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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0476

Jeremy Bernard Robertson

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-17-162)

MINOR, Judge.

A jury convicted Jeremy Bernard Robertson of provocation manslaughter, see § 13A-6-3(a)(2), Ala. Code 1975, for the

shooting death of Ronald Billingsley. The circuit court sentenced Robertson to 15 years in prison.¹

Robertson argues on appeal that the circuit court erred in refusing to give the jury a stand-your-ground instruction. Robertson says that, because the evidence supported--and the circuit court gave--a self-defense instruction under § 13A-3-23(a), Ala. Code 1975, the circuit court also should have given a stand-your-ground instruction under subsection (b) of that statute because, he says, he was not engaged in an unlawful activity and he was in a place where he had a right to be. Robertson contends that the circuit court denied his request for a stand-your-ground instruction because, he says, the circuit court wrongly believed that, under § 13A-3-23(b), Ala. Code 1975, a person does not have a right to be on private property not his own. Because we agree that the circuit court should have given a stand-your-ground instruction to the jury, we reverse and remand.²

¹The circuit court also ordered Robertson to complete the "Crime Bill Program" and an anger-management program while in prison.

²Because we hold that the circuit court erred in not giving a stand-your-ground jury instruction, we do not address the other issues Robertson raises in his brief on appeal.

The undisputed evidence at trial was that Robertson shot Billingsley in the front yard of Mary Terry's house on Handy Avenue in Birmingham, Alabama. Robertson's friend, Nadarrius Lewis, lived next door to Terry, and Robertson's sister, Jocelyn Robertson--who was, at the time of the shooting, seven or eight months pregnant with Billingsley's child--lived on the other side of Terry in Robertson's mother's house. Billingsley lived in a house across the street from Jocelyn.

Terry's granddaughter, Hondrica Vann, testified that she had known Robertson and Demarri Duncan--Robertson's friend who was with him at the time of the shooting--about 20 years, and that Duncan was a "friend of the family." (R. 458.)

The evidence at trial showed that, on the day of the shooting, Lewis told Robertson to come to his house because they had made plans to go together to a sports bar in Bessemer. Robertson arrived at Lewis's house with Duncan, and, after getting out of the vehicle, Robertson followed Duncan into Terry's yard through a "cut" or "walk through" in a line of hedges between Terry's and Lewis's front yards. Shortly after Robertson entered Terry's yard there was an altercation between Robertson and Billingsley, and both

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Robertson and Billingsley sustained multiple gunshot wounds. Billingsley died from his injuries.

Law-enforcement officials charged Robertson with murder for Billingsley's death. At the charge conference the circuit court said that it would instruct the jury on self-defense, but that it would not give a stand-your-ground instruction:

"The Court: Going back to the self-defense instruction, is the defendant entitled to a stand-your-ground instruction?

"[Defense counsel]: Well, Judge, Mr. Robertson was within the purview of his home--his mother's house. He grew up there. You have got [Robertson's mother's house] and [Terry's house]. He was where he had a right to be in his own community and his own neighborhood. We would request a stand your ground instruction.

"[Prosecutor]: Your Honor, it is actually in the yard of the Terry's residence, not his family home. It was in the neighbor's yard between Nadarrius Lewis's house and the Terry's house, not the Robertson's home.

"The Court: You are saying he doesn't have a legal right to be where he was at the time?

"[Prosecutor]: That is correct, Judge.

"[Defense counsel]: He has a legal right. He has been going there all of his life. There is no suggestion from anyone that he was a trespasser and didn't have the right to be at that place in his own neighborhood.

". . . .

"The Court: Any time self-defense becomes an issue, the question then has to be whether or not the defendant had a duty to retreat or the right to stand his ground. So, the instruction is going to be given on self-defense. It is really a matter on which two of those is appropriate to give, the duty to retreat or stand his ground. The first step in that analysis is the defendant in a place where he had a legal right to be. If he is on private property and it is not his own private property, then he didn't necessarily have a legal right to be there.

"[Prosecutor]: And that is the State's position, it was Ms. Terry's yard.

"The Court: So, without going any further, the analysis stops right there. There is no stand your ground."

(R. 1084-86.) Later, during a break in closing arguments, defense counsel again requested that the circuit court instruct the jury on stand your ground:

"[Defense counsel]: ... We had a conversation yesterday about stand your ground 'A person who is justified under subsection [a] [of § 13A-3-23, Ala. Code 1975] in using physical force, including deadly physical force, and [who is] not engaged in an unlawful activity and is in any place where he or she has [the] right to be has no duty to retreat and has the right to stand his or her ground.' Predicated upon that, 'any place he has a right to be,' we think that Mr. Billingsley--strike that. Mr. Robertson in his neighborhood, up the street from his mom's home, he is at that neighbor's house he [has] known over 20 years, he has a right to be there. We request, again, a stand-your-ground jury charge.

"The Court: It is denied. He was on private property. He does not have a right to be there. He could have been told to leave at any time."

(R. 1160-61.) The circuit court instructed the jury on self-defense but it did not instruct the jury on stand-your-ground. The jury found Robertson guilty of the lesser-included offense of provocation manslaughter. This appeal followed.

"A trial court has broad discretion in formulating its jury instructions, provided they are an accurate reflection of the law and facts of the case. United States v. Padilla-Martinez, 762 F.2d 942 (11th Cir. 1985). However, a "defendant is entitled to have the court instruct the jury on his defense theory, 'assuming that the theory has foundation in the evidence and legal support.' United States v. Conroy, 589 F.2d 1258, 1273 (5th Cir. 1979)." United States v. Terebecki, 692 F.2d 1345, 1351 (11th Cir. 1982). In order to determine whether the evidence is sufficient to necessitate an instruction and allow the jury to consider the defense, "we must accept the testimony most favorably to the defendant." (Citations omitted.) United States v. Lewis, 592 F.2d 1282, 1286 (5th Cir. 1979)."

