

Randall M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)
)
)
v.) Criminal Action No. 20-CR-00433
)
WILLIAM RODERICK BRYAN,)
Defendant.)

IMMUNITY MOTION PURSUANT TO O.C.G.A. § 16-3-24.2

COMES NOW Defendant, William Roderick Bryan, by and through his undersigned attorney, and files this motion for the Court to enter an Immunity Order pursuant to O.C.G.A. § 16-3-24.2. In support of this motion, Defendant shows as follows.

The Law Governing Immunity Motions

Statutory Authority

O.C.G.A. § 16-3-24.2 provides that a person “shall be immune from criminal prosecution” when that person “uses threats or force in accordance with O.C.G.A. § 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24. O.C.G.A. § 16-3-21 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 himself or herself or a third person against such other’s imminent use of unlawful force; however, except as provided in O.C.G.A. § 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.” Defendant is charged in each count not merely as a “party to the crime” but also directly as having directly committed said crimes himself. Either way, Defendant has standing to assert immunity both directly and indirectly to the extent that others were justified in taking action on the day in question.

Time for Hearing the Motion

Immunity motions are required to be heard prior to trial. “[A]s the statute provides that such person ‘shall be immune from criminal prosecution’ the decision as to whether a person is immune under O.C.G.A. § 16-3-24.2 must be determined by the trial court [as a matter of law] before the trial of that person commences.” [emphasis omitted] *See Fair v. State*, 284 Ga. 165, 166 (2008) (quoting *Boggs v. State*, 261 Ga. App. 104, 106 (2003)).

Burden of Proof

In *Bunn v. State*, 284 Ga. 410 (2008), the Supreme Court specifically addressed the standard of review a trial court should employ. Specifically, the Court stated that “to avoid trial, a defendant bears the burden of showing that he is entitled to immunity under O.C.G.A. § 16-3-24.2 **by a preponderance of the evidence.**” See *id.* at 413. [emphasis added]

Factual and Legal Basis for the Motion

On February 23, 2020, Ahmaud Arbery committed the offenses of burglary and criminal attempt to commit burglary of a Satilla Shores residence under construction. Video taken in said residence and in the neighborhood shows that Mr. Arbery walked up to said residence, entered it and remained in said residence without authority for several minutes. Mr. Arbery can be seen “casing” the establishment for tools, construction materials and other valuables onsite that could be taken either then or at a later time.¹ Mr. Arbery had “cased” the residence on several previous

¹“The storing of valuable goods in a building ‘may give rise to an inference of an intent to commit theft therein, particularly where no other motive is apparent for the entry.’ *Id.* Likewise, in *Legg v. State*, 204 Ga. App. 356-357 (1992), the Court concluded: “The question of intent to commit burglary is for the determination of the jury . . . as a general rule the State must, of necessity, rely on circumstantial evidence in proving intent . . . [and] [t]he presence of valuables inside the premises . . . could support an inference of the intent to steal particularly where no other motive is apparent.” *Id.*

occasions and had run away on at least one other occasion where he escaped, in part, by suggesting by furtive movement that he was armed. Mr. Arbery was on probation at the time for theft by shoplifting as well as for a violent felony. (These convictions were previously tendered as exhibits at Mr. Bryan's bond hearing). Mr. Arbery had also apparently been involved in burglaries, attempted burglaries, loitering and criminal trespasses on several other occasions but had not been charged with these offenses at the time of his death. One or more of these offenses may have involved accomplices, and may have involved a vehicle matching the description of one to which Mr. Arbery had access. These circumstances are consistent with Mr. Arbery's apparent association with individuals reputed to have been engaged in the past in criminal activity, and to a broader pattern of criminal activity on the premises of others.

Although it has been suggested that he was jogging, Mr. Arbery was not observed running prior to his entry into the subject residence. He was not wearing jogging shoes, nor jogging clothes or other indicia that he was either participating in or preparing for an athletic activity. Even by the shortest, and most direct route, Mr. Arbery was already several miles from home when he entered the Satilla Shores residence and when he left the residence he was running further away from his own residence at a high rate of speed.²

²In Georgia, criminal intent to commit theft may be presumed from flight. In Anthony v. State, 347 Ga. App. 807 (2012), another citizens arrest case in which the accused was chased and tackled by a neighbor before the police arrived, the accused offered several innocuous reasons to enter the subject premises. In finding the evidence sufficient to convict the Court noted that the accused "tried to flee" upon being seen by the neighbor. Id. Likewise, see Evans v. State, 148 Ga. App. 422 (1978), in which the court found that there was sufficient evidence to convict of attempted burglary when the accused ran from the door of a grocery store when approached by a law enforcement officer. 148 Ga. App. at 425. See also Battle v. State, 178 Ga. App. 655 (1986) (evidence sufficient to support guilty verdict where accused ran from the scene after alarm sounded at the store).

