

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

The State,

v.

Justin Tyler Anderson,

Defendant.

IN THE COURT OF GENERAL SESSIONS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

ORDER GRANTING DEFENDANT'S
MOTION FOR IMMUNITY

Case: 2022-GS-46-011559; 011559A

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SC Court of Appeals

This matter came before the Court on motion of the Defendant seeking an order granting the Defendant immunity pursuant to South Carolina's Protection of Persons and Property Act (S.C. Code Ann. §16-11-410, et seq.).

A hearing was held on Wednesday, January 11, 2023, at 10:00 a.m. Present were the Defendant, Justin Tyler Anderson; his attorney of record, Leland B. Greeley of the York Bar; and Senior Solicitor Leslie Robinson of the Sixteenth Judicial Circuit Solicitor's Office.

The Defendant presented testimony from Ms. Kirsten Michelle Pickett, Donna Renee Ferguson, as well as testifying himself. The State presented testimony from the alleged the Victim Robert Wayne Wiestling and Deputy Arens Marthone of the York County Sheriff's Department.¹ Both the Defendant and the State introduced photographs of the scene, including the parking lots and properties. The State introduced photographs of the wound of Mr. Wiestling.

¹ The State also attempted to admit into evidence over the objection of the Defendant two video interviews of alleged witnesses at the scene. However, the Court took the admission under advisement.

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APPLICABLE LAW

Immunity under the Act is to be determined by the Circuit Court as a pretrial ruling. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In making such a ruling, this Court applies a preponderance of the evidence standard with the burden on the Defendant to demonstrate that he is entitled to immunity. *Id.* at 411, 709 S.E.2d at 765. Recent appellate court decisions emphasize that this Court sits as fact-finder in making the immunity determination under the Act. See *McCarty*, 437 S.C. at 374, 878 S.E.2d at 912 (2022). As such, this Court is required to weigh evidence, assess credibility, and make factual findings. *Id.* "The relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence." *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019).

FINDINGS OF FACT

1. On August 14, 2022, the York County Grand Jury returned a true bill indictment against the Defendant alleging two charges arising from an incident occurring in York County on March 17, 2022. Those charges are Assault and Battery of a High and Aggravated Nature and Possession of a Deadly Weapon While Committing a Violent Offense. The Victim named in the indictment is Robert Wayne Wiestling.
2. The incident occurred in the parking lot of a hair salon owned by Donna Renee Ferguson and her husband.
3. The incident occurred at approximately 7:00 p.m. before sunset.
4. The Defendant, who was 32 years of age at the time of the incident, is the son of



the owner of the salon. The Defendant's girlfriend, Kirstin Michelle Pickett, works at the salon as a cosmetologist and a manager.

5. The salon is located next to a restaurant and bar named "2020 Tavern". The two businesses are serviced by an access road leading past the salon toward the interior property where the restaurant and bar is located with its own large parking lot. The salon has six parking spaces located perpendicularly between the access road and the salon building.
6. The incident occurred on March 17, 2022.
7. Shortly before the incident Ms. Ferguson asked the Defendant and Ms. Pickett to monitor the salon.² Ms. Ferguson then walked up to 2020 Tavern to meet a client and let the client know Ms. Ferguson was ready for the client to come to the salon for the client's appointment.
8. Ms. Ferguson had some months earlier placed four professionally painted signs along the parking area to notify the public that parking in the six spaces beside the Salon was allowed only for salon patrons. The signs read: For Salon Customers Only. Towing at Owner's Expense.
9. After Ms. Ferguson left to retrieve the client from 2020 Tavern, a car attempted to park in the salon parking lot. The Defendant and Ms. Pickett were outside in the parking lot at Ms. Pickett's car. The Defendant told the driver that the driver could not park there and that the driver needed to read the signs. Initially the occupants of the car paid no attention to the Defendant and parked in a salon spot. However,

² The Defendant is Ms. Ferguson's son.

the driver did return shortly thereafter and moved the car.

10. The Defendant and Ms. Pickett remained at their car in the second parking space preparing to transport Ms. Pickett's 11-year-old daughter who suffers from a disability and is wheel chair bound, to their home.
11. Shortly after the first car left the parking spot, Mr. Wiestling, with his wife and a friend, began to back into spot number 4 of the salon parking. Mr. Wiestling, his wife, and the friend were going to 2020 Tavern for an evening of dinner, drinks, and dancing.
12. The Defendant began to speak loudly telling Mr. Wiestling that he could not park in the salon space and also pointed to the no-parking signs. Mr. Wiestling began to yell at the Defendant about his "poor attitude" and the Defendant yelled back. Mr. Wiestling stopped his car halfway in the parking spot. The Court heard conflicting testimony regarding the final parking location of the Victim's car.³ The Defendant testified that the Victim stopped prior to parking fully before the exchange occurred.
13. As both continued to confront one another, Mr. Wiestling opened the driver's door, got out of the vehicle, and began moving toward the Defendant in a threatening manner. Both men continued to yell at the other.
14. Mr. Wiestling approached the Defendant by moving around the back of Mr. Wiestling's car to confront the Defendant at the back of parking spot #3. More than

