NO. 335PA16 FIRST JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	)	
	)	From Pasquotank County
v.	)	No. 13-CRS-050004
	)	
GYRELL SHAVONTA LEE,	)	From the Court of Appeals
	)	No. COA 15-1352
Defendant-Appellant	)	

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BRIEF OF *AMICUS CURIAE* CATO INSTITUTE IN SUPPORT OF DEFENDANT-APPELLANT

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INTEREST OF *AMICUS CURIAE* AND INTRODUCTION

The Cato Institute is a nonpartisan policy research foundation established in 1977 and dedicated to the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies helps restore the principles of constitutional government that are the foundation of liberty. This case concerns Cato because it threatens the right of self-defense enshrined in the North Carolina and U.S. Constitutions, as well as a long common-law tradition.

While this case is largely concerned with subtle questions of statutory interpretation and the provision of jury instructions, it also implicates larger concerns about "stand your ground" laws and judicial enforcement of the Second Amendment more generally. The Court of Appeals' interpretation of N.C. Gen. Stat. 14-51.3's "no duty to retreat" clause as not requiring a specific jury instruction in cases like this one runs counter to longstanding canons of statutory interpretation and renders toothless North Carolina's democratically enacted "stand your ground" law. The lower court was also dangerously incorrect in its determination that Mr. Lee could not have acted in defense of his cousin being murdered in front of him because the assailant had stopped shooting—for mere seconds, in order to point his gun at Mr. Lee. The court thus usurped the jury's fact-finding power while misconstruing those facts so egregiously that illuminating the error almost seems unnecessary.

ARGUMENT

The Court of Appeals opinion incorrectly interprets state defensive-force laws in a way that has grave consequences for North Carolinians' statutory and common law right to stand their ground in the face of deadly force, consequences that may very well reverberate nationwide if this Court does not intervene.

I. The Lower Court Misconstrued the Plain Meaning of the Stand-Your-Ground Law and Unnecessarily Rendered the Provision Superfluous

The Court of Appeals, in its analysis of N.C. Gen. Stat. 14-51.2 and 14-51.3, violated multiple longstanding canons of statutory interpretation—primarily the plain-meaning rule and the rule against surplusage. The plain-meaning rule stands for the proposition that when statutory language is plain and unambiguous, that plain and unambiguous language controls. *See Carcieri v. Salazar*, 555 U.S. 379, 387 (2009); *State v. Davis*, 364 N.C. 297, 302, 698 S.E.2d 65, 68 (2010). The rule against surplusage stands for the proposition that "a statute must be construed, if possible, to give meaning and effect to all of its provisions," *HCA Crossroads Residential Ctrs. v. N.C. Dep't. of Human Resources*, 327 N.C. 573, 578, 398 S.E.2d 466, 470 (1990); *see also Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014), meaning that no part of the statute should be interpreted as being superfluous or redundant.

Generally, people are authorized to use deadly force against others if they reasonably believe that such force is necessary to protect themselves or third parties from imminent death or seriously bodily harm. North Carolina law on the allowed

justifications for the defensive use of force is split into two parts. The first discusses the defense of habitation and states that "[t]he lawful occupant of a home, motor vehicle or workplace is presumed to have a reasonable fear of imminent death or serious bodily harm to himself or herself or another" in the case of a burglary, granting what the Court of Appeals refers to as the unqualified "no duty to retreat" defense. N.C. Gen. Stat. 14-51.2(b). The second discusses the defense of persons:

> A person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:
>
> (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.
>
> (2) Under the circumstances permitted pursuant to G.S. 14-51.2.

N.C. Gen. Stat. 14-51.3(a).

The plain meaning that an ordinary person would take from this statute is that it is legal to stand your ground and kill an assailant in cases where you think that doing so is necessary to protect yourself or others from the deadly force of an assailant—with the caveats that you have to be reasonable in your appraisal of the situation and you cannot be somewhere it's illegal for you to be. The statute explicitly says that there is *no duty to retreat* as long as those conditions are met, and there is no reason to believe that "any place he or she has the lawful right to be" should not include the public street in front of one's own home.

There is no reason why the plain language of this clearly written statute cannot easily be applied to the facts of this case by a jury that has been fully informed of the statute's contents. Yet the trial court and the Court of Appeals refused to inform the jury accordingly, and the appellate opinion instead spends an inordinate amount of time discussing the largely irrelevant text of § 14-51.2, citing precedent purporting to show that Mr. Lee somehow did not have a "lawful right to be" on a public street outside his own home. The lower court also narrowed the meaning of "imminent" such that the handful of seconds it takes for an assailant to train his gun on a second target is apparently enough time to close the door on the justified use of defensive deadly force. Instead of reading and applying the statute as a reasonable person of ordinary intelligence would, the Court of Appeals muddied the waters by manufacturing ambiguity.

The Court of Appeals also erred when it interpreted § 14-51.3 in a way that makes its "no duty to retreat" language completely superfluous, violating the rule against surplusage. According to the court, because the no-retreat rule only applies when the defendant's actions are premised on a reasonable belief that deadly force is necessary to prevent death or serious injury, and the jury here determined that Mr. Lee either didn't have that belief or wasn't reasonable when it found him guilty of second-degree murder, the question of whether he had a duty to retreat was irrelevant

(and so the jury wasn't prejudiced by the instruction's omission). So even if omitting the instruction was an error, the court reasoned, no new trial was required.

