



STATE OF ARKANSAS
Office of the Prosecuting Attorney
Second Judicial District

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Chief Todd Stovall
Paragould Police Department
101 North 3-1/2 Street
Paragould, AR 72450

Re: *State of Arkansas vs. Ivey Herren Jr.*

Dear Chief Stovall:

I have reviewed the matter in which Mr. Ivey Herren, Jr. is charged with battery in the first degree after he shot Mr. Alex Wells in 2014. When I assign a case to a particular deputy, I expect him or her to handle the day to day management of the case until it is completed. However, because this case is over two years old and has drawn some media attention, I sat down with the file and now understand why my deputy prosecutor, Mr. Charles Finkenbinder has been hesitant to take this matter to trial.

First, I think it is important to note that Mr. Finkenbinder has not shown a hesitancy to move forward on difficult cases. Within just a few weeks of joining my Craighead County office, Mr. Finkenbinder took a very difficult child battery case to trial. The outcome was questionable until the jury returned with a guilty verdict. Mr. Finkenbinder has prosecuted several jury trials since coming to work in Jonesboro.

As stated above, I now understand why Mr. Finkenbinder has been hesitant to take this matter to trial. It is not due to a fear of losing, but rather a question of what justice is in this case. There is no question that Mr. Wells would not have gotten shot that night had he not gone to Mr. Herren's home to avenge the hurt feelings of Mr. Herren's former girlfriend. Mr. Wells could have better helped the aggrieved female by encouraging her to obtain the services of the court system. Instead, he decided to take the law into his own hands and interjected himself into a text message argument originally between the female and Herren. There were threats exchanged between Mr. Herren and Mr. Wells, which escalated into Mr. Wells traveling across snow and ice covered roads to have it out with Mr. Herren at Herren's home. Wells did not go to Herren's house alone, either. He also took his older brother and another man with him.

Not only would it be difficult to prosecute a case where the victim and two other individuals travel to another man's home to fight, the facts are complicated by words from the victim's own mouth. It is undisputed that Herren fired a warning shot as Wells walked onto Herren's property. Wells was heard to say to Herren, "What are you going to do, shoot me?" Wells told the detective that Herren threatened to shoot him if he came to Herren's home. At the detective's prompting, Wells said Herren did invite him to his home, and added that Herren stated that he would put a bullet in Wells if he showed up. In recent days, the media has quoted

Wells as saying he didn't think Herren had the "cojones" to shoot him.

A few facts strike me as significant as I review this investigative file :

- (1) Wells admitted to my deputy prosecutor that he didn't know what or how much he drank that night, but apparently he felt compelled to have a sober driver;
- (2) Witnesses who rode to Herren's residence with Wells say he jumped out of the pickup truck and headed toward the house as soon as it stopped rolling when they arrived at Herren's residence;
- (3) Wells was on Herren's property, in the front yard when Herren shot him.
- (4) An eyewitness states that he saw Adam Wells, brother of Alex Wells, immediately get out of the pickup with what he thought was a baseball bat – which turned out to be a Remington .30-06 rifle, which he fired twice during the incident at Mr. Herren's home;
- (5) Mr. Wells was shot in the back in his right shoulder area, and the bullet traveled downward and exited through a lower point on his back. At six feet tall and 245 pounds, Wells was two inches taller and 45 pounds heavier than Herren. Herren says that as Wells approached him, he attempted to strike Wells on the head with his right hand (the hand holding his pistol) and as he made contact the gun accidentally fired. Because the wound entered from the top of Wells's back, traveled downward and exited in the middle area of his back, Herren's explanation seems likely. If Herren had set out to shoot Wells, he more than likely would have shot him point blank with the bullet entering his front and exiting out his back.;
- (6) Finally, when the contents of Mr. Wells's pickup were inspected, Paragould officers found the rifle, a 12-gauge shotgun and a pair of brass knuckles.

The law pertaining to self defense is found at Arkansas Code Annotated 5-2-607, which provides:

(a) A person is justified in using deadly physical force upon another person if the person reasonably believes that the other person is:

(1) ... about to commit a felony involving force or violence. The statute further provides:

(b) A person may not use deadly physical force in self-defense if the person knows that he or she can avoid the necessity of using deadly physical force with complete safety:

(1) (A) By retreating.

(B) However, a person is not required to retreat if the person is: (I) In the person's

dwelling or on the curtilage surrounding the person's dwelling and was not the original aggressor;

(C) As used in this section: (1) "Curtilage" means the land adjoining a dwelling that is convenient for residential purposes and habitually used for residential purposes, but not necessarily enclosed, and includes an outbuilding that is directly and intimately connected with the dwelling and in close proximity to the dwelling.

In this case, there is some question whether Herren could have retreated with complete safety as Wells was quickly upon him as they met in Herren's yard. However, I need not split hairs on the issue of retreating with complete safety due to Herren being in his own front yard and therefore not required to retreat into his home.

I think a jury would struggle with finding justice due to the facts of this case. I, myself, struggle to find justice in prosecuting an individual who was engaged by one of three adult males on his own property, especially when those three individuals had two long guns and a set of brass knuckles with them. It is apparent that Mr. Wells, his brother and the other individual came looking for a fight at Mr. Herren's home, and they found one. After further consideration, our office will withdraw prosecution of this matter and close the file.

If you have any questions, please feel free to contact me at the number above. Thank you for your service.

Sincerely yours,



Scott Ellington
District Prosecuting Attorney