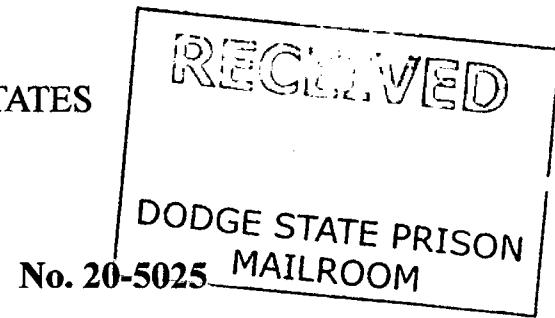


SUPREME COURT OF THE UNITED STATES

EDDIE MATTHEW AMOS,  
Petitioner,  
v.

TOMMY BOWEN,  
Respondent.



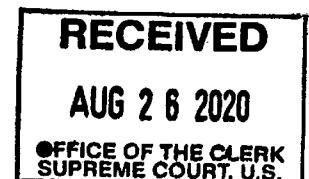
**SUBMISSION OF SUPPLEMENTAL LEGAL AUTHORITY**

Comes now Eddie M. Amos, the pro se Petitioner in the above-styled case, and hereby formally submits two (2) recent legal rulings made by the Georgia Supreme Court. Said rulings are directly relevant to Petitioner's pending PETITION FOR A WRIT OF CERTIORARI, which petition was filed on July 29, 2020, and placed on the docket July 13, 2020. The two (2) recent legal rulings made by the Georgia Supreme Court are attached hereto as Johnson v. State and State v. Remy. Both cases are essential reading for a fair and proper resolution of the instant certiorari petition by this Honorable Court, as the central holding of those cases are that: A person such as the petitioner, who is a convicted felon, cannot be denied the right of self-defense, despite the fact that the law forbids convicted felons from having or possessing a firearm.

DATE: 08- 13-2020

Respectfully submitted,

  
EDDIE MATTHEW AMOS  
#888637  
Dodge State Prison  
Chester, GA 31012-0276



In the Supreme Court of Georgia

Decided: February 28, 2020

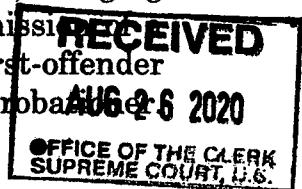
S19A1404. JOHNSON v. THE STATE.

BLACKWELL, Justice.

Frederick Johnson, Jr. is charged with murder and unlawful possession of a firearm by a felony first-offender probationer, both in connection with the fatal shooting of Tyrell Jordan in June 2016.<sup>1</sup> Johnson contends that he shot Jordan only to protect himself and that the shooting was a justified use of force in defense of self under OCGA § 16-3-21 (a). But because Johnson was a felony first-offender probationer generally forbidden to possess a firearm, the State asserts that he is categorically barred by OCGA § 16-3-21 (b) (2) from claiming that the shooting was a justified use of force in defense of

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<sup>1</sup> In August 2018, a Bibb County grand jury indicted Johnson, charging him with murder with malice aforethought, murder in the commission of a felony (aggravated assault and possession of a firearm by a felony first-offender probationer), and possession of a firearm by a felony first-offender probationer.



self. The State filed a motion in limine to bar Johnson from asserting his theory of justification at trial, and pursuant to OCGA § 16-3-24.2, Johnson filed a motion for pretrial immunity from prosecution for murder based on the same theory. Following an evidentiary hearing, the trial court granted the motion in limine and denied the motion for immunity, concluding as a matter of law that Johnson cannot claim that the shooting was a justified use of force in defense of self.<sup>2</sup> Johnson appeals,<sup>3</sup> and we reverse and remand for further proceedings consistent with this opinion.

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<sup>2</sup> No one disputes that Johnson was a felony first-offender probationer in June 2016. And for the purposes of this appeal, we accept that Johnson presented evidence at the hearing on his motion for immunity from which the trial court *could* find facts sufficient to establish that Johnson shot Jordan under a “[reasonable belief] that such force [was] necessary to prevent death or great bodily injury to himself.” OCGA § 16-3-21 (a). We do not mean to suggest, of course, that the trial court *should* make such findings. Whether such findings are warranted depends on assessments of credibility and the weight to be afforded to the evidence, assessments that are committed to the discretion of the trier of fact. To this point, the trial court has made no such assessments, having concluded that Johnson is barred as a matter of law from even claiming that the shooting was a justified use of force in defense of self because he was a felony first-offender probationer.

