



Property Act.” *State v. Curry*, 406 S.C. 364, 371, 752 S.E. 2d 263, 266 (2013). I find that Mr. Olden has failed to prove by a preponderance of the evidence, he was acting in self-defense.

In South Carolina, four elements must be established to justify using deadly force as self-defense: (1) The defendant was without fault in bringing on the difficulty; (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

I find that both the second and third elements of self-defense, “the defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; [and element three:] If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...;” *Id.* was not established through the testimony presented. The defendant testified that the victim waived both hands in the air prior to the altercation and after the defendant stated the victim went to retrieve a weapon. That is why he concluded the victim did not have a gun, per his testimony. He was not in imminent danger of losing his life. Also, the defendant never testified he thought he was going to be killed or receive serious bodily injury. The testimony was that the victim grabbed the defendant's collar then the defendant struck the victim. This led to the physical altercation. This testimony makes it clear that the defendant could not have entertained the belief of imminent danger of being shot.

The defendant was a 36-year-old male while the victim was a 70-year-old male, giving the

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defendant a clear physical advantage. The evidence shows no physical injuries to the defendant other than skinned knees most likely from the pavement as he was on top of the victim. The lack of trauma or injuries to the defendant likely evidences that the victim was incapacitated by the defendant rather quickly, and clearly was unable to fight back.

The defendant has not established by a preponderance of the evidence that a “reasonable prudent man of ordinary firmness and courage would have entertained the same belief [of imminent danger of losing his life or sustaining serious bodily injury] ...;” given the considerations discussed above.

While considering the elements of self-defense, I must also consider the language of the Protections of Persons and Property Act and applicability thereof to the facts of this case. S.C. Code Section 16-11-440(A) provides: A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person: (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred. The defendant has not shown by a preponderance of the evidence that he is entitled to enjoy this presumption.

S.C. Code Section 16-11-440(C) provides “A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet

force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60." S.C. Code Section 16-11-440(C). When considering "force with force" as stated in the statute and the defendant's testimony that he concluded the victim did not have a gun, and testimony from the defendant that the victim grabbed him by the collar, for the Defendant to meet this type of force initiated by the victim with repeatedly punching the victim does not, by a preponderance of the evidence, meet the burden of self-defense and goes beyond that the force required for self-defense. *Id.*

Further, after weighing the credibility of the witnesses, including Ms. Powers whose testimony was inconsistent with the officer's body worn camera, the testimony does not weigh in favor of the defendant's immunity under the act. Ms. Powers testimony establishes that the defendant had the upper hand as she had to pull the defendant off of the victim as she stated on the dash cam. Her demeanor on the witness stand evidenced potential bias due to her relationship with the defendant. She was impeached during her cross examination with the inconsistencies from her statements at the scene, and her current testimony. I make note of her physical appearance and demeanor on the witness stand as opposed to that on the scene of the altercation. She appeared very nervous and was visibly shaking on the witness stand but appeared calm and able to her composure at the scene. The conflicting testimony did not establish by a preponderance of the evidence exactly where the altercation occurred allegedly giving rise to the protection under the Protections of Persons and Property Act. In court, there was testimony that the altercation took place in the yard of the defendant's home however on the responding officer's body worn camera video played in court, there was testimony the altercation occurred on the street beyond the defendant's property. Also, the physical evidence, the photos of the

blood, tend to prove the fight occurred in the street based on the blood being spattered directly on top of the white road line.

For the forgoing reasons, Mr. Olden's motion to dismiss based on immunity under the Protection of Persons and Property Act is respectfully denied.

IT IS SO ORDERED!

*MM*

September 7, 2022

*Maité Murphy*  
Maité Murphy  
Chief Administrative Judge  
Of the Court of General Sessions  
The First Judicial Circuit