

**IN THE SUPERIOR COURT OF CAMDEN COUNTY**

SEP 26, 2019 03:37 PM

**STATE OF GEORGIA**

  
Joy Turner, Clerk  
Camden County, Georgia

STATE OF GEORGIA

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vs.

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CASE NO. 2018CR758

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ZECHARIAH PRESLEY,

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Defendant.

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**ORDER**

This matter is before the Court on Defendant's pretrial motion for immunity from prosecution based on justification. The matter came on for hearing on September 24, 2019, where Defendant appeared represented by Adrienne Browning, Esq., and the State appeared represented by Rocky Bridges, Esq. After consideration of the pleadings, the evidence and testimony presented, the arguments of counsel and the applicable law, the Court finds as follows:

Defendant Zechariah Presley was indicted by the Camden County Grand Jury for voluntary manslaughter, involuntary manslaughter and violation of oath by a public officer for the June 20, 2018, shooting death of Tony Marcel Green. At the time of the incident, Defendant Presley was a police officer for the City of Kingsland. Various law enforcement officers testified that they responded to a radio call from Presley needing assistance for what apparently began as a traffic

stop, but turned into a foot chase after two suspects, one of whom was Tony Green. It is difficult to ascertain Presley's exact location at first due to the garbled radio traffic, but it is clear Presley was involved in a foot chase. Presley's body camera recording shows Green jump out of the car and begin to run, then quickly return to the vehicle, grab an unidentified object, and take off running again. Presley is heard yelling, "I've got two running."

It was nighttime, very dark and difficult to distinguish exactly what was going on, but it is clear that Presley was chasing Green on foot, alerted Green that he was about to be tased and then attempted to tase Green, at which point the two got into a physical altercation and multiple shots were fired. Subsequently, Presley is heard yelling "keep your hands up," "stay still," and "I've got help coming." He is heard yelling his location over the radio multiple times and repeats "I need help, I need help." Green is seen laying on the ground not moving.

When officers arrive on the scene Presley is distraught. He complains repeatedly of his head hurting and asks the responding officer if he is okay. He has no injuries visible to the other officers. He is heard saying, among other things, that Green was on top of him pulling at his taser so he went to pull his gun. Then Presley is heard saying "he started taking off so I fired."<sup>1</sup> Green suffered multiple gun shot wounds with entrance and exit wounds to both his front and his back. He

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<sup>1</sup> See State's Exhibit 2.

ultimately died. No weapons were found on Green at the scene.

To avoid trial based on a justification defense presented at a pretrial immunity hearing, a defendant bears the burden of showing that he is entitled to immunity under O.C.G.A. § 16-3-24.2 by a preponderance of the evidence.<sup>2</sup> To meet this burden, a defendant must show that he was justified in using such force against another that would likely result in death or great bodily injury because he reasonably believed that such force was necessary to prevent death or great bodily injury to himself.<sup>3</sup>

Having considered the entirety of the evidence presented at hearing, the Court finds that Presley has not met his burden of proof for pretrial immunity to attach. While the evidence is uncontroverted that Green fled from Presley and the two ended up in some sort of physical altercation prior to shots being fired, and while it is clear from the body camera video that Presley was distraught and fearful during and after the incident; it is unrebutted at this stage of the proceedings that Green was “taking off” at the time Presley fired his weapon, and there was evidence that Green was found to have entrance wounds and exit wounds to both his front and his back, although the sequence of the shots is unknown. Moreover, Green had no weapon on him.

Based on the evidence presented, the Court finds Defendant has failed to

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<sup>2</sup> *Hornbuckle v. State*, 300 Ga. 750, 752 (2017) (citing *Bunn v. State*, 284 Ga. 410, 413 (2008)).

<sup>3</sup> O.C.G.A. § 16-3-21(a).

show by a preponderance of the evidence that he reasonably believed deadly force was necessary under the circumstances to prevent death or great bodily injury to himself. As such, Defendant's motion for pretrial immunity under O.C.G.A. §§ 16-3-21 and 16-3-24.2 is hereby **DENIED**.

**SO ORDERED**, this 26<sup>th</sup> day of September, 2019.

A handwritten signature in dark ink, appearing to read "Stephen G. Scarlett, Sr.", is written over a horizontal line.

**STEPHEN G. SCARLETT, SR.**  
**Chief Judge, Superior Courts**  
**Brunswick Judicial Circuit**