

IN THE DISTRICT COURT IN AND FOR MUSCOGEE (CREEK) NATION
OKMULGEE DIVISION

SUPREME COURT
FILED

MUSCOGEE (CREEK) NATION,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 ZACHARY DELMAR PADDLETY,)
)
 Defendant/Appellee.)

OCT 13 2023

CONNIE DEARMAN
MUSCOGEE (CREEK) NATION
COURT CLERK

LM

Case No.: CF-2022-1333

SC-2023-09

PADDLETY'S RESPONSE TO NATION'S APPEAL

COMES NOW, the Zachary Delmar Paddlety (hereinafter "Mr. Paddlety"), by and through his attorney of record, Carla R. Stinnett, Esq. of STINNETT LAW, and in response to the Nation's appeal, states the following:

This Court is asked to review the trial court's findings on a Motion for Immunity and Brief in Support pursuant to the Constitution of the Muscogee (Creek) Nation, the Oklahoma Constitution, the United States Constitution, 21 O.S. § 1289.25 and *McNeely v. State*, 2018 OK CR 18, whereby the trial court judge dismissed this case on August 8, 2023.

It is within the sound discretion of the Judge presiding over the District Court to evaluate the facts using logic and reason. The Honorable Judge Lisa Otipoby was in the best position to evaluate the Defendant's Motion for Immunity, arrive at the proper conclusion regarding veracity and the ultimate disposition of the Defendant's Immunity claim. The Trial Court's Order should be affirmed.

STATEMENT OF FACTS

1. Mr. Paddlety was charged in this matter by *Amended Criminal Complaint and Information* filed October 1, 2023. The *Information* alleged Defendant committed: (Count 1)

Unlawful Use of a Dangerous Weapon. This count was based on alleged circumstances that took place on or about July 20, 2022.

2. Everyone agrees that Ms. Autumn Pohlschneider brought Mr. Jacky Plotner and Mr. Clay Pohlschneider with her to the apartment she shared with Mr. Paddlety on or about July 20, 2022. Ms. Pohlschneider told police that they were there to gather some of her belongings and she had a key to the apartment. It is undisputed that Mr. Plotner and Mr. Pohlschneider came into the apartment where Mr. Paddlety was sitting on the couch with Ms. Izabel Gibson.

3. Mr. Plotner stated that he advised the police that when he entered the residence, he asked Mr. Paddlety where the AR was located. The Court heard evidence concerning the events that followed. After hearing that evidence, the Court ruled that Mr. Paddlety was immune from prosecution pursuant to Oklahoma's "Stand your Ground" laws.

4. The Oklahoma Legislature has established that "citizens of the State of Oklahoma have a right to expect absolute safety within their own homes" and that such persons have the right to use deadly force against an intruder if the "person who uses such force knew or had reason to believe that an unlawful and forcible entry had occurred." 21 O.S. § 1289.25. (Statute attached at Exhibit "A.")

5. Article II, § 2 of the Constitution of the Muscogee (Creek) Nation provides "This Constitution shall not abridge the rights and privileges of individual citizens of the Muscogee (Creek) Nation enjoyed as citizens of the State of Oklahoma and of the United States of America."

6. In State Court, the District Court makes the determination on immunity pursuant to 21 O.S. § 1289.25. *State v. Ramos*, Nos. S-2013-509 & S-2013-510, slip op. at 9-10 (Okl. Cr. June 9, 2015) (not for publication). Although the *McNeely* Court judicially

legislated that "Stand Your Ground" is a *conditional* immunity, it is still an *immunity from prosecution* no less. See *McNeely v. State*, 2018 OK CR 18,, 7,422 P. 3d 1272 (emphasis added). (Case attached at Exhibit "B".) The MCN District Court made the determination of immunity in Tribal Court, just as a State District Court would have done.

