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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2021-001537

THE STATE,

Respondent,

v.

CHARVIX L. WRIGHT,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

- I. Wright shot his female housemate in the face at point blank range. His testimony at the immunity hearing was inconsistent with the physical evidence and the trial court found him not credible. Did the trial court abuse its discretion by denying his motion for immunity from prosecution?

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted Appellant Charvix Wright for Murder and Possession of a Weapon during the Commission of a Violent Crime. He moved for immunity from prosecution under the Protection of Persons and Property Act (PPPA), S.C. Code Ann. § 16-11-410–450, and a hearing was convened before the Honorable J. Derham Cole, circuit court judge. Judge Cole denied the motion and Wright proceeded to jury trial. He was convicted of the lesser-included Voluntary Manslaughter and the weapon charge and sentenced to concurrent terms of 30 years' and 5 years' incarceration, respectively. This direct appeal follows.

STATEMENT OF FACTS

Charvix Wright, a 38-year-old man when this occurred, is a convicted domestic abuser. (Pretrial Tr.p.57, 73). The victim, Quanisha Fernanders, was a 24-year-old female and Wright's housemate. (Pretrial Tr.p.73). Wright testified he woke up around noon on August 3, 2019, when Ferndanders came to tell him that someone was at the door for him. (Pretrial Tr.p.38, 73). He sent her away because he "didn't feel like being bothered." (Pretrial Tr.p.39).

Wright lay in bed a bit longer before getting ready to leave the home. (Pretrial Tr.p.39). Wright testified Fernanders began "bothering" him by asking him to turn his music down and other "normal woman stuff." (Pretrial Tr.p.41). In response to Fernanders "bothering" him, Wright began to accost her about keeping a messy kitchen. (Pretrial Tr.p.41–43). He testified Fernanders began "gathering stuff like she was going to barricade herself in her room" (Pretrial Tr.p.43).

Wright went to play videogames and noticed Fernanders taking the air conditioning window unit from the living room back to her bedroom. (Pretrial Tr.p.45–46). Wright was "getting ready to leave," but first decided to confront Fernanders by telling her to put the air conditioning unit back in the living room. (Pretrial Tr.p.47). When Fernanders would not open her door, Wright went outside and "pushed the AC unit through the window." (Pretrial Tr.p.48).

Wright claimed that when he came back inside, Fernanders was "in the kitchen fumbling like with dishes, stuff like that." (Pretrial Tr.p.49). He claimed he walked towards the back of the house. (Pretrial Tr.p.50). Wright then claimed that

Fernanders "ran up on" him and began "waving" a knife around. (Pretrial Tr.p.50–51). Wright testified he then armed himself with a pistol he kept in the hall closet. (Pretrial Tr.p.51). Wright claimed he apologized for pushing the air conditioning unit through the window and offered to help her put it back, but Fernanders responded that she didn't need his help. (Pretrial Tr.p.52). Wright claimed Fernanders then "lunged" at him and it "caused [him] to react" by shooting her in the face. (Pretrial Tr.p.54). He claimed he "threw up [his] hands . . . in like a defensive manner, and the gun discharged." (Pretrial Tr.p.54). He claimed he did not intentionally fire the gun. (Pretrial Tr.p.54). He testified Fernanders was so close he could "feel [her] breath" (Pretrial Tr.p.54). On cross-examination, Wright claimed he tried to "block" Fernanders from stabbing him when the gun discharged, yet miraculously he was not cut at all. (Pretrial Tr.p.60).

Wright claimed that after he shot Fernanders, he "grabbed her hand," saying "No, please God, Queenie, Queenie." (Pretrial Tr.p.55). Yet he did not immediately call 911. Instead, he called his ex-girlfriend, his kids' grandmother, his mother, his grandmother, his supervisor at work, and a co-worker, and accepted calls from his sister and brother (a police officer). (Pretrial Tr.p.65–68).

