RECEIVED
Feb 08 2023
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Richland County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE, RESPONDENT,

V.

MELVIN JAMES WHITE, APPELLANT

APPELLATE CASE NO. 2019-001854

APPENDIX

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
(803)734-2508

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

COURT OF APPEALS OPINION AFFIRMING 1

PETITION FOR REHEARING 4

COURT OF APPEALS ORDER DENYING PETITION FOR REHEARING 13

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Melvin James White, Appellant.

Appellate Case No. 2019-001854

Appeal From Richland County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2022-UP-450
Submitted October 1, 2022 – Filed December 14, 2022

AFFIRMED

Appellate Defender Sarah Elizabeth Shipe, of Columbia for Appellant.

Attorney General Alan McCrory Wilson, Assistant Attorney General Joshua Abraham Edwards, and Solicitor Byron E. Gipson, all of Columbia, for Respondent.

PER CURIAM: Melvin J. White appeals his conviction and thirty-year sentence for voluntary manslaughter. White argues the trial court erred in denying his

pretrial motion for immunity under the Protection of Persons and Property Act (the Act).

Because White was at fault in bringing about the difficulty and failed to prove he had a reasonable fear of death or great bodily injury, the trial court did not err in finding he is not entitled to immunity under the Act. Accordingly, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [an appellate] court reviews under an abuse of discretion standard of review."); *State v. Oakes*, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017) ("An abuse of discretion occurs when the [trial] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (citation and internal quotation marks omitted)); *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014) ("[T]he abuse of discretion standard of review does not allow [an appellate] court to reweigh the evidence or second-guess the trial court's assessment of witness credibility."); S.C. Code Ann. § 16-11-440(C) (2015) ("A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force . . . if he reasonably believes it is necessary to prevent death or great bodily injury to himself . . . ."); *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 ("[T]he trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity [under subsection C]. This includes all elements of self-defense, save the duty to retreat."); *id.* at 371 n.4, 752 S.E.2d at 266 n.4 (delineating the remaining elements of self-defense, including the defendant's belief he was in "imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger" and that "a reasonably prudent man of ordinary firmness and courage would have entertained the same belief"); *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide."); *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52-53 (2007) (rejecting "the position that the unlawful possession of a weapon could never constitute an unlawful activity which would preclude the assertion of self-defense"); *id.* at 71, 644 S.E.2d at 53 (holding when the defendant's "actions, including the unlawful possession of the weapon, proximately caused the exchange of gunfire, and ultimately the death of the victim" the defendant "fails to meet the requirement that he be without fault in bringing on the difficulty and may not avail himself of a charge on self-defense").

AFFIRMED.[1]

WILLIAMS, C.J., THOMAS, J., and LOCKEMY, A.J., concur.

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MELVIN JAMES WHITE,

APPELLANT

APPELLATE CASE NO. 2019-001854

Appeal from Richland County

Honorable D. Craig Brown, Circuit Court Judge

Opinion No. 2022-UP-450

PETITION FOR REHEARING

On December 14, 2022, this Court affirmed appellant's conviction for voluntary manslaughter and thirty-year sentence. *State v. White*, 2022-UP-450 (S.C. Ct. App. filed December 14, 2022). Pursuant to Rule 221(a), SCACR, appellant respectfully requests this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

In its opinion affirming appellant's conviction and sentence, this Court found that "[b]ecause [appellant] was at fault in bringing about the difficulty and failed to prove he had a reasonable fear of death or great bodily injury, the trial court did not err in finding he is not

entitled to immunity under the [Protection of Persons and Property] Act." In affirming the trial court's decision to deny appellant immunity from prosecution, this Court cited and quoted the relevant statutory provisions and controlling case law. Although this Court provided no analysis to explain how it applied the relevant statutes and case law to the facts presented, appellant must assume this Court's analysis overlooked and/or misapprehended significant points either in the governing law or in the facts presented at the pretrial immunity hearing. Thus, appellant will review the necessary facts and case law again to show why the trial court erred in ruling that appellant was not entitled to immunity from prosecution pursuant to the Protection of Persons and Property Act where evidence demonstrated the deceased angrily charged appellant, appellant was in reasonable fear of imminent death or great bodily harm to himself and to another, and because appellant was at his home, he had no duty to retreat but could meet force with force.

In 2006, the South Carolina General Assembly adopted the Protection of Persons and Property Act. S.C. Code Ann. § 16-11-410, et seq. The General Assembly explained its intent was to "codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A). The General Assembly recognized "that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles." S.C. Code Ann. § 16-11-420(D). Finally, the General Assembly explained "that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." S.C. Code Ann. § 16-11-420(E).

To effectuate this intent, the General Assembly created a statute providing for immunity from prosecution to "[a] person who uses deadly force as permitted by the provisions of this

article or another applicable provision of law." S.C. Code Ann. § 16-11-450(A). One of the provisions of the Act 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 Ann. § 16-11-440(C).

