. Thus, Wilson fired three warning shots underneath the car as not to harm anyone, but to deter the aggressors. Although this caused the truck to initially slow down and back off of Wilson’s sedan for a moment, the truck sped back up and attempted to run Wilson’s vehicle off the road. That is the impression of both Wilson and Rigdon. The Party also caused something large to strike Wilson’s car. Wilson believed that the Party was shooting at him when something struck the car. Wilson, being in reasonable fear for his life, his passenger’s life, and his vehicle’s (habitation) safety, used his handgun to fire twice in defense of the same.

In State v. Green, 289 Ga. 802, 804 716 S.E.2d 194 (2011), the trial court granted Green’s motion for immunity from prosecution based on self-defense or justification. The Supreme Court held that “a mere threat of force is all that is required when one reasonably believes that he must defend himself against another’s imminent use of unlawful force.” In this matter, Wilson was clearly threatened by the Party’s reckless operation of the truck and violent behavior. The Party intentionally swerved towards Wilson on a highway with a speed limit of 60 mph. The Party attempted to run Wilson off of the road. Further, the Party began to throw objects at Wilson’s

sedan from the truck. After Wilson's first attempt to defend himself and his passenger against the occupants of the truck's imminent use of force, the party returned to attack. Wilson reasonably believed that he needed to use force to defend himself and his passenger against Party's use of force against him. Wilson had no way of knowing if he was going to be run off the road and be killed, or suffer violent bodily injury. Clearly, under O.C.G.A. § 16-3-21, Wilson was justified in using deadly force to defend himself.

Further, under O.C.G.A. § 16-3-23, Wilson was justified in using deadly force to defend his vehicle which is included in the definition of habitation. In Hammock v. State, 277 Ga. 612, 615, 592 S.E.2d 415 (2004), the Supreme Court held that "[u]nlike the defense of justification, the habitation defense, in recognition of the sanctity of a person in his home, allows the use of deadly force in certain situations even if the occupant does not fear death or great bodily injury." Defense of habitation includes a person's vehicle. O.C.G.A. § 16-3-24.1. In the case *sub judice*, Wilson lawfully used deadly force to defend his habitation, his vehicle, when he was threatened in a violent and tumultuous manner by the Party.

In analyzing the issue of defense of habitation, Benham v. State, 277 Ga. 516, 591 S.E.2d 824 (2004), is the most analogous. In Benham, the Georgia Supreme Court found trial counsel ineffective for failing to request a defense of habitation charge at trial. In that case, the evidence showed that the alleged victim, Kennemore, had gone to a relative's apartment home. Benham drove up and parked in front of the apartment building. She had her three young children in the car. There was animosity between the two women because the victim's husband had children with both women. A week prior to the incident, the two women had gotten into an argument in which Kennemore accused Benham of being disrespectful of her.

While Benham was in the car, Kennemore came out of the apartment and confronted Benham. Kennemore approached the passenger window and yelled “you ain’t going to keep disrespecting me.” The two women argued and Kennemore walked around to the driver’s side window and threw the first blow. Both women disagreed on the exact facts concerning the altercation. However, Benham grabbed a box cutter and cut Kennemore. Kennemore continued to fight even though Benham was trying to drive away.

The Supreme Court held that trial counsel was ineffective in failing to request a charge on defense of habitation. The Supreme Court specifically held that trial counsel “failed to appreciate that the defense of habitation may have justified the use of deadly force in this case even if that amount of force was not necessarily required to repel Kennemore’s attack.” Thus, trial counsel was ineffective. *Id* at 826.

The facts in Benham are very similar to the facts of this case. Wilson attempted to continue driving down the road but the truck driven by Glisson began swerving into his lane to run him off the road. It is commonly known that individuals have used the vehicle as deadly weapons against the person of another. See Adams v. State, 293 Ga. App. 377, 378-79 (2008) (A person commits an aggravated assault by assaulting another with a weapon or with any object, device, or instrument that, when used offensively, is likely to result in serious bodily harm. Thus, an automobile may constitute a deadly weapon depending on the manner in which it is used.) See also Guyse v. State, 286 Ga. 574, 690 S.E.2d 406 (2010) (finding Defendant guilty of aggravated assault and other crimes where Defendant, intoxicated off of Smirnoff beverages, tailgated victim, cut him off several times, and threw a beer bottle at his car before deliberately ramming his truck from behind because it is well established that an automobile can constitute an offensive weapon when used to risk or cause serious bodily harm and the defendant possessed a general and specific

intent to injure). Here, the Party steered their truck into the lane of Wilson's car in an effort to force the smaller vehicle down into the ditch on the side of the road. The evidence shows that even after Wilson fired warning shots the truck sped back up and continued to attack and further endanger Wilson and Rigdon's lives.