<sup>3</sup> At the urging of both Johnson and the State, the trial court certified its ruling for immediate review. Johnson timely filed an application for leave to file an interlocutory appeal, this Court granted the application, and this appeal followed. See OCGA § 5-6-34 (b).

“A person is justified in threatening or using force against another when and to the extent that he . . . reasonably believes that such threat or force is necessary to defend himself . . . against such other’s imminent use of unlawful force.” OCGA § 16-3-21 (a). The use of deadly force, however, is justified only by a reasonable belief that “such force is necessary to prevent death or great bodily injury.” Id. And no person may claim that a use of force was justified in defense of self if he “[i]s attempting to commit, committing, or fleeing after the commission or attempted commission of a felony.” OCGA § 16-3-21 (b) (2). Convicted felons and felony first-offender probationers are generally forbidden to possess firearms, and if a convicted felon or felony first-offender probationer unlawfully possesses a firearm, he commits a felony. See OCGA § 16-11-131 (b). It follows that the *unlawful* possession of a firearm by a convicted felon or felony first-offender probationer will preclude the felon or probationer from claiming that his use of the firearm in defense of self was justified under OCGA § 16-3-21 (a).

Consistent with the plain meaning of OCGA § 16-3-21 (b) (2),

we held in Woodard v. State, 296 Ga. 803, 814 (3) (b) (771 SE2d 362) (2015), that the felonious possession of a firearm by a convicted felon or felony first-offender probationer will preclude the felon or probationer from asserting that his use of the firearm in defense of self was justified.<sup>4</sup> See also Moore v. State, 306 Ga. 532, 535 (2) (d) (832 SE2d 384) (2019). But even under Woodard, if conduct that otherwise would be a felony is itself justified, it is no crime at all,

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<sup>4</sup> The Court has not always subscribed to this understanding of OCGA § 16-3-21 (b) (2). In Head v. State, 253 Ga. 429 (322 SE2d 228) (1984), three members of the Court suggested in a special concurrence—without any discussion of the relevant statutory text—that OCGA § 16-3-21 (b) (2) should not be understood to preclude a convicted felon from raising a justification defense under OCGA § 16-3-21 (a) simply because the felon was unlawfully in possession of a firearm:

[A] person who defends himself or herself against an aggressor's attack and who, without malice or intent, causes the aggressor's death in self-defense, should not nevertheless be guilty of felony murder on the basis that such person is guilty of possession (however momentary) of a firearm by a convicted felon. That is to say, in my view, a person should not be denied the right of self-defense because such person is a convicted felon.

253 Ga. at 432 (Hill, C.J., concurring), joined by Clarke and Smith, JJ. Seven years later, a majority of the Court fully endorsed that approach, holding in Heard v. State, 261 Ga. 262, 263 (3) (403 SE2d 438) (1991), that the preclusive bar of OCGA § 16-3-21 (b) (2) should be applied only “where it makes sense [to a majority of this Court] to do so.” Applying this “where it makes sense to do so” test in Heard, we said that “[i]t is both unfair and illogical to deny a defendant the defense of justification against a felony murder charge merely because of his status as a convicted felon in possession of a firearm.” *Id.* at 263 n.3 (3). But in Woodard, this Court overruled Heard. See 296 Ga. at 814 (3) (b).

and it does not trigger the preclusive bar of OCGA § 16-3-21 (b) (2). See Starks v. State, 304 Ga. 308, 312 (2) (818 SE2d 507) (2018) (“OCGA § 16-3-21 (b) (2) applies to all felonies and, although it does not completely eliminate the possibility of a justification defense to felony murder, such a defense requires the jury to find that the underlying felony was justified.”). See also Woodard, 296 Ga. at 814 n.10 (3) (b). The question presented in a case like this one, therefore, is not whether a convicted felon or felony first-offender probationer may claim that his use of a firearm was a justified use of force in defense of self when, at the time of its use, the felon or probationer was in unlawful possession of the firearm. Woodard makes clear that such a claim of justification is squarely precluded by OCGA § 16-3-21 (b) (2). Rather, the pertinent question is whether the possession of the firearm actually was unlawful—or instead was justified—at the moment of its use.