³ The Victim's version is that upon parking his car fully in to the parking space, that he rolled down his window and both began exchanging comments with the Defendant. Conversely, the Victim testified that upon one of his returns to his car that he decided to depart and move his car to the larger lot, but he abruptly stopped because he perceived and heard threatening comments from the Defendant and got out to address the comments directly with the Defendant.



once the Victim returned to the Victim's car and then came back to confront the Defendant who remained at the back of the third parking spot.

15. The testimony on both sides consistently affirmed that oral threats were being made. The threats did involve what could result in great bodily injury. Additionally, the Defendant indicated that Mr. Wiestling spat in the Defendant's face. This was corroborated by Ms. Pickett. Mr. Wiestling admitted that he had spat during the confrontation, but said he had not spat on the Defendant.
16. Mr. Wiestling then charged the Defendant, knocking the Defendant against Ms. Pickett's car. Both the Defendant and Mr. Wiestling then began swinging and grappling at one another.
17. The Defendant indicated that at the time he was knocked against the car, the Defendant then reached into the Defendant's pocket for the Defendant's work utility knife. The Defendant opened it and did strike Mr. Wiestling with the knife on Mr. Wiestling's neck behind Mr. Wiestling's ear when the pair were engaged in the grappling.
18. When Mr. Wiestling noticed he had been cut, Mr. Wiestling backed away, as did the Defendant. Mr. Wiestling moved back toward to in the parking spot. The Defendant threw the utility knife into the wiper trough of the Defendant's work van.
19. The Victim and the Defendant presented different versions of the battery. The Victim presented testimony that he was struck by the Defendant in the mouth while the Defendant was holding the knife. The Defendant testified that he retrieved the knife during the struggle and struck the Victim in the neck area. The testimony of



the Victim regarding the dynamics of the punch with the knife in the hand of the Defendant and the Victim's resulting minimal injury in the face and mouth are not consistent with the actual injury the Victim received in the neck area.

20. After the last confrontation near the cars, the Victim began moving toward 2020 Tavern to seek aid. Both men testified that the Defendant approached Mr. Wiestling from the rear as Mr. Wiestling began to walk toward 2020 Tavern. The Defendant testified that the Defendant tackled Mr. Wiestling to the ground. Mr. Wiestling testified that he heard the Defendant coming, then turned and kicked the Defendant in the chest, knocking the Defendant to the ground. Both men testified that Mr. Wiestling then went up to 2020 Tavern and the Defendant returned to Ms. Pickett's automobile.
21. The Court finds that the Victim's version of events to be strained. The Victim's testimony lacks credibility when considered in light of common sense and experience. Particularly, the Victim testified that the Defendant struck him in the mouth with the right hand with the hand holding a knife. If the Defendant had any item in his hand, the injuries would have been more than a swollen lip. Further, the Victim testified that he heard the Defendant coming from the rear, turned, and kicked the Defendant in the chest to the ground as the Victim was departing to seek aid at the adjoining bar and restaurant. The Defendant and Ms. Pickett testified that the Defendant tackled the Victim from the rear to the ground and that Ms. Pickett kicked the Defendant to disengage him from the affray.
22. The Court observed and heard the testimony of all of the witnesses. The Court

observed all of the witnesses were nervous while testifying. The Court noticed that the Victim was excited, changed volume and tone of his responses, and seemed to exaggerate his version of the facts. The Court finds the Victim's truthfulness and candor to be slightly less than the other witnesses.

23. The Court took under advisement the admission of a body-cam video of an interview of an eye-witness who was walking by the fray as it occurred.

Notwithstanding the objection of the defense, the Court accepts the testimony of the witness and finds the testimony consistent with the version that the Victim was the aggressor. The witness's comments to the deputy on scene were that the Victim could have left, but went back to confront the Defendant. The witness's comments also describe the witness's perception was that the Victim was "showing off" for the two ladies the Victim had in his company. The witness was unbiased as he was a stranger to the incident.

24. Subsequently, the Defendant was charged by the York County Sheriff's Department with the charges for which he was indicted.

ANALYSIS

Immunity under the Act is to be determined by the Circuit Court as a pretrial ruling. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In making such a ruling, this Court applies a preponderance of the evidence standard with the burden on the Defendant to demonstrate that he is entitled to immunity. *Id.* at 411, 709 S.E.2d at 765.

