

**D. JESSE SMITH
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**IN THE SUPREME COURT OF THE
STATE OF ARIZONA**

ARANZI RAE JON WILLIS,)	
)	SUPREME COURT NO.
PETITIONER,)	
)	NO. 2CA-SA-2021-0031
vs.)	
)	(PIMA COUNTY SUPERIOR COURT
THE HONORABLE JUDGE)	CASE NO. CR20202482-001)
BERNINI,)	
)	
RESPONDENT,)	
AND)	PETITION FOR REVIEW
)	
THE STATE OF ARIZONA,)	
)	
REAL PARTY IN INTEREST,)	
_____)	

COMES NOW attorney for Petitioner ARANZI RAE JON WILLIS, and respectfully requests the Arizona Supreme Court grant the instant Petition for Review from the July 8, 2021 decision of the Court of Appeals (attached) declining review of Superior Court Judge's denial of motion for remand for reasons more fully

set forth in the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 28TH day July, 2021.

S/D. JESSE SMITH

Copy of the foregoing
delivered this date to:

Honorable Deborah Bernini
Pima County Superior Court
Respondent

Pima County Attorney
Attn: Mr. Kartchner

MEMORANDUM OF POINTS AND AUTHORITIES

A. JURISDICTION

Special Action jurisdiction is appropriate as there is no other equally plain, speedy or adequate remedy by appeal. A ruling on a challenge to a grand jury's finding is not reviewable on direct appeal. See *State v. Moody*, 208 Ariz. 424, (439-40) 94 P.3d 1119 (2004); *State v. Murray*, 184 Ariz. 9, 321, 906 P.2d 542, 565 (1995).

B. ISSUE DECIDED (OR NOT DECIDED) BY COURT OF APPEALS

Whether in denying the motion for remand respondent failed to exercise discretion which she had a duty to exercise and/or made a determination that was arbitrary and capricious or was an abuse of discretion, where clearly exculpatory evidence relevant to justification was withheld from the Grand Jury?

C. MATERIAL FACTS

Defendant Aranzi Willis, Jr. and co-defendant Portillo are both charged with: Count 1, Attempted 2nd Degree Murder; Counts 2 and 3 Aggravated Assault (2 counts, deadly weapon and serious injury), Count 4 Discharging Firearm in City Limits. All four charges involve a fight with Kyle Kunz at 4:00 a.m. on March 15, 2020 in the parking lot of the Eden Strip Club on Speedway. A copy of the Grand Jury Transcript and copies of relevant pages of medical records and police reports

are in the Appendix.

It should be noted that the vote to charge Aranzi Willis was not unanimous; it was 12-3 on Count 1 and 11-4 on Counts 2-4, so legal errors with the Grand Jury presentation discussed infra cannot be deemed harmless.

When the two defendant's drove away after the confrontation (started by Mr. Kunz, discussed infra) Mr. Kunz was clearly still alive, kicking and screaming according to all witnesses who were already rendering aid to Mr. Kunz as defendant drove away. See police reports in exhibits in Appendix.

Mr. Kunz was clearly alive and kicking when he arrived at University Medical Center a few minutes later and medical records show he was "combative" with medical personnel.

That Mr. Kunz was clearly alive as Willis and Portillo left was not presented to the Grand Jury. As will be discussed infra, Attempted Second Degree Murder requires specific intent to kill.

SELF DEFENSE, THIRD PARTY DEFENSE

Det. Robinson told Grand Jurors:

Acquaintances of Portillo were interviewed. One witness said that Portillo admitted that he was at Eden with a male, and a male flicked a cigarette on him.

The male started the fight, and the male was on top of him, so he had to shoot the male. He then fired at the ground.

Another witness said Portillo claimed a friend shot the male.

(Transcript pg. 7)

Detective Robinson failed to tell the grand jurors the following which was vital to the issue of self defense and third party defense:

I. That Kyle Kunz was 211 pounds, literally twice the size of Mr. Portillo who weighs 115;

II. That Mr. Kunz was a very experienced wrestler;

III. That Mr. Kunz was drunk out of his mind (.251);

IV. That Kunz, who was on top of Portillo, was trying to get hold of Portillo's gun when Portillo shot him. (See medical record from UMC, statement of witness Tapia, that Portillo shot because Kunz was trying to get his gun, Kunz statement to Det. Robinson);

V. That Kunz was acting aggressively, still trying to fight with medical personnel.

All of this was left out; A.R.S. §13-405 and 13-406 (third party defense), does not allow the use of deadly physical force unless:

2. When and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.

13-405(2)

Prior to deliberations, a grand juror had a question for Det. Robinson about whether self defense applied:

JUROR COALTER: Did I understand that the defendant said that he was doing his – he made the first shot in self defense? I heard that in the beginning.