In Benham, the evidence shows that Kennemore approached Benham while she was in her car. Kennemore told Benham that she was not going to disrespect her. Kennemore possibly grabbed Kennemore's shirt. Kennemore possibly grabbed Benham's face. Kennemore was definitely in the doorway of Benham's car. Benham grabbed a box cutter and slashed at Kennemore several times. At some point, witnesses tried to pull Kennemore away. Obviously, from its ruling, the Supreme Court felt that Benham had a valid defense of habitation argument and the trial court should have charged the jury on such and that trial counsel was ineffective for failing to request said charge. The court found that the defense of habitation was the strongest defense even though Benham was protecting herself and three young children in the car.

Wilson has an even stronger argument because the evidence shows that, despite Wilson's attempt to fire warning shots, the truck driven by Glisson sped back up to Wilson's car and attacked him by throwing an object at the vehicle while the car traveled at a high rate. Again, all that a defendant is required to show to establish a valid defense of habitation defense is that entry is made or attempted in a violent and tumultuous manner and that the accused reasonably believes that the entry is made for the purpose of assaulting or offering personal violence to a person and that the force used to repel the assault or offer of violence is necessary to prevent the assault or offer of violence. O.C.G.A. § 16-3-23. And, under the holding in Benham, a person can use deadly force even if that amount of force is not necessarily required to repel the attack. In Wilson's situation, he had already been nearly run off the road by the Party driving the truck.

The defense would submit to this Honorable Court that the physical evidence from the scene supports Wilson's and Rigdon's version of what occurred. This Honorable Court sits as the trier of fact in this motion. The testimony of the truck's occupants lacks credibility. Conley gave several different statements concerning whether the Party shouted obscenities including racial slurs or waved at Wilson. He initially testified that the males in the truck waved at Wilson's vehicle. During cross-examination, he then testified that no exchanges happened between the parties. Later Conley states to police, "if I did say something I'll regret it for the rest of my life." Further, the occupants of the truck claimed that no objects were thrown at Wilson's vehicle. The physical evidence does not support this testimony. Beer bottles consistent with the beer the teenagers drank earlier that day were found along the highway at the scene of the incident. Moreover, Neagley admits that the boys "may" have thrown something out of the window. The physical evidence testified to by the State's witnesses supports Wilson's version of what happened. Rigdon's interview with Detective Travis also supports the fact that an object was thrown at and did violently strike the vehicle.

A reasonable person standing in Wilson's shoes that night could reasonably believe that his life was in danger as well as the passenger of his vehicle. Wilson was operating his vehicle after purchasing himself a meal. While driving, a truck speeds by him while swerving in and out of his lane. Wilson and the passenger both acknowledge that the occupants of the truck were likely intoxicated. When Wilson's vehicle reaches proximity to the truck, the Party emerges from the window and shouts racist slurs. Not only are the Party flipping Wilson off and calling him "nigger" the truck then began to swerve into Wilson's lane. At this point, Wilson began to fear for his and Rigdon's life, so he fired at the vehicle's wheels to prevent further attack from the truck. Wilson's attempt to escape danger only lasted for a short moment. The truck returned and threw a

large object at the vehicle while pushing Wilson's vehicle to the rumble strips. The unilluminated roadway caused the area to be very dark. Due to the poor lighting, Wilson reasonably thought the Party shot his car when the object struck his car. It is evident that the Party intended to continue their attack on Wilson and Rigdon. Under the applicable statutory and case law, Wilson was justified in using deadly force to defend both himself, Rigdon, and his habitation. The evidence presented to this honorable Court at the hearing on the motion would justify a trier of fact in finding by a preponderance of the evidence that Wilson has met his burden of proof in this motion and that he was acting in self-defense, defense of a third person, and defense of his habitation.

The superior weight of the evidence presented to this Court upon the issues involved is sufficient to incline a reasonable and impartial mind to find that Wilson was, in fact, defending himself, a third person, and his habitation. State v. Bunn, 288 Ga. App. 20, 22, 701 S.E.2d 138, 140 (2010).

CONCLUSION

WHEREFORE, based on the foregoing argument and citation of authority, the Defendant respectfully asks this Court to grant his Motion for Immunity from Prosecution and Request for Evidentiary Hearing and dismiss the charges against him.

RESPECTFULLY SUBMITTED this 5th day of August 2021.

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