

CASE NO. 15-CR-2214

JEFFERSON CIRCUIT COURT
DIVISION THREE
JUDGE MITCH PERRY

COMMONWEALTH OF KENTUCKY

PLAINTIFF

v.

**REPLY IN SUPPORT OF MOTION TO
DISMISS PROSECUTION**

DEONTAE DARION YARNELL

DEFENDANT

A homeowner’s “use of deadly physical force ... upon another person is justifiable” when the homeowner is defending himself, or another person, or his property “under those circumstances permitted pursuant to KRS 503.055,” the statute that codifies Kentucky’s longstanding “castle doctrine.” *See* KRS 503.050(2) (self defense), 503.070(2)(a) (defense of others), 503.080(2)(b) (defense of property). As relevant in our case, the castle doctrine allows “defensive force that is intended or likely to cause death or great bodily harm” to be directed against a wrongdoer who “had unlawfully and forcibly entered a ... residence,” provided the person using the deadly force “knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.” KRS 503.055(1). In such cases, the law instructs that the homeowner “has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believes it is

necessary” to prevent death, serious injury, or the commission of a forcible felony. KRE 503.055(3). If the wrongdoer is killed under such circumstances, the person who used the deadly force “is immune from criminal prosecution ... for the use of such force....” KRS 503.085(1).

Mr. Yarnell’s motion asks this Court to grant him immunity from prosecution for the death of Deandre Murphy. “[U]pon proper request,” the Supreme Court said in a recent case, “the trial court must make a pre-trial determination of whether the defendant acted in self-defense, and if so, dismiss the charge under the statutorily granted immunity.” *Commonwealth v. Hasch*, 421 S.W.3d 349, 363 (Ky. 2013). The legal question is whether, considering all of the circumstances, the Commonwealth can establish “probable cause to conclude that the force used was not legally justified.” *Rodgers v. Commonwealth*, 285 S.W.3d 740, 754-755 (Ky. 2009).

The Commonwealth concedes that the victim, Mr. Murphy, was one of two men who broke into Mr. Yarnell’s home, and that Mr. Yarnell caught him in the act of crawling out a basement window. (See Commonwealth’s Resp. at pg. 3.) The prosecution “does not dispute” that “there could have been some physical contact” between Mr. Yarnell and Mr. Murphy. (*Ibid.*) Mr. Murphy or his accomplice dropped a gun just outside Mr. Yarnell’s house. Mr. Murphy ran to join his accomplice, and Mr. Yarnell followed

Mr. Murphy, remaining at all times in close proximity to both burglars. After the shooting, Mr. Yarnell cooperated with police investigators and spoke willingly about the incident. Law enforcement officers have no eyewitness to the incident other than Mr. Yarnell.

The Commonwealth contends that “[t]here was no threat of deadly force against” Mr. Yarnell because he “chased after” Mr. Murphy, who, according to the Commonwealth, “was retreating.” (Resp. at pg. 4.) The Commonwealth seems to argue that, as a matter of law, a person cannot pursue a wrongdoer in the course of defending himself against that wrongdoer; the Commonwealth seems also to assume that any time a wrongdoer attempts to put distance between himself and the victim, the wrongdoer is “retreating.” These positions are not correct in either fact or law.

In a fight, both parties maneuver to gain advantage; a step away from the opponent is not a “retreat,” but a precursor to launching a new attack from a superior position. Kentucky’s high court recognized this fact in a very early decision discussing the principle of self defense: “[T]he first escape from threatened assassination by a determined and persevering enemy might not, and probably would not, secure the ultimate safety of the victim.” *Young v. Commonwealth*, 69 Ky. 312, 320 (1869). “The law of self-defense is in such a case more comprehensive, conservative, and

assuring,” wrote the Court: “if appellant had sufficient reason to comprehend, and did actually comprehend, ... that he was in continual danger of losing his life or suffering great bodily harm from [the wrongdoer], and that if he returned to his house the attack would be renewed upon him, he had a right to pursue his enemy until he might reasonably believe he was secure from danger.” *Ibid.*

“[A] retreat is not necessarily an abandonment,” wrote the Court a few decades later. *Hellard v. Commonwealth*, 84 S.W. 329, 329 (Ky. 1905). Rather, the act of retreat “may be only the falling back on a better position, or for strategic reasons, with intention to continue the battle when the advantage warranted it.” *Ibid.* “In such case an assailant who has wrongfully begun a fight cannot disarm his adversary of his legal right to pursue his own advantage till his safety is assured.” *Ibid.* “[C]hanging position alone may not at all indicate that there is to be a cessation of hostilities,” the Court continued: “The person who has been assaulted, and who under stress of necessity, must act quickly and certainly, ought not to be subjected to the further hazard by his wrongful adversary of having to guess correctly whether a retreating movement is to better the latter's position in the fight or is an abandonment of it.” *Ibid.* Thus the rule: “He who creates appearances of necessity for action should bear the burden of relieving the situation of its threatening aspect by appearances equally reasonable in their

assurance,” *ibid.* – in other words, to be considered in law an “abandonment,” the wrongdoer’s act must clearly communicate that he has surrendered. *Id.* at 329-330.

Other states with similar self defense doctrines recognize that in the course of defending oneself, a person has a “right to pursue” the wrongdoer. In Texas, for instance, it is the law that “[i]f, in the exercise of a right of self-defense, it becomes necessary that one assailed pursue his adversary, he may lawfully do so as long as, for the protection of his own life, the necessity continues.” *Taylor v. State*, 947 S.W.2d 698, 705 (Tex. App. 1997). The reality recognized by the rule is that a wrongdoer’s movement away may well be the act of “retreating to a vantage point from which to renew the attack....” *Ibid.*

The evidence does not establish probable cause that Mr. Yarnell acted in anything other than self defense when he pursued the men who burglarized his home. He is accordingly immune from prosecution, and the Court should dismiss the indictment with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that on September 21, 2015, a true copy hereof was mailed to Jennifer Murzyn Yancey, Assistant Commonwealth's Attorney, 514 West Liberty Street, Louisville, Kentucky 40202.

J. Rob Eggert