As for the circumstances that may justify the possession of a firearm by a convicted felon or felony first-offender probationer, Johnson points to the Safe Carry Protection Act of 2014, Ga. L. 2014,

p. 599, of which OCGA § 16-11-138 is a part.<sup>5</sup> Code Section 16-11-138 provides that “[d]efense of self or others, as contemplated by and provided for under [OCGA § 16-3-21], shall be an absolute defense to any violation under this part.” “This part”—referring to Title 16, Chapter 11, Article 4, Part 3 of the Code—is comprised of numerous statutes prohibiting the unlawful possession and carrying of certain firearms in certain places and by certain persons, including OCGA § 16-11-131, which forbids convicted felons and felony first-offender probationers to possess firearms.<sup>6</sup> Under OCGA § 16-11-138,

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<sup>5</sup> Prior to the enactment of the Safe Carry Protection Act, and in the absence of any statute specifically providing a justification defense for crimes involving the unlawful possession or carrying of firearms, this Court adopted a “sudden emergency” standard to identify the circumstances in which such possession or carrying would be lawful. See *Cauley v. State*, 260 Ga. 324, 325 (393 SE2d 246) (1990). Because the Safe Carry Protection Act applies in this case, and because we conclude that it is sufficient to resolve this appeal, we have no occasion to consider today the continuing viability (if any) of the “sudden emergency” standard. We note that Woodard did not address the “sudden emergency” standard or the Safe Carry Protection Act.

<sup>6</sup> Title 16, Chapter 11, Article 4, Part 3 now also includes statutes that prohibit the unlawful carrying of a handgun without a valid license to carry, OCGA § 16-11-126 (h); the unlawful carrying of a firearm in government buildings, courthouses, jails, prisons, places of worship, state mental health facilities, and polling places, OCGA § 16-11-127 (b); the unlawful possession of a firearm in and around schools, OCGA § 16-11-127.1 (b) (1); the unlawful possession of a firearm on the premises of a nuclear power facility, OCGA § 16-

Johnson says, circumstances sufficient to justify a threat or use of force in defense of self that would otherwise be unlawful also may be sufficient to justify the possession or carrying of a firearm that otherwise would violate Title 16, Chapter 11, Article 4, Part 3, including OCGA § 16-11-131.

As we have explained before, “[w]hen we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant.” Deal v. Coleman, 294 Ga. 170, 172 (1) (a) (751 SE2d 337) (2013) (citation and punctuation omitted). “To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language

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11-127.2 (a); the unlawful possession of a firearm in restricted access areas of commercial service airports, OCGA § 16-11-130.2 (a); the unlawful possession of a handgun by a person under the age of 18 years, OCGA § 16-11-132 (b); and the unlawful carrying of a handgun by a person with a valid license to carry but without proof of the license in his immediate possession, OCGA § 16-11-137 (a). In addition to these statutes that restrict the possession and carrying of firearms, Title 16, Chapter 11, Article 4, Part 3 also includes provisions that forbid the alteration or counterfeiting of a weapons carry license, OCGA § 16-11-129 (g), and the discharge of firearms by persons under the influence of alcohol or drugs, OCGA § 16-11-134.

would.” *Id.* at 172-173 (1) (a) (citations and punctuation omitted). “The common and customary usages of the words are important, but so is their context.” Zaldivar v. Prickett, 297 Ga. 589, 591 (1) (774 SE2d 688) (2015) (citation and punctuation omitted). “For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.” May v. State, 295 Ga. 388, 391-392 (761 SE2d 38) (2014) (citations omitted).

Read in its statutory context, the most natural and reasonable understanding of OCGA § 16-11-138 is the one that Johnson proposes. By its plain terms, OCGA § 16-11-138 affords “an absolute defense” to “any violation” of Title 16, Chapter 11, Article 4, Part 3. That “absolute defense” requires a showing of “[d]efense of self or others, as contemplated by and provided for under [OCGA § 16-3-21].” By its own terms, OCGA § 16-3-21 provides a justification defense, but only for crimes that involve “threatening or using force.” It offers no defense at all for crimes that merely consist of possessing

or carrying a firearm. See Wells v. State, 200 Ga. App. 104, 107 (407 SE2d 86) (1991) (Andrews, J., concurring). Accordingly, if OCGA § 16-11-138 were understood to apply only when OCGA § 16-3-21 applies by its own terms, it would be entirely unnecessary (because OCGA § 16-3-21 would already afford a defense of justification), and it would also appear almost entirely useless (because nearly all of the prohibitions in Title 16, Chapter 11, Article 4, Part 3 concern the possession or carrying of weapons, not the use of such weapons). The only sensible understanding of OCGA § 16-11-138 is that it effectively amends OCGA § 16-3-21 (a) so as to potentially justify not only threats or uses of force in the circumstances described in OCGA § 16-3-21 (a), but also the possession or carrying of a weapon in violation of Title 16, Chapter 11, Article 4, Part 3.