When Mr. Arbery discovered that he was under video surveillance and that a neighbor was watching him, Arbery then “hailed ass” according to witnesses to escape the scene of the crime. Arbery was provided several opportunities to explain his presence, repeatedly having been asked by neighbors to talk with them about his suspicious behavior, but Arbery aggressively declined these opportunities. At one point, a visibly angry Mr. Arbery attempted to carjack a motor vehicle.

For reasons that may never be known, after spending several minutes in flight Mr. Arbery suddenly turned and rushed Travis McMichael without warning. Rather than retreat, or surrender his weapon and take the beating that would surely follow, it appears from the video – notwithstanding the obstructed view – that Travis McMichael attempted to defend himself as he was authorized to do under Georgia law.

Although the citizen arrest statute itself is not well worded, for the purpose of this case its meaning is reasonably clear: “The statute apparently authorizes a citizens arrest for a felony committed in the citizen’s presence. Moreover, as Professor Kurtz points out [the leading authority in Georgia on substantive criminal law for many years], a private citizen may arrest on probable cause if the offense involved was a felony and the offender is escaping or attempting to escape.” Daniel’s Georgia Criminal Trial Practice, § 2-21, at 43 (2018 edition) (citations omitted). It is respectfully submitted that the available evidence clearly established probable cause to believe that Ahmaud Arbery had committed the offense of criminal attempt to commit burglary.³

³In Georgia, the “probable cause” standard for a arrest is an objective but extremely low threshold. The question has at times been put this way: whether “at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [defendant] had committed or was

Even if there was some legitimate question as to whether the McMichaels were authorized to conduct a citizen's arrest – on the theory that THEY somehow lacked sufficient knowledge or nexus to the commission of the crime – there remains the separate and equally troubling question as to whether Mr. Arbery was justified in turning on and attacking Travis McMichael. Unless Mr. Arbery's actions were justified then Travis McMichael was authorized under Georgia law to defend himself.

Mr. Arbery was not justified in assaulting Travis McMichael. Georgia law is clear: "The law provides no right to resist a legal arrest." Cordis v. State, 236 Ga. 629, 631 (1999). Mr. Arbery knew what he had done, knew that he was subject to lawful citizen's arrest for a felony, and knew that he was in flight – that he sought to escape apprehension. Accordingly, regardless of what Mr. Bryan and/or the McMichael defendants knew or didn't know, Mr. Arbery knew what he had done. He knew that probable cause existed for his arrest. Therefore, his assault against Travis McMichael was not justified. Accordingly, Mr. Bryan and the McMichael defendants are entitled to immunity as to all counts of the indictment.

committing an offense." Daniel's Georgia Criminal Trial Practice, § 2-11, at 22 (2018 edition) (citations omitted). Put somewhat differently, in the context of a preliminary hearing or commitment hearing, the question is "whether there is sufficient reason to suspect the guilt of the accused." Daniel's Georgia Criminal Trial Practice, § 11-4, at 608 (2018 edition) (citations omitted). Indeed, under Georgia law, there was, and is, sufficient evidence to establish not merely probable cause but proof beyond a reasonable doubt Mr. Arbery's commission of that offense. "A person commits the offense of criminal attempt when, with intent to commit a specific crime, he performs any act which constitutes a substantial step towards the commission of that crime." O.C.G.A. § 16-4-1. "A person commits the offense of burglary when, without authority and with the intent to commit a . . . theft therein, he enters the dwelling house of another . . . or enters . . . any other building . . . or any part thereof." O.C.G.A. § 16-4-1. "A house under construction which is so far completed as to be capable of providing shelter to people, animals or property constitutes a building under this statute." Weeks v. State, 274 Ga. App. 122, 124 (2005) (citation omitted).

The death of Ahmaud Arbery, while tragic, was not the result of any crime on the part of Mr. Bryan.

Prayer for Relief

1. Defendant requests a pre-trial hearing to determine if his immunity motion should be granted as to each and every count of the indictment.
2. Defendant requests that after the hearing this Honorable Court grant his motion and issue an order that grants him immunity from prosecution as to all counts in the above styled case.
3. Defendant requests any other relief this Court deems necessary and proper.

Respectfully submitted, this 6th day of August, 2020.

/s/ Kevin Gough
Kevin Gough
ATTORNEY FOR DEFENDANT
Georgia Bar No. 303210

Kevin Gough Firm, LLC
501 Gloucester Street, Suite 121
Post Office Box 898
Brunswick, GA 31521
(912) 242-5114
kevingough.firm@gmail.com

CERTIFICATE OF SERVICE

COMES NOW Kevin Gough, attorney for the defendant, and hereby certifies that a copy of the foregoing document(s) have been served upon the District Attorney by email delivery this date.

This 6th day of August, 2020.

/s/ Kevin Gough
ATTORNEY FOR DEFENDANT