7. Although Mr. Paddlety would have, according to the MCN Attorney General, presumably been able to present his immunity/defense to the jury, they object to the immunity. The Oklahoma Legislature specifically and unequivocally set forth the parameters for trial courts to use in granting the immunity. Even the *McNeely* Court agrees. "The pivotal determination of whether Stand Your Ground applies to any given scenario requires judicial application of the law to the specific facts at hand." *Id.* at 2018 OK CR 18, ¶7, 422 P. 3d 1272. Mr. Paddlety asked the Trial Court to look at the facts by way of an immunity hearing, apply the law and make a specific finding on immunity in this instance with specific conclusions of facts and law set forth herein. The Court did just that and upon that determination, Mr. Paddlety's case was dismissed and it was found he was acting within his rights as an Oklahoma citizen.

8. The Nation filed an appeal in this case August 17, 2023, and filed their Appeal Brief on September 15, 2023 which reiterated their argument that the Nation's affirmative defense option makes "Stand Your Ground" unnecessary.

9. The Nation does not argue the judge was wrong in her determination immunity applied, but that the immunity is not available to an Indian Defendant being prosecuted in Tribal Court. They rely on *Ade v. Muscogee (Creek) Nation*, 3 MVS L Rep 152.

ARGUMENT AND AUTHORITY

I. The case cited by the Nation¹ has no application to the case at bar.

The Nation's entire argument rests on its citation to *Ade v. Muscogee (Creek) Nation*, 3 MVS L Rep 152 which, it says, holds that no Oklahoma statutes are applicable in our court system, unless, expressly made applicable by law of the M(C)N and duly enacted by the National Council. The first distinction is that the cited case is a civil case dealing with summary judgment. Criminal cases are different, impact significantly greater rights of freedom and are also subject to the Indian Civil Rights Act. *See* 25 U.S.C. §§1301 et. seq. Further, this is a broad assertion lifted from within the case without much analysis for comparison.

Finally, a Constitutional provision, such as the one at issue herein protecting Mr. Paddlety's privileges and immunities as an Oklahoma citizen would trump any other case-law created rule. As is learned in the first weeks of a Constitutional law class, an Act repugnant to the Constitution is void. *See Marbury v. Madison*, 5 U.S. 137 (1803). Admittedly, this was a clash between the United States Constitution and Congress, however, our MCN forefathers penned our MCN Constitution with the same diligence and fervor as did the American forefathers. Our tribal Constitutional rights are of the same import. This Court may look at our Constitution and rule, if it finds the caselaw cited applicable, that this would contravene privileges and immunities guaranteed by the MCN Constitution and hold that specific rule of law as void.

II. The Law is clear on "Stand Your Ground" would apply if this case were being prosecuted by the State of Oklahoma.

Title 21 O.S. § 1289.25(D) is applicable to the instant case. If the elements are enumerated, it starts with "A Person who is not engaged in an unlawful activity and who is attacked in any

¹ This case was not brought up or argued at the trial court level.

other place where he or she has a right to be.” The evidence is undisputed that Mr. Paddlety was sitting on the couch in his home.

The nature of the right is that the homeowner “[h]as no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force.” Mr. Paddlety had no duty to retreat and could have used deadly force in this instance. All he is charged with is pointing a weapon, not even firing, much less using deadly force.

The standard for use of the right is whether “...he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.” *Id.* It is completely reasonable to believe an adult male walking into your home through a locked door would be there to inflict great bodily harm or commit a forcible felony.

III. The Complaining witness entered by “force” and therefore an unlawful act is presumed.

Title 21 O.S. § 1289.25(E) provides that a person who unlawfully and by force enters... a residence is presumed to be doing so with the intent to commit an unlawful act involving force or violence. See *Id.* A person who uses the force authorized by this statute is immune from prosecution for use of such force. (See 21 O.S. § 1289.25(F).

