STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELVIN JAMES WHITE,

APPELLANT

APPELLATE CASE NO. 2019-001854

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's request for 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, and because appellant was at his home, he had no duty to retreat but could meet force with force?

STATEMENT OF THE CASE

On March 16, 2016, a Richland County grand jury indicted appellant for murder. R. 585. A hearing was held on June 3, 2019, on appellant's motion for immunity pursuant to the Protection of Persons and Property Act[1] (the Act) before the Honorable Deandrea G. Benjamin. R. 1. Megan Eigenbrot and Zoe Bruck represented appellant and April Sampson, deputy solicitor, represented the state. R. 1. On July 8, 2019 Judge Benjamin signed an order denying immunity. R. 122.

Appellant was tried on October 23, 2019, before the Honorable D. Craig Brown and a jury. R. 378. Megan Eigenbrot and Zoe Bruck represented appellant and April Sampson, deputy solicitor, and Jacqueline Li, assistant solicitor, represented the state. R. 378.

On October 24, 2019, the jury found appellant not guilty of murder but guilty of voluntary manslaughter. R. 361, ll. 14-21. Judge Brown sentenced appellant to thirty years' imprisonment. R. 376, ll. 11-14.

This appeal follows.

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[1] S.C. Code Ann. § 16-11-440(C).

STANDARD OF REVIEW

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013); *see State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (recognizing that the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence). 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. *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007).

ARGUMENT

The trial court erred in denying appellant's request for 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, and because appellant was at his home, he had no duty to retreat but could meet force with force.

Relevant facts

Appellant and his girlfriend, Esther Caroline, lived together in a home close to Shop Road in Columbia. R. 15, ll. 9-12. Esther's twenty-five-year-old son, Antwan Caroline stayed there frequently. On the morning of November 28, 2015, Esther and Antwan had a disagreement because Esther discovered he had a young woman spend the night there and it was against Esther's rules for him to have young women spend the night in her home. R. 39, ll. 17-23. Esther and appellant spent some of the day doing laundry, and appellant drank beer throughout the day. R. 12-13.

Around two o'clock the next morning, appellant woke up to the sound of knocking. Antwan was at the door. Esther refused to let Antwan in the home because he had again broken one of her house rules by coming home late. Instead, she walked outside on the porch to talk to Antwan. R. 13, l. 11-14, l. 14; 42, l. 11-43, l. 17.

Appellant, still groggy from sleep, realized Esther was no longer in the house and walked outside to see what was happening, grabbing his shotgun, out of "habit." R. 14, l. 3-15, l. 8. Outside appellant saw Esther and Antwan "fussing." Esther was upset, crying, and telling Antwan to go away and "go back where he c[a]me from." When Antwan noticed appellant, he began coming towards appellant and said, "what's up." Esther tried to stop Antwan saying, "no,

no, no." R. 16, ll. 1-24. Antwan rushed towards appellant and when he got close pushed his mother, Esther, to the ground and charged appellant. Appellant, in fear, fired his gun believing Antwan to be armed. Antwan was dead when paramedics arrived. R. 17, l. 13-18 l. 8; 21, ll. 21-24; 44, l. 25-45, l. 1; R. 220, 1-12.

Appellant took the shotgun back inside his house, walked next door, and asked the neighbor to call 911. When officers arrived, appellant was waiting at the residence and was arrested and transported to headquarters for questioning. R. 19-21.

Immunity hearing

At the pretrial immunity hearing, appellant testified that the first time he met Antwan police showed up at the apartment Esther was living at and arrested Antwan. Appellant did not see Antwan again until he was released from prison. R. 7-10. The morning before the incident, appellant noticed Antwan trying to sneak a young woman out of the house before his mother Esther noticed. R. 11, ll. 12-21. Antwan's behavior had consistently been a problem, and Esther was upset with Antwan. Appellant did not see Antwan for the remainder of the day. R. 12, ll. 1-11. Appellant and Esther went to the laundromat and did their laundry and then came back to the house, and appellant spent the day in their yard having a few beers. R. 12, l. 12-13, l. 8.

Appellant went to bed around ten o'clock that evening. Appellant testified that he woke early that morning to the sound of knocking at the door and Esther yelling, "what have I told you about coming to my house all time of the night waking me up." R. 13, ll. 9-20. Appellant got out of bed to use the bathroom and realized neither Esther nor Antwan were inside the home. He put on clothes to go outside and sit, grabbing his shotgun out of "habit" because of the late hour and the nature of the area where they lived. R. 14, l. 25-15, l. 21.

Once outside he saw Esther and Antwan arguing in the street, and Esther was telling Antwan to go away. Appellant said he was "shocked" at the scene between Esther and Antwan and appellant was upset to see Esther so distraught. Antwan noticed appellant and began heading towards appellant. Meanwhile Esther was trying to stop Antwan, repeatedly telling Antwan "no." R. 16, ll. 1-25. Antwan kept saying to appellant, "what's up," which appellant understood as an invitation to fight. R. 29, ll. 8-17. Antwan continued towards appellant and when he got close to appellant, Antwan shoved Esther to the ground. Appellant went towards Esther, Antwan charged him, and appellant fired his gun. R. 17, l. 13-18, l. 8. Appellant testified he was "afraid" when Antwan charged him, and he did not know if Antwan had a weapon because he had one of his hands behind his back. R. 21, ll. 21-25; 29, l. 19-30, l. 6.

