

Randall M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,)
)
 v.) CRIMINAL ACTION NO: 20-CR-00433
)
 WILLIAM RODERICK BRYAN,)
 Defendant.)

PRE-HEARING MEMORANDUM OF LAW - CITIZENS ARREST

COMES NOW Defendant William Roderick “Roddie” Bryan, by and through undersigned counsel, and files this his “Pre-hearing Memorandum of Law - Citizens Arrest.” Defendant shows as follows:

Defendant Roddie Bryan has been indicted for various offenses arising out of the tragic shooting death of Ahmaud Arbery. Essentially, Mr. Bryan now stands charged by indictment with either conspiring, aiding and abetting or acting “as a party” to various crimes allegedly committed by Travis and Greg McMichael that resulted in the death of Arbery. The fatal shooting appears to have taken place as part of an attempt by the McMichael defendants to effectuate a citizens arrest of Ahmaud Arbery for the offense of criminal attempt to commit burglary. Roddie Bryan, armed with only a cell phone, took the video of this altercation from a safe distance (and immediately and voluntarily furnished said video to law enforcement officers on the scene). Upon information and belief, Mr. Bryan remains the only eyewitness to the tragic events of that day. For reasons that will never be known, after spending several minutes in flight Mr. Arbery suddenly turned and rushed the heavily armed McMichael family. Rather than retreat, or surrender his weapon and take the beating that would surely follow, it appears from the video – notwithstanding the obstructed view – that Travis McMichael attempted to defend himself as he was authorized to do under Georgia law.

The State of Georgia apparently contends that the circumstances did not authorize a citizens arrest, that Ahmaud Arbery was therefore justified in attacking Travis McMichael as the arrest itself was illegal, and that Travis McMichael was required by law to surrender his weapon and accept whatever beating or other physical punishment Ahmaud Arbery thought appropriate under the circumstances. The absurdity of the State's position becomes ever clearer as we look more closely at the applicable law.

Although the citizen arrest statute itself is not well worded, for the purpose of this case its meaning is reasonably clear: "The statute apparently authorizes a citizens arrest for a felony committed in the citizen's presence. Moreover, as Professor Kurtz points out [the leading authority in Georgia on substantive criminal law for many years], a private citizen may arrest on probable cause if the offense involved was a felony and the offender is escaping or attempting to escape." Daniel's Georgia Criminal Trial Practice, § 2-21, at 43 (2018 edition) (citations omitted).

In Georgia, the "probable cause" standard for a arrest is an objective but extremely low threshold. The question has at times been put this way: whether "at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [defendant] had committed or was committing an offense." Daniel's Georgia Criminal Trial Practice, § 2-11, at 22 (2018 edition) (citations omitted). Put somewhat differently, in the context of a preliminary hearing or commitment hearing, the question is "whether there is sufficient reason to suspect the guilt of the accused." Daniel's Georgia Criminal Trial Practice, § 11-4, at 608 (2018 edition) (citations omitted). It is respectfully submitted that the available evidence clearly established probable cause to believe that Ahmaud Arbery had committed the offense of criminal attempt to commit burglary.

Indeed, under Georgia law, there was, and is, sufficient evidence to establish not merely probable cause but proof beyond a reasonable doubt Mr. Arbery's commission of that offense. "A person commits the offense of criminal attempt when, with intent to commit a specific crime, he performs any act which constitutes a substantial step towards the commission of that crime." O.C.G.A. § 16-4-1. "A person commits the offense of burglary when, without authority and with the intent to commit a . . . theft therein, he enters the dwelling house of another . . . or enters . . . any other building . . . or any part thereof." O.C.G.A. § 16-4-1. "A house under construction which is so far completed as to be capable of providing shelter to people, animals or property constitutes a building under this statute." Weeks v. State, 274 Ga. App. 122, 124 (2005) (citation omitted). "The storing of valuable goods in a building 'may give rise to an inference of an intent to commit theft therein, particularly where no other motive is apparent for the entry.'" Id. Likewise, in Legg v. State, 204 Ga. App. 356-357 (1992), the Court concluded: "The question of intent to commit burglary is for the determination of the jury . . . as a general rule the State must, of necessity, rely on circumstantial evidence in proving intent . . . [and] [t]he presence of valuables inside the premises . . . could support an inference of the intent to steal particularly where no other motive is apparent." Id.

Georgia law is also clear that criminal intent may be presumed from flight. This principle applies with special force in an attempted burglary case. In Anthony v. State, 347 Ga. App. 807 (2012), another citizens arrest case in which the accused was chased and tackled by a neighbor before the police arrived, the accused offered several innocuous reasons to enter the subject premises. In finding the evidence sufficient to convict the Court noted that the accused "tried to flee" upon being seen by the neighbor. Id. Likewise, see Evans v. State, 148 Ga. App. 422 (1978), in which the court found that there was sufficient evidence to convict of attempted burglary when

the accused ran from the door of a grocery store when approached by a law enforcement officer. 148 Ga. App. at 425. See also Battle v. State, 178 Ga. App. 655 (1986) (evidence sufficient to support guilty verdict where accused ran from the scene after alarm sounded at the store).

Even if there was some legitimate question as to whether the McMichael family were authorized to conduct a citizen's arrest – on the theory that THEY somehow lacked sufficient knowledge or nexus to the commission of the crime – there remains the separate and equally troubling question as to whether Mr. Arbery was justified in turning on and attacking Travis McMichael. Unless Mr. Arbery's actions were justified then Travis McMichael was authorized under Georgia law to defend himself.

The relevant Georgia law is clear: "The law provides no right to resist a legal arrest." Cordis v. State, 236 Ga. 629, 631 (1999). The question as to Mr. Arbery, however, CANNOT BE what the McMichael defendants knew or did not know at the time of the incident. The question is objective as to what a reasonable person IN ARBERY'S POSITION would believe rather than the subjective inquiry by Mr. Arbery into what the McMichael's knew.

As the available evidence makes clear, objectively one can only conclude that Mr. Arbery was aware that he entered the subject residence on multiple occasions, that there were construction materials and other valuable things inside, that there was no purpose for his presence inside the residence that would be apparent to others, and that he ran from this location on several occasions. Mr. Arbery was also, objectively, aware that he was a convicted felon and that he was on probation for shoplifting such that there was ample reason for any objective observer to have reason to believe he was committing the offense of criminal attempt to commit burglary.

Accordingly, regardless of what the McMichael family knew or didn't know, Mr. Arbery knew that there existed probable cause for his arrest for a felony. Therefore, as a matter of law, Mr.

Arbery was not authorized to resist arrest when objectively speaking he knew that he was lawfully subject to arrest. It follows that Travis McMichael was authorized to defend himself against Mr. Arbery. It further follows that there is every reason to believe that all three defendants will be acquitted at trial. Indeed, one may reasonably anticipate a directed verdict in favor of all three at trial.

Submitted, this 14th day of July, 2020.

/s/ Kevin Gough
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CERTIFICATE OF SERVICE

COMES NOW Kevin Gough, attorney for the defendant, and hereby certifies that a copy of the foregoing document(s) have been served upon the District Attorney by email delivery this date.

This 14th day of July, 2020.

/s/ Kevin Gough