Title 21 O.S. § 1289.25 and its companion jury instruction are devoid of a definition for forcibly for the § (E) presumption. If a statute does not have a definition, we must first look to the common and ordinary meaning. See 25 O.S. § 1. The verb force is defined in the Merriam-Webster Dictionary as: (1): to do violence to especially; (2): to compel by physical, moral, or intellectual means; (3): to make or cause especially through natural or logical necessity *forced* to admit my error the last minute goal *forced* overtime; (4a): to press, drive, pass, or effect against resistance or inertia force your way through; (4b): to impose or thrust urgently, importunately, or inexorably

force unwanted attentions on a coworker; (5): to achieve or win by strength in struggle or violence: such as to win one's way into force a castle *forced* the mountain passes or to break open or through force a lock; (6a): to raise or accelerate to the utmost *forcing* the pace (b): to produce only with unnatural or unwilling effort forced a smile (c): to wrench, strain, or use (language) with marked unnaturalness and lack of ease. Although somewhat instructive, these definitions would not be a good application in the criminal law context.

Rules of statutory construction require criminal statutes be construed strictly against the State and liberally in favor of the accused. *Fenimore*, 2003 OK CR 20, ¶5, 78 P.3d at 551; *State v. Due Hong Pham Tran*, 2007 OK CR 39, ¶8, 172 P.3d 199, 200. Also, the Court must keep in mind the fundamental rule of statutory construction—to ascertain and give effect to the intention of the Legislature as expressed in the statute. *State v. Anderson*, 1998 OK CR 67, ¶3, 972 P.2d 32, 33; *Thomas v. State*, 404 P.2d 71, 73 (Okl.Cr.1965). To ascertain the intention of the Legislature in the enactment of a statute, the court may look to each part of the same, to other statutes upon the same or relative subjects, to the evils and mischiefs to be remedied, and to the natural or absurd consequences of any particular interpretation. *Id.* See also *Lozoya v. State*, 932 P.2d 22, 29 (Okl.Cr.1996). A statute should be given a construction according to the fair import of its words taken in their usual sense, in connection with the context, and with reference to the purpose of the provision. *Wallace v. State*, 910 P.2d 1084, 1086 (Okl.Cr.1996). It is the text of the statute which gives notice to the citizen of the prohibited conduct subject to prosecution and the scope of conduct which is allowable to defend against prohibited conduct committed against a person. *State v. Anderson*, 1998 OK CR 67, ¶3, 972 P.2d 32, 33.

In *Eizember v. State*, Eizember complained of various issues related to purported ineffective assistance of counsel. See *Eizember v. State*, 2007 OK CR 29, 164 P. 3d 208. He

basically wanted to argue that the deceased provoked his actions to get a Heat of Passion Manslaughter instruction. *See Eizember*, 2007 OK CR 29, ¶160 164 P. 3d 208. The Court, in affirming the denial, states that the uncontroverted evidence shows "[Eizember] was a burglar and home invader in the deceased's residence..." and "Under 21 O.S. 1289.25 (B), [the deceased] was justified in using any degree of physical force...against [Eizember] who had made unlawful entry into his home." *Eizember*, 2007 OK CR 29, ¶165 164 P. 3d 208. The Court of Criminal Appeals specifically used the word *burglar* in describing the legal classification of Eizember. It is not such a stretch--absent a specific statutory definition to the contrary--to look at this use of the word and the definitions related to same to find that burglary definitions can be instructive in the analysis herein.