As we understand it, OCGA §§ 16-3-21 (a) and 16-11-138 in combination effectively provide this rule of law:

A person is justified in threatening or using force against another, *or in engaging in conduct that is otherwise prohibited under Title 16, Chapter 11, Article 4, Part 3 of the Code*, when and to the extent that he or she reasonably believes that such threat or force *or conduct*

*otherwise prohibited under Title 16, Chapter 11, Article 4, Part 3* is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force . . . .<sup>7</sup>

Here, if Johnson's possession of a firearm at the time of the shooting was justified under the rule of law produced by the combination of OCGA §§ 16-3-21 and 16-11-138, then it cannot be said that Johnson was "committing . . . a felony" when he shot Jordan, and the preclusive bar of OCGA § 16-3-21 (b) (2) would not apply. Accordingly, the trial court erred when it denied the motion for immunity and granted the motion in limine upon the rationale that

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<sup>7</sup> Understood in this way, OCGA § 16-11-138 affords a justification defense for the otherwise unlawful possession or carrying of a firearm only "when and to the extent" that the accused reasonably believes that such possession or carrying is necessary to defend himself. As such, when applied to, for instance, the possession of a firearm by a convicted felon or felony first-offender probationer, it would justify the possession only for the duration of the necessity. If a felon or probationer came into possession of a firearm prior to any necessity arising and continued to have possession after any necessity had dissipated, his possession both before and after the time of necessity would be felonious and prosecutable. The justification of possession "when and to the extent" he reasonably believed it necessary, however, would mean that the possession during the time of necessity would not be felonious, and if the firearm were used during the time of necessity, its possession would not trigger the preclusive bar of OCGA § 16-3-21 (b) (2) against a claim that the use of force itself was justified. In those circumstances, it could not be said that the accused was "committing" the felony of unlawful possession of a firearm by a convicted felon at the time of the use of force that he seeks to justify.

it employed.<sup>8</sup> The judgment of the trial court is reversed, and this case is remanded for further proceedings consistent with this opinion.<sup>9</sup>

Judgment reversed and case remanded. All the Justices concur.

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<sup>8</sup> With respect to the motion for immunity under OCGA § 16-3-24.2, we observe that pretrial immunity formerly was not available to persons who used a weapon that they carried or possessed in violation of Title 16, Chapter 11, Article 4, Part 3, even if they otherwise could show that the use of force was justified. But the Safe Carry Protection Act of 2014 amended OCGA § 16-3-24.2 to remove this limitation (at the same time OCGA § 16-11-138 was added). See Ga. L. 2014, p. 599 § 1-3.

<sup>9</sup> We express no opinion about the extent to which the limitations of OCGA § 16-3-21 (b) apply to a justification defense under OCGA § 16-11-138.

In the Supreme Court of Georgia

Decided: March 13, 2020

S19A1410. THE STATE v. REMY.

NAHMIAS, Presiding Justice.

The State appeals the grant of a motion for immunity and dismissal of its criminal prosecution against appellee Paul Junior Remy. In March 2018, Remy was tried for murder and other crimes related to the shooting death of Jenario Sharone Stark.<sup>1</sup> After the jury had deliberated for a full day without reaching a verdict, the trial court declared a mistrial. Four days later, Remy filed a motion for immunity from prosecution under OCGA § 16-3-24.2, arguing that he shot Stark in defense of himself and others, see OCGA § 16-

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<sup>1</sup> On July 29, 2016, a Fulton County grand jury had indicted Remy on charges of malice murder, felony murder based on possession of a firearm by a convicted felon, felony murder based on aggravated assault, two counts of aggravated assault, possession of a firearm during the commission of a felony, and possession of a firearm by a convicted felon.

3-21 (a). Before the hearing on the immunity motion occurred, the State re-indicted Remy for the same incident, omitting a count of aggravated assault and adding a second charge of possession of a firearm by a convicted felon.<sup>2</sup> After the hearing, the trial court granted Remy immunity. The court then dismissed the new indictment on the ground that it was issued after a court-ordered deadline for the filing of new indictments.