When Wright finally called 911, he spoke to the operator in a strikingly calm and deliberate voice. (State's Exhibit #27). After giving his name and address, the operator asked Wright what was wrong. He paused for several seconds and she asked again. He told her he had done "something very bad on mistake" and the he "accidentally shot [his] girlfriend." When the operator asked where he shot her, he

claimed he didn't know and that he "didn't want to touch her or anything" wanted to "leave everything how it was." Wright told a responding officer he took "full responsibility" for what happened and that it was "a mistake." (State's Exhibit #4).

City of Spartanburg police officer Kegan Kelly responded to the shooting at around 1:30 p.m. (Pretrial Tr.p.8, 11). When he arrived, he found Appellant Charvix Wright and another man outside the front entrance to the home. (Pretrial Tr.p.8–9). He entered the home and discovered body Fernanders's body on the floor in her bedroom with her body leaning against the bed. (Pretrial Tr.p.9).

Fernanders had been shot in the face. (Pretrial Tr.p.24). Forensic investigator Shawn Cloran testified there was stipling around the wound, indicating Fernanders was shot at close range. (Pretrial Tr.p.24). He testified the gun was fired from within six inches of Fernanders's face. (Pretrial Tr.p.24).

Officer Kelley observed a kitchen knife by the victim's leg. He testified the knife was in an unusual position, with the handle facing downward, "almost right behind her hands and almost touching the floor," and the blade was "pointing towards the victim" with the "end of the knife pointing up." (Pretrial Tr.p.15). There was no blood on the knife, even though there was a significant amount of blood on Fernanders's hand and torso. (Pretrial Tr.p.15, 25–26, 29–30; State's Exhibits #10–15). Fernanders was wearing only underwear. (Pretrial Tr.p.33). There were also apparent large blood spots on the bedsheets, although no testimony was presented at the immunity hearing confirming this. (State's Exhibits #20–21).

STANDARD OF REVIEW

The appellate court reviews an immunity determination for abuse of discretion. State v. Glenn, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019). A trial court abuses its discretion when its ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support. Id.

ARGUMENT

- I. **Evidence supports the trial court's denial of immunity from prosecution under the Protection of Persons and Property Act because the trial court reasonably found Wright's story was not credible and inconsistent with the physical evidence.**

Evidence supports the trial court's finding that Wright failed to prove he acted in self-defense. Wright's story was not consistent with the physical evidence, and the trial court reasonably found Wright was not credible. This Court should affirm.

A. Issue preservation.

Wright's claim that the trial court abdicated its duty to act as factfinder is not preserved for review. Brief of Appellant at 12. Wright never objected to the sufficiency of the trial court's ruling and did not request that it make any additional findings. (Tr.p.48). He may not make this claim of error for the first time on appeal. See State v. Howard, 384 S.C. 212, 222, 682 S.E.2d 42, 47 (Ct. App. 2009) ("Howard did not object to the trial court's basis for admitting his prior convictions, therefore we find this issue is not properly preserved for review."); State v. Policao, 402 S.C. 547, 558, 741 S.E.2d 774, 780 (Ct. App. 2013) ("Because no contemporaneous objection accompanied the trial court's findings, we find this issue unpreserved.").

B. The trial court did not abdicate its role as fact-finder.

Even if preserved, the claim is meritless. Contrary to Wright's assertions, the trial court properly sat as fact-finder and explicitly found Wright failed to meet his burden of proving he acted in self-defense. Wright's

assertion that the trial court did not make a factual finding on the merits of his claim is contradicted by the record.

Following the immunity hearing, the trial court took the matter under advisement. (Pretrial Tr.p.99). When the case was called for trial, the court announced its ruling orally and subsequently issued a written order holding that Wright failed to prove he acted in self-defense. (Tr.p.48; Order). In its order, the trial court summarized the testimony presented at the immunity hearing and accurately cited to the applicable law. The trial court then explained:

The Court has had the opportunity to hear and observe the defendant as he testified and consider other evidence presented which was observed and collected at the scene. **This Court is not persuaded by the defendant's version of events** as it appears to be contradicted by the physical evidence observed and collected at the scene.

