

IN THE SUPERIOR COURT OF BULLOCH COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	§	
	§	
vs.	§	CASE NO.: SU20-CR-327P
ASHLYN Z. GRIFFIN,	§	
Defendant.	§	

DEFENDANT'S MOTION FOR RECONSIDERATION

COMES NOW Ashlyn Griffin, defendant in the above and moves this Court to reconsider the Order of this Court entered November 9, 2021 granting the State's Oral Motion to Dismiss and for grounds, shows the Court the following:

1.

In its Order this Court quotes the language of *Lightning v State*, 297 Ga. App. 54, 60, 676 S.E.2d 780 (2009) and then concludes: "Here, Defendant unequivocally testified that she did not intend to fire the first or the second shot, and that she did not intend to harm the victim."

2.

The Court's reliance on *Lightning v. State* is misplaced. In *Lightning* the Court of Appeals recognized the law in asserting an "...affirmative defense, the accused admits the elements of the crime, but seeks to justify, excuse, or mitigate by showing no criminal intent; all elements of the parts of the crime are admitted with the exception of the intent." In support of this statement of the law, the Court of Appeals cites *Green v. State*, 240 Ga. App. 774, 776 (1),

525 S.E.2d 154 (1999) and *Ojemuyiwa v. State*, 285 Ga. App. 617, 620 (1), 647 S.E.2d 598 (2007).

3.

In *McClure v. State*, 306 Ga. 856, 834 S.E.2d 96 (2019) the Supreme Court of Georgia considered whether or not an accused was entitled to a jury charge on self-defense or justification where the accused did not “admit” the crime. The Supreme Court clarified that the “admission” required to entitle an accused to assert an affirmative defense “...does *not* entail stipulating to the truth of the facts alleged in the indictment or accusation....” *McClure*, at p. 859. The Supreme Court concluded, at p. 864:

“In summary, in order to raise an affirmative defense, a criminal defendant need not “admit” anything, in the sense of acknowledging that any facts alleged in the indictment or accusation are true. Rather, in asserting an affirmative defense, a defendant may accept certain facts as true for the sake of argument, and the defendant may do so for the limited purpose of raising the specific affirmative defense at issue. A defendant is entitled to a requested jury instruction regarding an affirmative defense when at least slight evidence supports the theory of the charge, whether in the State's evidence or evidence presented by the defendant, and regardless of whether the theory of the affirmative defense conflicts with any other theory being advanced by the defendant. It follows that a trial court errs in denying a defendant's request for a jury instruction on an affirmative defense solely on the basis that the defendant did not admit for all purposes the truth of the allegations in the indictment or accusation regarding the allegedly unlawful act. Appellate

decisions affirming such rulings, where the affirmative defense was supported by at least slight evidence, are hereby overruled to that extent.”

In footnote 17, the Supreme Court overruled *Green v. State, supra*, and three other cases, and disapproved the language in *Ojemuyiwa v. State, supra*, and numerous other Court of Appeals cases.

4.

The fact that Defendant testified she did not intend to fire the first or second shot and that she did not intend to harm the victim have no bearing on Defendant’s entitlement to assert the affirmative defense of justification. Further, her testimony in this respect does not prevent this Court from giving full and due consideration to her affirmative defense in an immunity hearing required by law.

5.

It is respectfully submitted that this Court erred in terminating the immunity hearing without making the ruling required by law, and that this Court should reconsider its Order of November 9, 2021, vacate it and resume the immunity hearing without delay.

This 10th day of November, 2021.

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