Esther Caroline was called as a witness for the state. Esther testified at the hearing that Antwan lived in the home with she and appellant because he had just gotten out of prison and did not have his own place. R. 38, ll. 1-6. Yet, Antwan did not have his own key to the house and seemingly stayed elsewhere at times. R. 11, ll. 2-11; 53, ll. 12-18. Her testimony corroborated appellant's testimony regarding the difficulty she was having with her son because of his disregard of the rules of their home. Esther testified that the morning before the incident she had a discussion with Antwan and told him he was not to bring women to stay in her home overnight. R. 39, l. 17-40, l. 4. Esther also admitted she would not let Antwan in the home early that morning and that she told him to leave. R. 42, l. 11-43, l. 13; 55, l. 22-57, l. 19; 58, ll. 7-11.

Esther alleged that earlier in the day appellant threatened to kill Antwan if he ever came back in the house because appellant was tired of him disrespecting Esther's rules. R. 41, ll. 6-12. Esther testified that around two o'clock in the morning Antwan knocked on the front door. She went to the door and stated, "I asked you not to come to my house the time in the morning." R.

42, ll. 11-21. Esther also told Antwan to "go back where [he] was." Antwan started talking to her, so Esther opened the door and went outside to talk to him in the yard. R. 43, ll. 4-17. Esther claimed when she noticed appellant was in the yard he was about six feet away pointing a gun at Antwan, and Antwan asked, "so what are you going to do, are you going to shoot me or something," and in response appellant shot Antwan. R. 44, ll. 16-25. Esther denied that Antwan pushed her or charged appellant. R. 45, ll. 18-24.

Appellant's attorneys argued appellant was entitled to immunity under S.C. Code Ann. section 16-11-440(C). Attorney Bruck asserted appellant had the right to self-defense and was without fault in brining about the incident where appellant walked outside his own home in the middle of the night to an argument between his girlfriend and her son. Counsel contended appellant believed he was in imminent danger in that while outside Antwan charged him with his hands in back pocket and made the statement "what's up," in an aggressive tone. Antwan continued to approach despite seeing appellant holding a gun and then charged him. Lastly counsel argued a reasonably prudent man of ordinary firmness and courage would have also believed himself in imminent danger for the same reasons as above. R. 91-98.

On July 8, 2019 Judge Benjamin signed an order denying appellant immunity under § 16-11-440(C) of the Act. R. 122. The court found there was no testimony presented at the hearing, other than appellant's testimony that decedent pushed Esther and that appellant was scared, that showed it was reasonable for appellant to believe that deadly force was necessary to prevent great bodily injury or death. R. 117. Additionally, the court found decedent was unarmed and there was no evidence put forth to show why it was reasonable for appellant to fear decedent could cause great bodily injury or death. R. 118.

The court found appellant was unlawfully in possession of a gun because he was

previously convicted of a felony that precludes him from possessing a firearm or ammunition under federal law and was therefore not entitled to statutory immunity under the Act. R. 118-120. Further, the court found appellant armed himself with a gun he could not lawfully possess when there was no need to defend himself. R. 120.

Lastly the court found appellant could not prove the necessary elements of self-defense by a preponderance of the evidence and thus was not entitled to immunity. The court again found that other than appellant's testimony there was no credible evidence that appellant was in imminent danger or that a reasonable person would have believed they were. The court further found appellant was at fault in bringing about the difficulty for two reasons he (1) unlawfully possessed a gun when he approached decedent and (2) pointed and presented the loaded gun at decedent and Esther. R. 120-122.

Discussion

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 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). 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 its 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 must exist," 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).

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 killed his friend after an argument ensued over the victim teasing Douglas about taking medication for anxiety. 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. According to this Court, Douglas was not at fault in bringing 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.*

In *State v. Jones*, our Supreme Court affirmed a grant of immunity and held one who uses deadly force in response to an attack in his or her own home by a cohabitant can seek immunity under the Act, provided the person can establish reasonable fear of the attacker. 416 S.C. 283, 786 S.E.2d 132 (2016). In that case, Jones killed her boyfriend in the home they shared.

In *State v. Cervantes-Pavon*, our Supreme Court remanded the case to the circuit court for a new hearing to determine immunity and held: (1) the fact that the victim was unarmed was relevant under the Act but that it did not automatically prohibit immunity under the Act; (2) the fact the defendant armed himself did not, in and of itself, make him the aggressor in a confrontation for purposes of determining if he was entitled to immunity; (3) just because conflicting evidence as to immunity exists does not automatically require the court to deny immunity. 426 S.C. 442, 827 S.E.2d 564 (2019). In that case, Cervantes-Pavon was convicted of the murder of his unarmed coworker on a construction worksite.

In light of the immunity statute's incorporation of the elements of self-defense other than the duty to retreat prong, an examination of South Carolina's self-defense jurisprudence is helpful. 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). "[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) 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." *Slater*, at 71, 644 S.E.2d at 53.

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. Additionally, "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense" from *State v. Harvey*, 220 S.C. 506, 68 S.E.2d 409 (1951).

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 does 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 area where they resided and the lateness of the hour.

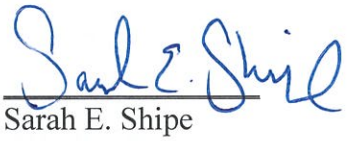
Appellant established his right to statutory immunity from prosecution by a preponderance of the evidence. Appellant testified that he was afraid of what Antwan would do because he shoved his own mother, Esther, and angrily charged him. The evidence presented at the hearing demonstrated prior difficulty between Antwan and appellant. Appellant's first impression of Antwan was negative because Antwan was arrested the first time they met. Also, Antwan had been consistently 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. The evidence shows that appellant was not at fault in bringing on the difficulty. 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 him 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.

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 him. 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 decedent. Moreover, appellant did not flee the scene. 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.

CONCLUSION

By reason of the forgoing argument, appellant's conviction and sentence should be reversed and appellant should be granted immunity from prosecution pursuant to the Act by order of this Court.



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Appellate Defender

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This 19th day of April, 2021.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 19, 2021.

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