Oklahoma law already broadly recognizes the type of "force" used by assailants in other contexts. *See for discussion*, 21 O.S. § 111 (defining the term "force" to mean "any force, no matter how slight, necessary to accomplish the act without the consent of the victim. The force necessary to constitute an element need not be actual physical force since fear, fright or coercion may take the place of actual physical force."); in burglary statutes, "breaking" means "[a]ny physical force, no matter how slight, satisfies the "breaking" element of burglary in the second degree. *Luker v. State*, 1976 OK CR 135, ¶9, 552 P.2d 715, 718; *State v. 1997 GMC SKI Pickup*, 2011 OK CIV APP 41, ¶6, 250 P.3d 913, 915; for robbery, "the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking," 21 O.S § 792, "the degree of force employed is immaterial." 21 O.S § 793; additionally, for "forcible entry and detainer" the longheld definition of the Oklahoma Supreme Court holds that "[t]o constitute 'force' within forcible entry and detainer act[,] actual violence is not necessary, and one taking possession of realty during absence and without consent of one in quiet possession, and refusing

to surrender premises, is guilty of forcible entry and detainer. *Casey v. Kitchens*, 1917 OK 524, 66 Okla. 169, 168 P. 812,812.

It would work an absolute injustice and be contrary to the spirit and purpose of the Stand Your Ground Law to require a more narrow definition of "forcibly." One could imagine a scenario wherein a person comes into a dwelling at night while the occupants are asleep by merely opening an unlocked back door. Under that standard, the sleeping homeowner would not be permitted to use deadly force against that intruder because the intruder did not forcibly come into the home. This could not be the law. There is no finding or statement as to the standard or definition the court did use for the interpretation/definition of forcible in this context. Defense counsel asks this Court to articulate its basis and definition for the term forcible in this context.

IV. The Defendant must prove his right to immunity at the immunity hearing to the preponderance standard.

In *Ramos v. State*, S-2013-509, S-2013-510, the Oklahoma Court of Criminal Appeals adopted Colorado's burden of proof for Stand Your Ground cases found in *People v. Guenther*, 740 P.2d 976 (Colo. I 987). That standard requires a Petitioner to prove their immunity by a preponderance of the evidence. *Ramos v. State*, S-2013-509, S-2013-510, P. 9 as well as footnote seven. *See also Little v. State*, 111 So. 3d 214, 218 (Fla. Dist. Ct. App. 2013) (*quoting Horn v. State*, 17 So.3d 836, 839 (Fla. 2d DCA 2009)) ("A defendant must establish entitlement to immunity under the Stand Your Ground law by a preponderance of the evidence.").

That standard requires a "more probable than not" finding. *Pickens v. State*, 2005 OK CR 27, ¶39, 126 P.3d 612, 621. Previous courts describe this low burden. *See Queen v. State*, 35 Okl.Cr. 412, 250 P. 935 (1925) ("a preponderance of the evidence has been defined by this Court to mean simply the greater weight of evidence"); *Peyton v. McCaslin*, Okl., 417 P.2d 316 ("to the mind of the trier of fact or the seeker of the truth, seems most convincing and more probably true");

finally see Midland Valley R. Co. v. Barnes, 1933 OK 26, 162 Okla. 44, 18 P.2d 1089, 1091 ("Their minds may not be at rest. They may not be freed from doubt, uncertainty, and suspense. But still the jury may recognize that there is a preponderance of evidence, and on that they may base their verdict"). It is rare that the burden is lowered in criminal cases. But the clear pronouncement of the Court of Criminal Appeals is that the Defendant has the burden to prove he is immune and he must only do this by a preponderance of the evidence.

CONCLUSION

It cannot be true that an Indian Defendant is not allowed to defend himself in his home, as he would if he were non-Indian. The Trial Court did not err and this decision should be affirmed. Based on the facts and circumstances, as discussed above, the Court was well within its discretion to sustain Mr. Paddlety's Motion for Immunity without further argument from the Nation.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2023, a true and complete copy of the above and foregoing *Defendant's Motion for Immunity and Brief in Support* was served by being deposited in the U.S. mail, with proper postage affixed thereon, and/or hand-delivered, via licensed process server to the following:

M(C)N Attorney General's Office
P.O. Box 580
Okmulgee, OK 74447

Zachary D. Paddlety
Defendant



Carla R. Stinnett, *Attorney for Defendant*