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**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-001352-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE AUDRA J. ECKERLE, JUDGE  
ACTION NO. 15-CR-2519

WILLIAM SCOTT ALBRIGHT

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, JOHNSON AND D. LAMBERT, JUDGES.

LAMBERT, D., JUDGE: The Commonwealth appeals an order of the Jefferson Circuit Court dismissing the indictment against the Appellee, William Scott Albright, based on a finding of immunity pursuant to Kentucky Revised Statutes (KRS) 503.085. The question for this Court to resolve is whether the trial court properly ruled that probable cause existed to find that Albright lawfully acted in self-defense or in defense of others. Having reviewed the record, we conclude the

trial court had a substantial basis for its finding that probable cause supports the conclusion that Albright's use of force was fully justified. Consequently, we affirm.

## **I. FACTUAL AND PROCEDURAL HISTORY**

Albright had been charged with an assortment of charges stemming from a shooting which resulted in the death of Cameron Pearson and the serious injury of Kyle Pearson, including murder and assault in the first degree.

Prior to the July 8, 2015 shooting, Kyle Pearson had stolen a pistol from his brother, Cameron. Kyle had a history of abusing controlled substances, and his family feared he had relapsed. Seeking to reclaim the gun, Cameron had their sister, Amanda Waits, contact Kyle to set up a meeting with a promise to provide him with money and a key to a utility box from the company where Amanda's husband, Alton Waits, worked. They had planned to take the gun from him at this meeting. Kyle instructed her to meet him behind a convenience store in a shopping center on Valley Station Road.

Amanda drove to the location at the appointed hour, with Cameron and Alton in the car with her. As Kyle approached, he saw Cameron in the vehicle, and bolted, prompting Cameron to exit the vehicle and chase him down. Cameron grew closer, and Kyle produced the weapon, waving it around and pointing it at Cameron. When Cameron demanded the weapon, Kyle fired it at his feet and threatened to shoot Cameron or anyone else who approached him. Cameron and Amanda continued in their attempts to talk Kyle down, which

prompted him to fire another round into the ground between them. The sound of the gunshots drew the attention of several people in the area, including James Sumner and Albright, who owns a gun store located in the shopping center.

Albright asked Sumner for his handgun, and instructed him to call the police while Albright exited the store. Albright approached Kyle and Cameron with Sumner's pistol drawn, demanding that Kyle drop the gun, or he would shoot. Amanda pleaded with him not to shoot her brothers. Meanwhile, Kyle threatened to shoot himself, and pointed the gun at his own head. Cameron reached to disarm him, and a struggle ensued. During the struggle, the brothers rolled around on the ground, and several witnesses gave statements that the gun discharged in the general direction of Albright. Though not visible to Albright, the gun in Kyle's possession jammed as that round was discharged, rendering it incapable of firing again until cleared. Albright then opened fire, and continued firing until the brothers stopped moving.

Albright and Amanda administered first aid to her brothers. When police arrived, Albright surrendered his weapons to them and gave a statement. Cameron died in an ambulance being transported to the hospital, but Kyle survived his injuries. Statements from other eyewitnesses varied regarding the sequence of events, portraying Albright as both inserting himself into the situation and as preventing injuries to himself and others in the vicinity.

Following the indictment by the grand jury, the Commonwealth provided discovery to Albright. Having reviewed the witness statements, Albright

then moved to dismiss the indictment pursuant to the immunity provision of KRS 503.085. In a lengthy opinion which thoroughly recited the evidence, the trial court issued a finding that probable cause existed to believe that Albright was justified in his use of lethal force, entitling him to immunity from prosecution. Consequently, the trial court dismissed the indictment. This appeal followed.

## II. ANALYSIS

The proper standard of review on appeal is whether the trial court had a substantial basis for a finding of probable cause. *Commonwealth v. Lemons*, 437 S.W.3d 708, 715 (Ky. 2014). This necessitates an analysis of the law regarding self-defense and the defense of others.

Immunity from prosecution for defending oneself using deadly force is a statutory creation. KRS 503.085 provides that “[a] person who uses force as permitted in KRS 503.050, 503.055, 503.070, and 503.080 is justified in using such force and is immune from criminal prosecution[.]” KRS 503.085(1). The legislature intentionally set the evidentiary threshold for allowing cases to proceed very low, which reflects both the extraordinary nature of this type of immunity and the remedy of the dismissal of an indictment by a trial court. In determining whether a person appropriately used deadly force in self-defense, or the defense of others, the standard is whether “there is probable cause that the force that was used was unlawful.” KRS 503.085(2).