On appeal, the State raises three alleged errors. First, the State contends that Remy was not entitled to file a motion for immunity after a mistrial. Second, the State argues that even if an immunity motion may be considered after the declaration of a mistrial, Remy was not entitled to immunity on the merits. Third, the State asserts the trial court erred when it dismissed the second indictment. For the reasons explained below, we affirm the trial

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<sup>2</sup> A grand jury returned the second indictment on April 27, 2018. Counts 6 and 7 of that indictment both alleged a charge of possession of a firearm by a convicted felon. Count 6 was listed as a predicate felony for one of the felony murder counts, while Count 7 was described as “alleg[ing] a separate and distinct offense from that alleged in Count 6 of this Indictment.” The counts were otherwise identical.

court's judgment in part, reverse it in part, vacate it in part, and remand the case for further proceedings.

1. Prior to 2014, a felon in possession of a firearm generally could not assert a claim for immunity from prosecution under OCGA § 16-3-24.2 for crimes involving the use of deadly force. See *State v. Burks*, 285 Ga. 781, 782 (684 SE2d 269) (2009) (holding that the former version of OCGA § 16-3-24.2 did not apply if the defendant was unlawfully carrying a firearm). The former version of § 16-3-24.2 prohibited a person from seeking immunity predicated on justification if that person carried or possessed a weapon in violation of "Part 2 or 3 of Article 4 of Chapter 11 of [Title 16]," Part 3 of which includes OCGA § 16-11-131, which in turn prohibits felons from possessing firearms.<sup>3</sup>

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<sup>3</sup> From 2006 to 2014, OCGA § 16-3-24.2 said in full:

A person who uses threats or force in accordance with Code Section 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24 shall be immune from criminal prosecution therefor unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful by such person under Part 2 or 3 of Article 4 of Chapter 11 of this title.

In 2014, however, the General Assembly amended OCGA § 16-3-24.2 to eliminate the language referencing a violation of Part 3, thereby allowing defendants charged with violating OCGA § 16-11-131 to raise a claim of immunity. See Ga. L. 2014, p. 599, § 1-3.<sup>4</sup> Thus, at the times pertinent to this case, felons charged with possession of a firearm in violation of OCGA § 16-11-131 were no

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<sup>4</sup> OCGA § 16-3-24.2 now says:

A person who uses threats or force in accordance with Code Section 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24 shall be immune from criminal prosecution therefor unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful by such person under Part 2 of Article 4 of Chapter 11 of this title.

OCGA § 16-3-21 says in pertinent part:

- (a) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.
- (b) A person is not justified in using force under the circumstances specified in subsection (a) of this Code section if he: . . . (2) Is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony[.]

longer categorically precluded by the final clause of OCGA § 16-3-24.2 from seeking immunity from criminal prosecution under that statute.

2. The State argues, however, that a motion for immunity under OCGA § 16-3-24.2 must be made before trial and, therefore, was unavailable to Remy because his case went through a full trial and was submitted to a jury before the court declared a mistrial. Although nothing in the language of OCGA § 16-3-24.2 requires an immunity motion to be filed pretrial, such motions are generally made before trial because a grant of immunity terminates a criminal prosecution. And we have held that a trial court errs when it refuses to consider before trial an immunity motion that was filed before trial. See *Fair v. State*, 284 Ga. 165, 166 (664 SE2d 227) (2008).

Even assuming that motions for immunity under OCGA § 16-3-24.2 must be made before trial, however, Remy is now back in a pretrial position. We recently explained that a defendant may file a motion for immunity under OCGA § 16-3-24.2 after the grant of a new trial because when a new trial is granted, it is “as though no

trial had been had.” *State v. Hamilton*, Case No. S19A1363, 2020 WL 967006, at \*3 (Feb. 28, 2020) (quoting OCGA § 5-5-48; emphasis omitted). The declaration of the mistrial put Remy in the same situation: “a mistrial . . . is equivalent to no trial at all, and the case stands, when the mistrial is declared, as though it had never been entered upon.” *Augusta Ry. Co. v. Tenant*, 98 Ga. 156, 157 (26 SE 481) (1896). See also *Hayes v. State*, 58 Ga. 35, 45-46 (1877) (holding that the State is not required to re-indict the defendant after a mistrial is declared, citing a case holding that re-indictment is not required after the grant of a new trial); *Beecher v. State*, 240 Ga. App. 457, 460 (523 SE2d 54) (1999) (holding that after a mistrial, the State was required to give notice of its intention to use prior convictions again before the second trial, citing a case that said such notice was required again after the defendant’s convictions were reversed on appeal).