George v. State, 159 So. 3d 90, 93 (Ala. Crim. App. 2014) (quoting Coon v. State, 494 So. 2d 184, 186 (Ala. Crim. App. 1986)).

Before the legislature amended § 13A-3-23, Ala. Code 1975, in 2006, subsection (b) of that code section "was a codification of the common-law rules regarding a duty to retreat before using deadly force." Malone v. State, 221 So.

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3d 1153, 1156 (Ala. Crim. App. 2016). But effective June 1, 2006, § 13A-3-23, Ala. Code 1975, now provides, in relevant part:

"(a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose. A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense or the defense of another person pursuant to subdivision (5), if the person reasonably believes that another person is:

"(1) Using or about to use unlawful deadly physical force.

". . . .

"(b) A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his or her ground."

Although § 13A-3-23 no longer expressly codifies the common-law rules about the duty to retreat, those rules remain in effect unless an accused meets the requirements of § 13A-3-23.

Malone, 221 So. 3d at 1156.

"As amended, § 13A-3-23 no longer includes an express codification of the common-law rules regarding the duty to retreat. In recognizing that

there is no duty to retreat under certain conditions, however, § 13A-3-23 assumes that the common-law rules regarding a duty to retreat generally remain in effect in evaluating a claim of justified deadly force under § 13A-3-23. Otherwise, the no-duty-to-retreat provision of § 13A-3-23(b) makes no sense Accordingly, an accused who claims to have been justified in using deadly force under § 13A-3-23 must have complied with the common-law rules regarding the duty to retreat unless he or she meets the requirements of § 13A-3-23(b)."

Malone, 221 So. 3d at 1156. The "no-duty-to-retreat" provision of § 13A-3-23 is not limited to only those places in which the accused has an "ownership" interest. George, 159 So. 3d at 95.

"The State's 'ownership' argument was based on the following emphasized language in § 13A-3-23(b), Ala. Code 1975, which provides that a person has no duty to retreat when he or she is 'not engaged in an unlawful activity and is in any place where he or she has a right to be.' (Emphasis added.) That language, however, does not limit the 'no-duty-to-retreat' provision of § 13A-3-23(b) to only those places in which a person has an 'ownership' interest; rather, the no-duty-to-retreat provision applies if the person claiming its protection was 'not engaged in an unlawful activity' and '[was] in any place where he or she ha[d] a right to be.' (Emphasis added.) See, e.g., Ex parte Pratt, 815 So. 2d 532, 535 (Ala. 2001) ('Principles of statutory construction instruct this Court to interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous.')."

Id.

The circuit court agreed to--and did--instruct the jury on self-defense under § 13A-3-23(a), and that decision is not before this Court. Rather, the question is whether the circuit court also should have given a stand-your-ground jury instruction under subsection (b) of that statute. Under subsection (b), when a defendant is justified in using physical force under subsection (a), he or she is entitled to a stand-your-ground instruction if he or she was not engaged in an unlawful activity and was in a place where he or she had the right to be.

Here there is no evidence indicating--and the State does not contend--that Robertson was engaged in an unlawful activity that would make a stand-your-ground defense unavailable to him. The question, then, is whether Robertson had the right to be in Terry's yard at the time of the shooting.

The evidence at trial was that Robertson's sister, Jocelyn, lived in their mother's house next door to Terry, and that Robertson's friend, Lewis, lived in a house on the other side of Terry. On the day of the shooting Lewis invited

Robertson to come to his house. After Robertson and his friend, Duncan, parked at Lewis's house, Robertson followed Duncan from Lewis's yard into Terry's yard. There was no evidence at trial indicating that Terry had prohibited Robertson from being on her property, and Terry's granddaughter testified that Duncan was a "friend of the family." Thus, there was evidence showing that Robertson was "in [a] place where he ... ha[d] the right to be." See Thomas v. State, 224 So. 3d 688 (Ala. Crim. App. 2016) (holding that, because the defendant was not prohibited from being at the residence where he shot the victim and was at that residence at another's invitation, the trial court erred in refusing to instruct the jury on a stand-your-ground theory of self-defense); George, 159 So. 3d at 93-95 (holding that the defendant had a right to be on the property where the altercation occurred, even though he had no ownership interest in the property).

In George, the evidence at trial was that the physical altercation between the defendant and the victim began in another person's yard and that, during the altercation, the two men moved out of the yard and into a lot across the road.

The owner of the property where the altercation began testified at trial that he was friends with both the defendant and the victim and that both men had visited his residence that day. In holding that the circuit court should have given a stand-your-ground instruction, this Court noted that, although the defendant did not own the property where the altercation occurred,

"[the defendant] has not conceded that he did not have 'a right to be' on [his friend's] property where the altercation began or in the lot where the final shot was fired, and the record before us does not indicate that [the defendant] did not have such 'a right to be' in either location."

George, 159 So. 3d at 95. Here, as in George, Robertson did not concede that he did not have a right to be on Terry's property, and nothing in the record shows that Robertson did not have "a right to be" in Terry's yard at the time of the shooting.

Accepting the evidence in the light most favorable to Robertson, see Thomas, 224 So. 3d at 693, we hold that the circuit court should have given a stand-your-ground instruction to the jury. "Such a determination belongs to the jury and is not for this Court to decide." Id. (citing Smith v. State, 698 So. 2d 189, 214 (Ala. Crim. App. 1996)).

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We reverse the circuit court's judgment and remand this case for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.