The court erred in its reasoning because it failed to recognize that Mr. Lee's common-law and statutory right not to retreat in the face of deadly force *informs* the ultimate determination of whether he acted reasonably. It's possible that this error would have been insignificant had the prosecution not inserted the "duty to retreat" issue into the litigation. But the prosecution's use of Mr. Lee's failure to retreat as evidence of his guilty mind—and the trial court's subsequent failure to inform the jury that nobody who reasonably believes deadly force is necessary to prevent death or seriously bodily harm and is in a location where he is allowed to be has a duty to retreat—clearly must have had a prejudicial effect on the jury. The prosecution wrongly implied to the jury that only guilty people stand their ground when met with deadly aggression—that the only appropriate way to respond to a man repeatedly shooting one's cousin in the stomach is to run away!—and the court's failure to disabuse that notion constitutes plain error.

The Court of Appeals' reasoning is akin to an election official's refusal to put an eligible candidate on the ballot and then using the election results to justify the decision, pointing out that nobody voted for the candidate anyway. A system's outputs are only as good as its inputs; juries are incapable of reaching fully informed decisions if they're not being fully informed of the parties' relevant rights and duties.

II. The Lower Court's Decision Threatens to Undermine the Fundamental and Long-Recognized Right to Self-Defense

The outcome of this case is important not just because of the injustice done to Mr. Lee, but because allowing the Court of Appeals decision to stand would threaten effective invocation of no-retreat laws throughout the nation, and weaken a Second Amendment right to bear arms that the U.S. Supreme Court has only recently begun to reassert. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742 (2010). *Heller* and *McDonald* reinforced the idea that the right of self-defense has constitutional standing and is a fundamental to the concept of ordered liberty; that the right "to keep and bear arms" includes the right to use them under proper circumstances, including for self-defense and defense of another; and that handguns are recognized as the self-defense weapon of choice in America.

Despite what some opponents say, the no-retreat rule dovetails with the fundamental right to self-defense and has deep roots in traditional American law, first in the judicially fashioned common law and later in statute. At the U.S. Supreme Court, "stand your ground" dates back to the 1895 case of *Beard v. United States*, in which the great Justice John Harlan wrote for a unanimous Court that the victim

> was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground, and meet any attack upon him with a deadly weapon, in such a way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury.

158 U.S. 550, 564 (1895). Indeed, this Court has recognized the common-law right to stand your ground—even outside the home—on multiple occasions. *See State v. Johnson*, 184 N.C. 637, 644, 113 S.E. 617, 620 (1922) ("A man may repel force by force, in defense of his person . . . against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony, such as murder . . . [H]e is not obliged to retreat, but may pursue his adversary until he has secured himself from all danger; and if he kill him in so doing, it is called justifiable self-defense") (quoting 1 East, *Pleas of the Crown* (1803), pp 271–72). *See also State v. Jones*, 87 N.C. 547 (1882); *State v. Belvins,* 138 N.C. 668, 50 S.E. 763 (1905); *State v. Bryant,* 213 N.C. 752, 756, 197 S.E. 530, 532 (1938); *State v. Pearson,* 288 N.C. 34, 215 S.E.2d 598 (1975). And North Carolina's self-defense case law is hardly unique.

The rule that a person facing deadly force must always retreat if possible, which persists in a minority of states despite the recent proliferation of new no-retreat statutes, makes it hard to invoke self-defense even if you face an immediate threat of assault. "You could have run away" comes the common refrain, echoed by the prosecution in this very case. Among those who have lost out under that rule are domestic-violence victims who turned on their assailants. Feminists point out that "you could have run away" may not work so well given a stalker or vengeful ex.

Stand-your-ground laws are thus designed to clarify the law in order to protect the law-abiding citizen under attack by a criminal. It's slightly less controversial in

the case of a home: It's bad enough to have your home burglarized and your life threatened, but to have to hire a lawyer and fend off a misguided prosecutor or personal-injury lawyer defending an injured criminal was considered too much for many lawmakers. When you extend that doctrine to public spaces—as most states do—you get stand your ground, which when understood in the proper context is actually quite a modest, reasonable doctrine.

So while all of the majority of states that have affirmatively enacted some form of stand-your-ground law, including North Carolina, have only done so within the past 15 years, it is clear that § 14-51.3 and similar laws are not merely a transitory result of post-9/11 paranoia or meaningless platitudes with no real legal effect. Instead, they codify longstanding practices that have long been a fundamental component of U.S. common law—including in states that didn't codify the right until more recently. They are rational and intrinsically American responses to the injustice that tends to result from prosecuting for murder people who did nothing except defend themselves against a deadly attack. By rendering § 14-51.3's no-duty-to-retreat language toothless, the Court of Appeals opinion rejects that measured decision made by the people of North Carolina and their elected representatives and threatens to prop up the attempts of other courts who wish to do the same thing to similarly worded statutes in other states.

CONCLUSION

Straightforward judicial interpretation and the correct application of common sense and longstanding canons of construction should have resulted in the Court of Appeals' ruling in favor of the Defendant-Appellant. In light of the clearly prejudicial effect of that court's interpretation of North Carolina's stand-your-ground law on Mr. Lee—and the corrosive effect that interpretation will likely have on the right to self-defense throughout the country—this Court should reverse the decision below.

This the 16th day of May, 2017.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Motion by the Cato Institute For Leave to File *Amicus Curiae Brief*** was served upon all parties to this action by mailing via First Class U.S. Mail a copy thereof to their counsel of record at the address indicated below at this date.

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This the 16th day of May, 2017.

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