(Order at 3). Thus, the trial court denied immunity because it did not believe Wright's story, at least in part because it was not consistent with the physical evidence. This is a factual finding.

The trial court's explanation that he had an "opportunity to hear and observe the defendant as he testified" and that he was "not persuaded by [his] version of events" clearly indicates that he did not find Wright credible. Otherwise, he would have granted immunity from prosecution. Wright's assertion otherwise denies the court's words their plain, ordinary, and obvious meaning.

Wright seems to argue that because the trial court cited State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), that the court must have abdicated his duty to determine whether Wright met his burden to prove self-defense under PPPA. After stating its finding that it did not believe Wright's testimony, the trial court quoted oft-cited language from Curry that the case presented a "quintessential jury question." (Order at 3). See State v. Curry, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). Immediately after, the court again explained that "the defendant has failed to establish to this Court's satisfaction by a preponderance of the evidence each of the elements of self-defense" (Order at 3).

The trial court's citation to Curry does not show that it failed to rule on Wright's self-defense claim. Rather, it merely signified that because Wright failed to prove he acted in self-defense, the question became one for the jury.

Curry is still good law, and the Supreme Court continues to cite it. In State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019), as in this case, the trial court denied immunity and cited Curry for the proposition that the case presented a "quintessential jury question." The Supreme Court explained that "[s]ome cases in which a defendant seeks immunity under the Act may present a 'quintessential jury question' regarding self-defense." State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 564, 568 (2019). The court went on to explain:

[J]ust because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court must

sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act. **Of course, at the conclusion of any given hearing, if the circuit court determines the movant has not met his burden of proof as to immunity, the case will go to trial, and the issue of self-defense may—depending upon the evidence presented at trial—be presented to the trial jury.**"

Cervantes-Pavon, 426 S.C. at 451, 827 S.E.2d at 569 (emphasis added).

This is exactly what happened in this case. The trial court concluded that Wright "failed to establish to this court's satisfaction by a preponderance of the evidence each of the elements of self-defense" (Order at 3). The trial court "[sat] as fact-finder . . . weigh[ed] the evidence presented, and reach[ed] a conclusion under the act." Id. The trial court was well aware that it sat as fact-finder, and indicated that its ruling was based on Wright's lack of believability. Cf. State v. Gray, Opinion No. 5951 (S.C. Ct.App. filed November 23, 2022) (Howard Adv. Sh. No. 41 at 42) (remanding for findings of fact where trial court stated self-defense determination was "**best left to the finders of fact, namely the trial jury**") (emphasis added). The court was not required to use magic words in its order to fulfill its role as fact-finder. Nor was it forbidden from citing Curry to support its ruling.

While the Supreme Court in Cervantes-Pavon ultimately remanded the case with instructions for the trial court to conduct a self-defense analysis, it did so because the trial court's order was premised on "multiple errors of law" and an "erroneous characterization" of the testimony presented. Cervantes-Pavon, 426 S.C. at 452, 827 S.E.2d at 569. The Supreme Court noted that while PPPA does not require a trial court to make specific findings of fact on the record, the trial court's

analysis in that case was such that the court was "unable to discern a legally-correct basis on which the court relied." Cervantes-Pavon, 426 S.C. at 452, 827 S.E.2d at 569 and n.4.

That is not the case here. The trial court accurately summarized the evidence presented and provided lengthy citations to the applicable case law. Most importantly, it explained that its decision was based on Wright's lack of credibility and the inconsistent physical evidence. Cf. State v. McCarty, 437 S.C. 355, 371–74, 437 S.E.2d 902, 911–12 (2022) (remanding for factual findings where trial court "never engaged in a weighing of the evidence, and did not make any specific credibility or factual findings" and erroneously held that "the evidence presented conflicting views . . . and that **presents a factual question that must be answered by a jury**") (emphasis added). The trial court was not required to make detailed findings on every element of self-defense. See State v. Andrews, 427 S.C. 178, 182, 830 S.E.2d 12, 14 (2019) (explaining that "while the circuit court may not have set forth every detail of its analysis in the record, the record is nevertheless adequate for a reviewing court to determine that the circuit court applied the correct burden of proof and made findings that supported its denial of immunity consistent with a correct application of this Court's precedent").