Accordingly, Remy was entitled to file a motion for immunity under OCGA § 16-3-24.2 after the trial court declared a mistrial.

3. The State contends next that the trial court erred when it

concluded that Remy was entitled to immunity on the merits. To succeed on his immunity motion under OCGA § 16-3-24.3, Remy was required to show by a preponderance of the evidence that he acted in defense of himself or others. See *Goodson v. State*, 305 Ga. 246, 251 (824 SE2d 371) (2019). On appeal of an order granting or denying immunity, “we review the evidence in the light most favorable to the trial court’s ruling, and we accept the trial court’s findings with regard to questions of fact and credibility if there is any evidence to support them.” *State v. Bunn*, 288 Ga. 20, 23 (701 SE2d 138) (2010) (citation and punctuation omitted). See also *Mullins v. State*, 287 Ga. 302, 302 (695 SE2d 621) (2010).

(a) Viewed in the light most favorable to upholding the trial court’s ruling, the evidence shows the following.<sup>5</sup> Stark and his girlfriend Ashley Lucas lived with Lucas’s cousin, Chyna

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<sup>5</sup> The trial court relied on the trial transcripts as the evidence for its immunity decision. The State did not object to the trial court’s reliance on the transcripts for this purpose. Compare *Hamilton*, 2020 WL 967006, at \*3-8 (addressing the State’s hearsay objection to the trial court’s reliance on trial testimony in making a subsequent immunity decision under OCGA § 16-3-24.2).

Tshitambwe, and Tshitambwe's toddler daughter in Tshitambwe's small studio apartment. Lucas testified that, on the morning of the incident, Stark dragged her by her hair and that the two of them engaged in a verbal and physical altercation. Tshitambwe testified that she saw Stark choke Lucas and punch her in the face. Wanting to get her child away from the altercation, Tshitambwe called two female friends, Jaimee Harris and Mary Shaw, to come over and take her and her daughter away from the apartment.

Harris and Shaw arrived along with two male companions, Alveo Seabrooks and Remy. Harris and Shaw entered Tshitambwe's apartment first. Shaw told Stark that he needed to get his belongings and leave. When Stark saw Seabrooks and Remy enter the apartment, he said, "Who are these b\*\*ch ass n\*\*gas?" Remy testified that he noticed a large bulge in Stark's pocket, which he believed to be a gun. Lucas testified that Stark was armed that morning with a 9mm handgun that he usually kept in his pocket or in a side holster.

Shaw and Remy testified that Stark threatened to beat Shaw.

Remy testified that when he heard this threat and saw Stark moving towards Shaw and Harris, who was standing next to Shaw, he moved between them and punched Stark because he believed Stark meant to harm the women. Multiple witnesses testified that Stark and Remy began to “tussle.” Remy testified that, during the struggle, he put his hand on Stark’s pocket and was able to confirm Stark had a gun.

Witnesses testified that the two men fell over a sofa and onto the floor during their struggle, with Remy ending up on top of Stark. Remy testified he pulled his gun out and pointed it at Stark’s chest, verbally demanding that Stark give up his gun. Remy testified that, rather than surrendering, Stark kept trying to pull out his gun, yelling that he had “a license to kill.” Remy testified that he believed Stark was psychotic because Stark would not give up his gun even though Remy was armed and had the better of him. Remy then put his gun away and asked for Seabrooks’ assistance in disarming Stark, so Seabrooks entered the melee. Lucas testified that she and Harris also tried to get Stark’s gun, but that she started fighting

Harris after Harris punched Stark in the face.

Eventually, all the women left the apartment. Remy and Seabrooks continued to struggle with Stark, but they were unable to disarm him. At some point, the men separated. Remy testified that Stark reached for the gun in his pocket, but it caught on the fabric of his pants. In that brief moment, Remy pulled out his gun and fired once because he believed Stark was going to shoot him. Remy and Seabrooks then fled. When Lucas reentered the apartment, Stark was lying wounded on the floor. Lucas testified that she rolled Stark over and found his gun on the floor underneath him. She testified that the gun's safety was off.

