



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**WILLIS v. HON. BERNINI
CR-21-0258-PR
2 CA-SA 2021-0031 (Order)**

PARTIES:

Petitioner: Aranzi Rae Jon Willis

Respondent: The State of Arizona

Amici curiae: Arizona Attorneys for Criminal Justice; Maricopa County Attorney's Office

FACTS:

The following facts were presented by a detective at the grand jury proceeding in this case. Police responded to shots fired at an exotic club the morning of March 15, 2020. When they arrived, the victim, who survived, was lying on the ground with several gunshot wounds to his torso and one to his head. No firearm or any type of weapon was found on his person.

A witness reported hearing gunshots and capturing a video of a blue car with a custom paint job leaving the scene, which showed the car's license plate. Police later determined the car was associated with a man named Terrazas. Surveillance footage confirmed Terrazas entered the club with Portillo, Willis' co-defendant. Police also found a cell phone at the scene that they later determined belonged to Portillo and that implicated him in an unrelated robbery.

Police interviewed Portillo's acquaintances. One acquaintance (who the detective did not identify) said that Portillo admitted he was at the club, and a male flicked a cigarette on him. According to this acquaintance, Portillo also said the male began a fight and was on top of him, so he had to shoot the male. He then fired at the ground. Another acquaintance told police that Portillo claimed a friend shot the male and that Portillo had a black pistol.

Police examined the Facebook messages of Terrazas' sister. On the day of the shooting, the sister sent Willis a Facebook message about Terrazas getting into a fight with a male and asked him if they "caught a body." Willis replied, "that [expletive] was crazy," and that he heard the male scream after he "hit him." He then told the sister to "delete that." Willis also sent messages stating they should paint Terrazas' car because people probably saw them.

A further review of Willis' Facebook account revealed he sold a tan 9mm Glock the day of the shooting, which police later recovered. Ballistics testing showed his Glock fired the 9mm shell casings recovered at the scene. Police also determined Portillo sold a .45 caliber handgun in April, which was later recovered and matched to the .45 caliber shell casings recovered at the scene.

There was no other surveillance footage of the shooting, nor any footage of Willis at the club. There was also no other witness to the shooting, and the victim did not have much recollection of what happened beyond remembering there was an altercation and a tan Glock.

After these facts were presented, a juror asked, “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 detective responded, “I didn’t say that.” The juror then said, “I thought you said that Portillo claimed it was in self-defense that he shot back or something.” The detective replied, “They said the guy held him down to the ground.”

By a 12-3 vote, the grand jury indicted Willis on attempted second degree murder. By an 11-4 vote, it also indicted him on two counts of aggravated assault and one count of unlawful discharge of a firearm. After he was indicted, Willis filed a motion to remand his case to the grand jury for a redetermination of probable cause.

Willis argued that the State failed to present clearly exculpatory evidence relevant to a third-party justification defense, which allows the use of deadly force to protect another if the other reasonably appeared to be facing deadly force. This evidence included the fact that the victim was nearly twice the weight of Portillo, who the victim had attacked, the fact that the victim was an experienced wrestler, the fact that the victim was intoxicated, that he had a high blood alcohol concentration, and that he fought with medical personnel after the shooting.

Willis also argued the State failed to present the fact that one of the acquaintances the detective had referred to in the grand jury proceeding, who was Portillo’s girlfriend, also said that Portillo told her that the victim tried to grab his (Portillo’s) gun while the victim was on top of him before his friend reacted and shot the victim.

The trial court summarily denied the motion, finding the detective did not “exclude anything exculpatory.” Willis filed a special action in the court of appeals again arguing that the State failed to present clearly exculpatory evidence relevant to his third-party justification defense. After briefing, the court declined to accept jurisdiction. Willis filed a petition for review and the Court granted review of the following question.

ISSUE:

Is “clearly exculpatory evidence” defined by the standard set forth in *Herrell v. Sargeant*, 189 Ariz. 627 (1997) or *Trebus v. Davis*, 189 Ariz. 621, 623 (1997)?

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