

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

  
Rebecca Keaton  
Clerk of Superior Court Cobb County

STATE OF GEORGIA

vs.

STANNER RIVERA,

Defendant.

CASE NO. 17-9-3126-49

**ORDER ON DEFENDANT'S PLEA IN BAR OF IMMUNITY FROM PROSECUTION**

The above-matter having come before this Court on Defendant's Plea in Bar of Immunity from Prosecution, and this Court having heard evidence, testimony, and argument from the State and the Defendant, as well as the victim, finds as follows:

The charges in this case stem from a fight on March 11, 2016, at Café Istanbul, a restaurant and lounge in Kennesaw, Georgia. At the time of the incident in question, Defendant and the alleged victim, Kenny Rivera ("Kenny"), are brothers who, by their own admission, had a strained relationship. Defendant's wife was in some type of relationship with Kenny at the time of the incident, and Defendant and his wife were in the process of a divorce. On the night of March 11, 2016, Kenny and Defendant's wife were walking into Café Istanbul when they saw Defendant pulling into the parking lot. Kenny and Defendant's wife decided to go inside anyway. While the brothers mostly kept their distance from one another throughout the night, at some point Defendant approached his wife and asked if she had the paperwork finalizing their divorce. Defendant's wife went to the car and gave Defendant copies of the divorce paperwork.

Eventually, Defendant wanted to go outside and began to walk out of Café Istanbul. As Defendant neared the entrance, Kenny approached him and the two exchanged words.

During the exchange of words, Kenny punched Defendant in the face with great force without Defendant taking any aggressive action, raising his hands towards or touching Kenny prior to the punch. Kenny knocked Defendant against the hostess stand and into the wall and continued to punch Defendant in the body and face. Kenny was essentially on top of Defendant, punching Defendant repeatedly.<sup>1</sup> While he was being attacked, Defendant reached into his pocket and pulled out a box cutter, which he had from his job in a warehouse, and swung the box cutter at Kenny. Defendant cut Kenny severely in four places, but Kenny said he did not immediately realize he had been cut. Kenny was eventually pulled off of Defendant by the bouncer, Lee Plaza (“Plaza”), at which point Defendant ran out of Café Istanbul and left the scene.

Plaza and Jasmine Watley (“Watley”), the hostess at Café Istanbul, both testified that Kenny punched Defendant first and that Defendant made no aggressive action or raised his hands towards Kenny prior to being punched. They also testified that they had not seen Defendant with the box cutter at any point prior to or when the altercation began. They both testified, as did the Defendant, that Kenny continued punching Defendant repeatedly while Defendant was essentially pinned between Kenny and the hostess stand. The testimony of Plaza and Watley matched Defendant’s account of the events of that night and were credible. Kenny attempted to discredit Plaza and Watley by insinuating that they were friends with Defendant and were lying to assist him. After observing Plaza and Watley and hearing their testimony, the Court found Kenny’s speculation to be unfounded.

Defendant testified that while he was being attacked, he believed that Kenny would kill him if he could. Defendant based this on his previously strained relationship with Kenny and on threats and insults the two had recently exchanged on social media. In addition, on a previous encounter that night, Defendant asked to speak with Kenny, but Kenny suggested

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<sup>1</sup> The Court’s observation is that Kenny is significantly physically larger than Defendant.

they go outside and fight instead. Defendant also testified that he left the club once Kenny was pulled off him because he thought Kenny would still come after him.

The only evidence that contradicted the Defendant's Plea in Bar was Kenny's testimony and documents. Kenny's account of the events that night differed greatly from Defendant and the eyewitnesses. Kenny speculated that the Defendant and his "friends" from the club had hatched a plot to publicly murder Kenny for revenge. Kenny testified that Defendant cut him on the arm and abdomen while Plaza held him defenseless in a choke hold. Kenny even speculated that Defendant had cut him with not one but two box cutters simultaneously. None of this was plausible.

Kenny testified that he and Defendant's wife had been afraid of Defendant and tried to avoid being near or communicating with him, but this is belied by the evidence presented. Kenny testified that he knew Defendant went to Café Istanbul regularly and had previous encounters with him there, yet Kenny and Defendant's wife went to Café Istanbul that night anyway. Kenny testified that he saw Defendant outside Café Istanbul prior to entering the bar but still chose to stay there and enter the bar. Kenny also testified to posting antagonistic comments on Defendant's Facebook page prior to the night of the incident.

Kenny's credibility was further diminished due to his pending civil lawsuit against Café Istanbul and the utter implausibility of his theory of a premeditated plot to murder him in cold blood in a public place. These issues are just a few of the examples leading to the Court's skepticism regarding Kenny's testimony.

"A person is justified in ... using force against another when ... he reasonably believes that force is necessary to defend himself ... against such other's imminent use of unlawful force." O.C.G.A. § 16-3-21(a). When the defensive force a person uses is likely to cause

death or great bodily harm, such force is only justified if he reasonably believes it is necessary to prevent his own death or great bodily injury. *Id.* A person shall be immune from prosecution when they use force in accordance with O.C.G.A. § 16-3-21. O.C.G.A. § 16-3-24.2. A defendant must show he is entitled to O.C.G.A. § 16-3-24.2 immunity by a preponderance of the evidence. *Bunn v. State*, 284 Ga. 410 (2008).

The Court finds that Defendant has met his burden of showing by a preponderance of the evidence that he is entitled to immunity under O.C.G.A § 16-3-24.2. The evidence is clear that Kenny was the initial aggressor in the altercation as he struck Defendant with no physical provocation. In fact, Kenny admitted in his testimony that he threw the first punch. Not only was Kenny the initial aggressor, Kenny continued to punch Defendant while Kenny was on top of him and there was no indication that Kenny was going to stop swinging of his own volition. Given the bad feelings between the brothers and Kenny's previous threats to fight Defendant, it was reasonable for Defendant to believe that Kenny would kill him or do great harm to him if Defendant failed to act. The amount and type of force used was justified under the circumstances and upon Defendant's reasonable belief that Kenny would kill or seriously injure him in the attack.

Based upon the requirements of O.C.G.A § 16-3-24.2, Defendant's Plea in Bar of Immunity from Prosecution is hereby **GRANTED**.

SO ORDERED this 10<sup>th</sup> day of April, 2018.



HONORABLE C. LATAIN KELL  
Judge, Superior Court of Cobb County  
Cobb Judicial Circuit

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STATE OF GEORGIA

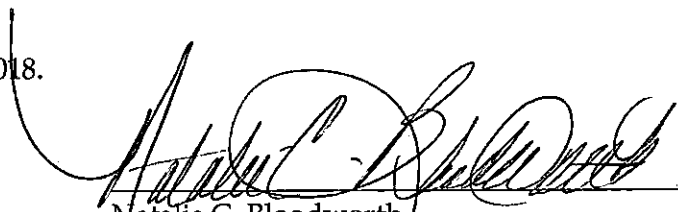
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing order (Criminal Action File No. 17-9-3126-49) upon all parties by sending a true and correct electronic copy addressed to the following:

Susan Treadaway, Esq.  
Cobb County District Attorney's Office  
susan.treadaway@cobbcounty.org

Grady A. Moore, Esq.  
moorelegalfirm@gmail.com

This 12<sup>th</sup> day of April, 2018.



Natalie C. Bloodworth  
for C. LaTain Kell, Judge  
Superior Court of Cobb County  
Cobb Judicial Circuit