The Kentucky Supreme Court held in *Rodgers v. Commonwealth*, 285 S.W.3d 740, 754-55 (Ky. 2009), that KRS 503.085 is unique in that creates a new

authority for trial judges to dismiss indictments in instances where the evidence shows a lack of probable cause to find the use of force was unlawful. The *Rodgers* Court also noted that “in order for the prosecutor to bring charges or seek an indictment, there must be probable cause to conclude that the force used by the defendant was not fully justified under the controlling provision or provisions of KRS Chapter 503.” *Id.* at 754.

Kentucky courts use the “totality-of-the-circumstances” inquiry from *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) to determine if probable cause exists. By the admission of the Supreme Court of the United States, probable cause can be a nebulous concept. “Probable cause deals ‘with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act[.]’” *Gates* at 241 (quoting *Brinegar v. U.S.*, 338 U.S. 160, 175, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879 (1949)). Moreover, probable cause is a very low standard, “less than prima facie proof but more than mere suspicion.” *Baltimore v. Commonwealth*, 119 S.W.3d 532, 538 (Ky. App. 2003).

KRS 503.050(1) declares the use of physical force justified when “the defendant believes that such force is necessary to protect himself against the use or imminent use of unlawful physical force by the other person[.]” but subsection (2) limits the use of deadly force to circumstances where the defendant believes such force is necessary to protect against being killed, seriously physically injured, kidnapped, or raped. On the other hand, a defendant cannot claim self-protection

immunity if his belief in the necessity of the use of such force is unreasonable, or an innocent third party suffered harm. *Gribbins. v. Commonwealth*, 483 S.W.3d 370, 374 (Ky. 2016) (citing KRS 503.120)).

KRS 503.055 creates a presumption of a defendant's "reasonable fear of imminent peril of death or great bodily harm to himself or herself or another" where the person being defended against forcibly enters a dwelling, residence, or occupied vehicle, and also the person using defensive force "knew or had reason to believe that an unlawful and forcible entry . . . had occurred." KRS 503.055(1)(a) and (b). KRS 503.055 further provides that "a person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat" and is permitted to use deadly force to meet the perceived threat, but only if operating under a reasonable belief that such force is necessary to prevent death or great bodily harm to himself or others. KRS 503.055(3).

KRS 503.070 outlines the concept of using force in the protection of others. The law permits the use of force to protect a third party when the defendant believes such force is necessary to prevent the imminent use of unlawful force against the third party, but only if the third party would himself be permitted to act in self-defense. KRS 503.070(1)(a) and (b). However, when it comes to deadly force, the reasonability of the defendant's belief that deadly force is necessary must be examined using an objective standard; *i.e.* the circumstances as they actually existed, and not what the defendant thought them to be. KRS 503.070(2)(b).

KRS 503.080 pertains to the use of force to protect property. Because it is not germane to the facts presented here, we need not include it in our analysis.

The trial court did have a substantial basis from the facts to support its finding. The evidence shows that Albright was in a place he had a right to be, and thus had no duty to retreat. At the time Kyle fired the first shots, Albright was in his store. The evidence also shows that although Albright injected himself into the situation, he acted in a way that he believed protected himself and third parties from injury at the hands of the Kyle Pearson. One of the witnesses placed a 911 call describing Albright as coming out of a business with a gun already drawn. Albright's own statement indicated that Kyle and Cameron were not physically fighting over the gun at the exact moment he approached them, but they had struggled over it in the moments preceding Albright's approach. However, two different witnesses gave statements indicating that Kyle pointed his gun directly at Albright prior to Cameron's grabbing for it. During their struggle, at least one shot rang out in Albright's direction.

### **III. CONCLUSION**

Taking the totality of the circumstances into account, we cannot conclude that the evidence does not reflect probable cause to show Albright's actions were fully justified. Though the objective reasonableness of his belief that deadly force was necessary to protect third parties was questionable, the fact that Kyle Pearson pointed the weapon at Albright prior to the struggle, and that a shot was fired in his direction during the struggle are sufficient to create probable cause

as to self-defense. Albright is entitled to immunity, and the trial court properly dismissed the indictment. We affirm.

ALL CONCUR.

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