THE WITNESS: I didn't say that.

JUROR COALTER: I thought you said that Portillo claimed that it was in self defense that he shot back or something.

GRAND JURY FOREPERSON: They said the guy held him down to the ground.

THE WITNESS: Right. He said that he held him down on the ground and then he shot him. I didn't use the words you are using.

(Transcript pgs. 18-19)

Once again, all the evidence relevant to the use of deadly force discussed supra was left out, and neither of the two prosecutors in attendance made any attempt to correct the record.

Omission of the facts that the 211 pound, drunk and aggressive Kunz was on top of little Portillo and trying to take away his gun, left the Grand Jury with no option other than indictment.

D. REASONS TO GRANT REVIEW

There are no reported decisions from this Court or the Arizona Court of

Appeals setting forth the proper obligations of the prosecution when they are presenting a case to a grand jury that involves a Chapter 4 justification offense, as in the instant case.

§13-205. Affirmative defenses; justification; burden of proof

A. Except as otherwise provided by law, a defendant shall prove any affirmative defense raised by a preponderance of the evidence. Justification defenses under chapter 4 of this title are not affirmative defenses. Justification defenses describe conduct that, if not justified, would constitute an offense but, if justified, does not constitute criminal or wrongful conduct. If evidence of justification pursuant to chapter 4 of this title is presented by the defendant, the state must prove beyond a reasonable doubt that the defendant did not act with justification. (Emphasis added).

The instant grand jury proceedings was a blatant violation of long standing case law since the 1980's mandating that “clearly exculpatory evidence” in the State’s possession at the time of the ex-parte grand jury presentation be presented.

In *Crimmins v. Superior Court*, 137 Ariz. 39, 668 P.2d 882 (1983) the State Supreme Court ruled that clearly exculpatory evidence must be presented to the grand jury. *Bashir v. Pineda*, (App. 2011) 226 Ariz. 351 makes it clear that the State is obligated to do this even in the absence of a request.

In Arizona, a defendant is entitled to a self defense instruction if the record contains the “slightest evidence” that the defendant acted in self defense. See *State*

v. King, 225 Ariz. 87, 235 P.2d 240 (2010) quoting *State v. Lujan*, 136 Ariz. 102, 664 P.2d (1983).

As noted, there was overwhelming evidence that the shooting was motivated by self defense, and all of this was withheld.

ATTEMPTED SECOND DEGREE MURDER

In Arizona, all attempt crimes require that the defendant have the specific intent to achieve the completed crime, in this case the death of Mr. Kunz.

Our attempt statute, however, requires that a defendant have the intent to perform acts and to achieve a result which, if accomplished, would constitute the crime. A.R.S. §13-1001 (defining the offense of attempt); see also *State v. Kiles*, 175 Ariz. 358, 370, 857 P.2d 1212, 124 (1993) (“[A]ttempt is a specific intent crime and by definition involves *intentional* conduct.”); *State v. Curry*, 187 Ariz. 623, 627, 931 P.2d 1133, 1137 (App. 1996) (“[I]n order to commit an ‘attempt’ a defendant must have an intent to perform acts and to achieve a result which, if accomplished, would constitute the crime.”); *State v. Miller*, 123 Ariz. 491, 493, 600 P.2d 1123, 1125 (App. 1979) (“In order to sustain a conviction for attempt there must be proof of a specific intent on the defendant’s part to commit the substantive crime.”).

State v. Moore, 218 Ariz. 534, 189 P.3d 1107 (App. 2008)

As noted, the fact that Mr. Kunz was clearly still alive and receiving aid as Portillo and Willis departed the parking lot, clearly negated any specific intent to kill; it also tended to corroborate that defendants were acting for purposes of self

defense as their use of deadly force ended as soon as the threat ended.

CONCLUSION

The Court should accept jurisdiction and order a remand with instructions to present the withheld evidence that supports a justification defense.

RESPECTFULLY SUBMITTED this 28TH day July, 2021.

S/D. JESSE SMITH