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard." *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). During the pretrial hearing, a defendant must set out "a valid case of self-defense" excluding the duty to retreat prong, "and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." *Id.* at 371, 752 S.E.2d at 266.

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; 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 the particular instance. *State v. Hendrix*, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); *see also State v. Davis*, 282 SC. 45, 46, 317

S.E.2d 452, 453 (1984).

The South Carolina Supreme Court affirmed a grant of immunity in *State v. Jones*, 416 S.C. 283, 786 S.E.2d 132 (2016). In that case Jones and her boyfriend, Eric Lee, lived together. *Id.* at 287, 786 S.E.2d at 134. One evening Jones and Lee were involved in a physical altercation. *Id.* Jones left the home and returned when she had "cooled down." *Id.* at 288, 786 S.E.2d at 134. While Jones gathered her things, Lee yelled at her and followed her around. *Id.* at 288, 786 S.E.2d at 135. Jones grabbed a knife for protection. *Id.* Lee grabbed Jones, shook her, and told her it was over. *Id.* Believing Lee was going to hit her again, Jones grabbed the knife out of her shirt and stabbed Lee once in the chest. *Id.* Although Jones initially left Lee, she and a friend shortly returned to the residence and took Lee for help. *Id.* However, Lee later died at the hospital. *Id.*

The Court found there was "nothing in the record to suggest that Jones was at fault in bringing on the difficulty" because she attempted to leave the apartment before the first altercation, returned to the apartment to gather her belongings, and called her friends to pick her up. *Id.* at 301-302, 786 S.E.2d at 142. Jones told police that she believed Lee "was going to hit her again and that had she not acted as she did, then she would have been killed." *Id.* at 302, 786 S.E.2d at 142. Next, the Court held Jones' belief that she was in imminent danger of losing her life or sustaining great bodily injury was reasonable considering Lee punched her earlier in the night and he grabbed Jones and shook her immediately prior to the stabbing. *Id.* Finally, the Court held that Jones had no duty to retreat pursuant to the Act because she was attacked in her home. *Id.*

This Court affirmed a grant of immunity in *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014). In that case, Douglas and his friend, Charles Smith, had spent the day on the golf course drinking. *Id.* at 312, 768 S.E.2d at 236. After leaving the golf course, the two went to Douglas' home and continued drinking. *Id.* at 313, 768 S.E.2d at 236. Smith found a bottle of

Douglas' anti-anxiety medicine and began teasing Douglas about it. *Id.* When Douglas got angry, Smith "snapped" and "went crazy." *Id.* Smith grabbed Douglas by his arms and threw him against the refrigerator. *Id.* When Douglas fell to the floor, Smith got on top of him and struck him in the eye. *Id.* at 314, 768 S.E.2d at 236. Although Douglas told Smith to leave, Smith refused, but did go into another room. *Id.* Douglas got a pistol from the nightstand. *Id.* Douglas, returning to the kitchen, again told Smith to leave. *Id.* Instead, Smith advanced toward Douglas. *Id.* Douglas lifted the pistol to scare Smith. *Id.* When Smith was two feet away, Douglas fired the pistol. *Id.* A bullet hit Smith, and he died within minutes. *Id.*

This Court held Douglas proved by a preponderance of the evidence that he reasonably believed shooting Smith was necessary to prevent great bodily injury to himself, and that he acted in self-defense. *Id.* at 319, 768 S.E.2d at 239. This Court noted that Douglas was injured in the altercation prior to the fatal shot, and that in light of Smith's lack of serious injury, Douglas' belief that Smith was about to inflict serious bodily injury upon him if he did not act to protect himself was reasonable. *Id.* at 320, 768 S.E.2d at 240. This Court also considered evidence that several years prior to the shooting, Smith assaulted Douglas by slamming him against a wall and choking him. *Id.* According to this Court, Douglas was not at fault in brining on the difficulty where "Smith's violent behavior was an unreasonable reaction to a reasonable demand for Smith to return [Douglas]'s medicine." *Id.* at 321, 768 S.E.2d at 240. Further, this Court found that after Smith attacked Douglas and Douglas retreated to his bedroom, his "reappearance at the kitchen's threshold with a loaded pistol by his side was lawful, as he had a right to defend his home and demand that Smith leave." *Id.*

Considering the immunity statute's incorporation of the elements of self-defense save the duty to retreat, an examination of South Carolina's self-defense jurisprudence is instructive. An

individual who provokes or initiates an assault may not assert self-defense. *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide." *Id.*

"[T]he mere unlawful possession of a firearm, with nothing more, does not automatically bar a self-defense charge." *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). In *Slater*, the Court determined the defendant was not entitled to a charge on self-defense because he was not without fault in bringing on the difficulty where the defendant was "in unlawful possession of a weapon; he carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement." *Id.* at 71, 644 S.E.2d at 53.