Likewise, the trial court's citation to Tellwinger v. Marion, 222 S.C. 185, 72 S.E.2d 165 (1952), does not show an error of law. While Tellwinger is not directly applicable to this case because it was a civil case in a different procedural posture, the trial court did not intend that it serve as controlling precedent based on the

similarity of the two cases. Rather, the court was merely quoting specific language emphasizing the importance of witness credibility, specifically the "inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation." (Order at 3). The court quoted Tellwinger in conjunction with Black v. Hodge, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct.App. 1991), for the proposition that the "fact that testimony is not contradicted directly does not render it undisputed." This was likely in response to defense counsel's argument that "no witnesses . . . could provide eyewitness testimony of what happened that would contradict any of Mr. Wright's statements." (Pretrial Tr.p.93).

The trial court's citation to Black and Tellwinger underscores the fact that its ruling was based largely on Wright's lack of credibility. By quoting language about the "interests of the witness" and the "inherent probability of the testimony," the court was indicating again that it did not believe Wright's dubious, self-serving story. See also State v. Johnson, 413 S.C. 458, 468, 776 S.E.2d 367, 372 (2015) (citing Black) ("[T]here is no requirement under the law that the trial court must believe a criminal defendant's version of events."). The citation to Tellwinger also shows that the court gave serious consideration to Wright's testimony. The fact that Tellwinger arose from a different procedural posture, where the jury served as fact-finder, does not negate the legitimacy of the language therein emphasizing the importance of witness credibility to findings of fact.

The trial court did not "[refuse] to exercise discretionary authority." Brief of Appellant at 12. By making a credibility determination and explaining that its

decision was based on inconsistencies between Wright's testimony and the physical evidence, the trial court ruled on the merits of Wright's claim and provided "adequate findings to support its decision." McCarty, 437 S.C. at 374, 437 S.E.2d at 912. That is all that is required under the abuse of discretion standard of review.

C. Evidence supports the trial court's denial of immunity.

Evidence supports the trial court's finding that Wright failed to prove he acted in self-defense. As noted above, the trial court concluded Wright failed to prove he acted in self-defense because: 1) the court found Wright not credible, and 2) Wright's testimony was not consistent with the physical evidence. These are both factual findings that this Court must affirm if there is any evidence in the record to support them. State v. Glenn, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019). Because there is evidence to support the trial court's ruling, this Court should affirm.

Because Fernanders was his cotenant, Wright could not claim immunity under subsection § 16-11-440 (A) of PPA. See State v. Jones, 416 S.C. 283, 292, 786 S.E.2d 132, 137 (2016). Instead, he was defaulted into subsection (C), and was required to prove he killed Fernanders out of necessity in order to prevent death or great bodily injury to himself, and that his conduct was reasonable. Jones, 416 S.C. at 301, 786 S.E.2d at 141. He was also required to prove he was without fault in bringing on the difficulty. Id. In other words, he was required to meet all the common law elements of self-defense, save the duty to retreat. Id. A defendant must satisfy each element of self-defense to be entitled to immunity under the act. State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) ("Consistent with the

Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat.").

It is apparent from the trial court's order that it found Wright failed to show he shot Fernanders out of necessity to prevent death or great bodily injury to himself.¹ In the conclusion section of its order, the trial court indicated that it denied immunity in part because Wright's version of events was "contradicted by the physical evidence observed and collected at the scene." (Order at 3). Earlier in the order, the court discussed facts which were inconsistent with Wright's story. The court noted that while Fernanders's body was covered in blood, there was "no blood found on the defendant." (Order at 2). The court pointed out that Wright "testified that while she was lying on the floor he hugged and kissed her" (Order at 2).