Based on this evidence, the trial court was authorized to find that Remy showed by a preponderance of the evidence that he shot Stark in self-defense. See *State v. Green*, 289 Ga. 802, 804 (716 SE2d 194) (2011) (affirming grant of immunity where decedent, who was "totally irrational," chose to attack even while aware that the defendant was armed with a knife).

(b) Nevertheless, the State contends that Remy's status as a

convicted felon precluded the trial court's finding of immunity. We disagree. This Court recently held that, when read together, OCGA §§ 16-3-21 and 16-11-138<sup>6</sup> create the following rule of law:

A person is justified in threatening or using force against another, or in engaging in conduct that is otherwise prohibited under Title 16, Chapter 11, Article 4, Part 3 of the Code, when and to the extent that he or she reasonably believes that such threat or force or conduct otherwise prohibited under Title 16, Chapter 11, Article 4, Part 3 is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force . . . .

*Johnson v. State*, Case No. S19A1404, 2020 WL 966592, at \*3 (Feb. 28, 2020) (emphasis omitted). Accordingly, "if [Remy's] possession of a firearm at the time of the shooting was justified under the rule of law produced by the combination of OCGA §§ 16-3-21 and 16-11-138, then it cannot be said that [Remy] was 'committing . . . a felony' when he shot [Stark], and the preclusive bar of OCGA § 16-3-21 (b) (2) would not apply." *Johnson*, 2020 WL 966592, at \*3.

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<sup>6</sup> In addition to amending OCGA § 16-3-24.2 in 2014, the General Assembly enacted OCGA § 16-11-138, which provides that "[d]efense of self or others, as contemplated by and provided for under Article 2 of Chapter 3 of [Title 16], shall be an absolute defense to any violation under this part." OCGA § 16-11-131 constitutes a violation under that part.

However, Remy may not be completely immunized from prosecution as a felon in possession of a firearm in violation of OCGA § 16-11-131, if he possessed a firearm outside the period of time when there was a necessity to defend himself or another person pursuant to OCGA § 16-3-21. See *Johnson*, 2020 WL 966592, at \*3 n.7 (“If a felon . . . came into possession of a firearm prior to any necessity arising and continued to have possession after any necessity had dissipated, his possession both before and after the time of necessity would be felonious and prosecutable.”). The trial court needs to consider this issue in light of the evidence and our rulings in this opinion and *Johnson*. Accordingly, regarding the original indictment, the judgment is affirmed as to all of the counts except the charge of being a felon in possession of a firearm, which is vacated, and the case is remanded for the trial court to conduct further proceedings consistent with this opinion.

4. As noted above, the State re-indicted Remy on April 27, 2018, before the trial court ruled on his immunity motion. The trial court dismissed the new indictment *sua sponte* on the ground that it

violated an order in the original case prohibiting re-indictment after the final plea date of December 13, 2016, which was over a year before Remy's trial began. The State and Remy agree that the trial court was not authorized to dismiss the second indictment on the basis asserted. A trial court may dismiss an indictment *sua sponte* only in limited circumstances. See *State v. Bachan*, 321 Ga. App. 712, 714 (742 SE2d 526) (2013). For example, a court may dismiss an indictment when there is a defect on its face and may dismiss criminal charges without prejudice for want of prosecution. See *id.* But a trial court cannot dismiss criminal charges without a proper legal basis. See *State v. Kelley*, 298 Ga. 527, 530 (783 SE2d 124) (2016). Indeed, we have held that even this Court's authority to promulgate a unified appeal procedure for death penalty cases does not "give [us] the power to abrogate or interfere with an otherwise-valid statutory enactment, such as the statutory procedure by which prosecutors procure indictments and conduct criminal prosecutions through them." *Edwards v. State*, 281 Ga. 108, 110 (636 SE2d 508) (2006).

The trial court did not cite any authority, and we are unaware of any, allowing a trial court to dismiss a subsequent indictment because it was not filed by a date set forth in a trial court order pertaining to the original case. Because the trial court failed to provide a legal basis for dismissing the charges in the second indictment, that ruling is reversed. We do not address whether other grounds for dismissing the indictment exist.

*Judgment affirmed in part, reversed in part, and vacated in part, and case remanded. Melton, C.J., and Blackwell, Boggs, Peterson, Warren, Bethel, and Ellington, JJ., concur.*