In *State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008), the South Carolina Supreme Court held a defendant's statement that it was either "her or me" after the defendant took the gun from the victim established that the defendant believed he was in imminent danger. The Court determined this belief was reasonable in light of the defendant's testimony that in the preceding weeks the victim had been acting jealous, had followed him, and told him that if she caught him with another woman it was "going to be messy." *Id.*

An individual has the right to act on appearances. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000); *see also State v. Jackson*, 277 S.C. 271, 87 S.E.2d 681 (1955). The South Carolina Supreme Court held the trial judge erred in failing to instruct the jury that the defendant had the right to act on appearances concerning one of the shootings. *Starnes*, 340 S.C. at 320, 531 S.E.2d at 912. In *Starnes*, one of the potential drug buyers, Wellborn, pointed a gun at the defendant, cursed him, and questioned where he was going. *Id.* The Court held the defendant was not entitled to a charge on the right to act on appearances concerning Wellborn because his claim to self-defense

arose from an actual threat. *Id.* However, concerning the shooting of the other potential buyer, Champlin, the Court held the defendant was entitled to an appearances charge. *Id.* at 321, 531 S.E.2d at 912. The pertinent fact noted by the Court was that "[i]mmediately prior to the shooting, [the defendant] observed Champlin hold a gun to [another]'s head and threaten to shoot him, apparently because the intended drug deal, which [the defendant] had arranged, had gone awry." *Id.* The Court held the defendant was entitled to an act on appearances charge even though the defendant did not testify that he thought he saw a weapon in Champlin's hand at the time of the shooting. *Id.*

Examining the evidence in the proper light shows appellant established his right to statutory immunity from prosecution by a preponderance of the evidence. The evidence does not support this Court's finding that appellant was at fault in bringing about the difficulty where appellant witnessed prior difficulties between Antwan and his mother, Esther, and appellant witnessed Antwan's prior arrest. The evidence does not support this Court's finding that appellant failed to prove he had a reasonable fear of death or great bodily injury to himself or another where evidence demonstrated Antwan was engaged in a verbal and physical altercation with Esther and angrily charged appellant.

The trial court erred in finding appellant was acting unlawfully by being in possession of a gun at the time of the incident. Appellant's status as a convicted felon did not preclude him from lawfully arming himself in self-defense. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). The trial court used *Slater* to support its finding that appellant was acting unlawfully however the facts in *Slater* differ significantly from the facts of this case. Unlike in *Slater*, where the defendant was in a public place, a high school, appellant was at his own home in his yard. Additionally, appellant

was not arming himself in the home to go out and look for a fight with Antwan. Appellant testified that he grabbed his gun out of habit due to the inherent danger of the area where they resided, the lateness of the hour, and his prior experiences with Antwan.

Appellant established his right to statutory immunity from prosecution by a preponderance of the evidence. Appellant testified that he was afraid of what Antwan would do because he shoved Esther, his own mother, and angrily charged at appellant. The evidence presented at the pretrial hearing demonstrated prior difficulty between Antwan and appellant. Appellant had an uneasy opinion regarding Antwan because Antwan was arrested the first time they met. Additionally, Antwan had been steadily, seriously disregarding the rules that Esther, appellant's girlfriend, had set in order for him to be able to stay in the home. Just the morning before, Antwan had broken Esther's well-established rule that he should not bring women to stay in the house at night.

Appellant was not at fault in bringing about the difficulty in the situation where the evidence showed Antwan came to the home very late, two o'clock in the morning, and woke up appellant and Esther trying to get in the home. Esther would not let Antwan inside the home, and the two began arguing outside. Appellant, as was his habit, grabbed his gun and went outside where he found Esther and decedent having an argument.

Evidence did not support this Court's finding that appellant failed to prove he had a reasonable fear of death or great bodily injury. Appellant's fear was reasonable considering his past experiences with Antwan, the time of day, and the fact that Antwan shoved Esther and was charging angrily at appellant. Appellant was reasonable in acting on the appearance that Antwan was armed and, in order to protect himself and Esther, appellant shot his gun, one time, to stop Antwan. Notably, appellant did not flee the scene after the incident. Rather, he stayed, waited

on police, and willingly gave a statement early that morning. Finally, appellant had no duty to retreat because he was at his residence when the incident occurred.

Appellant respectfully requests this Court rehear this matter to consider how the trial judge's ruling was not supported by the evidence presented and was contrary to controlling case law.

Respectfully Submitted,

SARAH E. SHIPE
Appellate Defender

This 29th day of December, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Melvin James White, Appellant.

Appellate Case No. 2019-001854

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

______________________ C.J.

______________________ J.

______________________ A.J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Sarah Elizabeth Shipe, Esquire
Joshua Abraham Edwards, Esquire
Byron E. Gipson, Esquire
The Honorable D. Craig Brown

FILED
Jan 20 2023