There are four elements that must be established to justify the use of deadly force

as self-defense. *State v. Dickey*, 469 S.C. 394, 491, 499, 716 S.E.2d 97, 101 (2011). *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). The elements of self-defense are:

(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. *Dickey*, 394 S.C. at 499, 716 S.E.2d at 101 (quoting *State v. Wiggins*, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998)).

DISCUSSION

Fault in Bringing on the Difficulty

In considering the fault element of self-defense, this Court recognizes that a business proprietor has the right to eject trespassers from the premises.⁴ *State v. Brooks*, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969). That right, however, is not without limitation. A proprietor is without fault in bringing on the difficulty only if "engaged in the legitimate exercise in good faith of his right to eject." *Id.* (citing *State v. Rogers*, 130 S.C. 426, 126 S.E. 329 (1925)); see also *State v. Starnes*, 213 S.C. 304, 316, 49 S.E.2d 209, 213 (1948). Whether a proprietor legitimately exercised the right to eject a trespasser in good faith can turn on language used during the interaction. See *State v.*

⁴The Defendant is not, in fact, the proprietor of the salon. The Court accepts, however, that the Defendant acted as an agent of Ms. Ferguson, his mother and the proprietor, in attending to the business in her absence.

Wiggins, 330 S.C. 538, 546-47, 500 S.E.2d 489, 493-94 (1998).

In the facts of this case, the Defendant verbally advised the Victim not to park in the designated salon space but then heard the Victim questioning whether the salon was open for patrons. The uncontroverted testimony is that the verbal exchange between the parties escalated rapidly. The Defendant testified that multiple face-to-face confrontations occurred between the Victim and him. Both men yelled at each other, and the Victim returned to his vehicle between the short confrontations. The Court finds that the Defendant had no duty to retreat.

Belief in or Actual Imminent Danger

Weighing the evidence as a whole, the Court also finds that the Defendant establish by a preponderance of the evidence that the Defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or that he actually was in such danger. Both men testified about the repeated approaches and retreats by the Victim to the Victim's car. The Defendant testified that he was unsure of why or for what reason the Victim retreated. The Defendant testified that he was concerned that the Victim could have obtained a weapon from his vehicle.

Reasonably Prudent Man of Ordinary Firmness

The third requirement looks to whether a reasonably prudent man of ordinary firmness would have believed there to be imminent danger of serious bodily injury or death or, if such danger actually existed, the circumstances warranted such a man to use deadly force to save himself. Considering the Defendant's testimony, the physical confrontation was initiated by the Victim. The consistent testimony of all of the witnesses

was that the Victim retreated no less than twice to his car. The Court finds, then, that the Defendant established the third requirement of self-defense:

And so under the current law, the Defendant, being in a place he had a right to be, and being authorized to eject trespassers, only must satisfy two elements: that he 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 that a reasonable prudent man of ordinary firmness and courage would have entertained the belief of imminent danger.

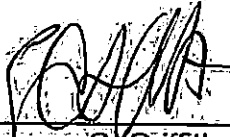
CONCLUSION

Based on the facts found by this Court and the law of this State, the Defendant has met his burden of proof in this case and his motion for immunity from prosecution should be granted. Having considered and weighed the evidence presented in this matter, the Court finds that the Defendant proved that he is entitled to immunity under the Act by a preponderance of the evidence.

Therefore, **IT IS ORDERED:**

1. That the Defendant's motion is hereby granted for immunity; and,
2. The State shall hereby immediately cease its prosecution of the Defendant on the above-referenced indictment and the facts contained therein.

AND IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Presiding Judge
Sixteenth Judicial Circuit Court

Feb. 15th 2023
York, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) 2023 MAY 18 PM 3:42
FOR THE SIXTEENTH JUDICIAL CIRCUIT


State of South Carolina) DAVID JAMILTON
v.) C.C.O.P. & ORDER DENYING STATES
Justin Tyler Anderson,) YORK COUNTY SC) MOTION TO RECONSIDER
Defendant) Case: 2022-GS-46-011559; 011559A

This matter came before the Court on the State's Motion to Reconsider the February 15, 2023 Order Granting the Defendant immunity pursuant to South Carolina's Protection of Persons and Property Act (S.C. Code Ann. §16-11-410, et seq.).

After careful consideration of the motions submitted to the Court, the Motion to Reconsider is respectfully denied.

AND IT IS SO ORDERED.

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SC Court of Appeals


Eugene C. Griffith, Jr.
Presiding Judge
Sixteenth Judicial Circuit Court

May 18th 2023
York, South Carolina.