The court also pointed to officer testimony that the knife recovered from Fernanders's hand was "at an 'odd' angle." (Order at 2). The Court noted there was no blood on the knife, even though there was significant blood on Fernanders's hand and torso. (Order at 2). The obvious implication is that the court believed Wright likely planted the knife by Fernanders's hand after he shot her. These

¹ Although the trial court did not address whether Wright was at fault in bringing on the difficulty, Wright admitted he provoked Fernanders by pushing the air conditioning unit through her bedroom window. See State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). Wright admitted he was "being childish," and this act was obviously intended to provoke Fernanders, who was alone in her bedroom at the time. (Pretrial Tr.p.52).

inconsistencies support a finding that Wright was fabricating his story. See State v. Marshall, 428 S.C. 11, 20, 832 S.E.2d 618, 623 (Ct. App. 2019) (affirming denial of immunity where trial court based its ruling in part on inconsistencies in defendant's testimony and "[b]ased on these inconsistencies, the circuit court found Marshall's testimony was unreliable and prevented the court from finding he established the relevant elements of self-defense by a preponderance of the evidence").

Finally, there is the "inherent [im]probability" of Wright's testimony about how the fatal shot occurred. See Tellwinger, 222 S.C. at 188, 72 S.E.2d at 166. Wright claimed he "accidentally" shot Fernanders in the face from within 6 inches away. While he claimed she "lunged" at him with a knife while she was close enough that he could "feel her breath," Wright was completely uninjured. Wright claimed he had time to arm himself and plead with Fernanders to put down the knife, even though he also claimed she "ran up on" him and was "waiving [the knife] around." (Pretrial Tr.p.50–51). Finally, Wright claimed Fernanders was "in the hallway" when she "lunged" at him, but her body was discovered in her bedroom sitting upright next to her bed. (Pretrial Tr.p.64).

Wright's story reads like a self-serving fabrication, even on a cold record. But an appellate court cannot fully judge credibility from a cold record. This is why credibility determinations are properly left to the trial court. It is "well-established under South Carolina law that credibility determinations are entitled to great deference." State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015). "The determination of credibility must be left to the trial judge who saw and heard the

witnesses and is therefore in a better position to evaluate their veracity." State v. Cutro, 332 S.C. 100, 117, 504 S.E.2d 324, 333 (1998) ("Our task is not to engage in a de novo review of the evidence. Nor are we to usurp the authority of the trial court by attempting to judge the credibility of witnesses.").

The only evidence supporting Wright's claim is his own self-serving testimony. The trial court, after observing Wright on the stand, did not believe him. See State v. Johnson, 413 S.C. 458, 468, 776 S.E.2d 367, 372 (2015) (noting trial court's credibility finding was made after "assessing Respondent's actual demeanor on the witness stand"). The court emphasized that it had the opportunity to "hear and observe the defendant" immediately before it wrote that it was not persuaded by Wright's version of events. "[T]here is no requirement under the law that the trial court must believe a criminal defendant's version of events." Johnson, 413 S.C. 458, 468, 776 S.E.2d 367, 372 (citing Black v. Hodge, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct.App.1991)).

PPPA establishes a presumption against a finding of immunity by placing the burden of persuasion with the defendant. In a case such as this one, where the only evidence tending to establish self-defense comes from the defendant's testimony, credibility is of paramount importance. If the trial court does not believe the defendant's story, his self-defense claim will necessarily fail.

That is what happened in this case. Wright's unbelievable story did not convince the trial court that he killed Fernanders in self-defense. There is evidence to support this credibility-based finding. This Court should affirm.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
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APPEAL FROM SPARTANBURG COUNTY

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The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2021-001537

THE STATE,

Respondent,

v.

CHARVIX L. WRIGHT,


Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Initial Brief of Respondent on Susan Hackett, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of January, 2022.



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Attachments: WRIGHT Charvix - Initial Brief of Respondent (03186410xD2C78).PDF

Good Afternoon Ms. Hackett,

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter in The State v. Charvix Lavoy Wright (2021-001537). This brief will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you,

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