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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of General Sessions

Robert J. Bonds, Circuit Court Judge
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2024-000085

THE STATE,

Respondent,

v.

TIFFANY REBECCA OWENS,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 13

ARGUMENT 14

I. The circuit court did not abuse its discretion by denying Appellant immunity from prosecution under the Protection of Persons and Property Act because Appellant failed to show by a preponderance of the evidence that she was entitled to such immunity. 14

A. The record shows Appellant was not without fault in bringing on the difficulty. 15

B. The record indicates Appellant did not have a belief of imminent danger of losing life or sustaining serious bodily injury. 18

C. The presumption of reasonable fear found in section 16-11-440(A) was rebutted in this case. 19

CONCLUSION 21

TABLE OF AUTHORITIES

Cases

State v. Bixby, 388 S.C. 528, 698 S.E.2d 572 (2010) 15, 18, 21

State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999) 10, 16, 18, 20

State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019) 13, 16

State v. Chhith-Berry, 437 S.C. 527, 878 S.E.2d 352 (Ct. App. 2022) 16

State v. Council, 129 S.C. 116, 123 S.E. 788 (1924) 15

State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) 14

State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019) 14, 15

State v. Harvey, 110 S.C. 274, 96 S.E. 399 (1918) 15

State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016) 13

State v. McCarty, 437 S.C. 355, 878 S.E.2d 902 (2022) 16

State v. McGreer, 13 S.C. 464 (1880) 19

State v. Osborne, 202 S.C. 473, 25 S.E.2d 561 (1943) 15

State v. Rowell, 75 S.C. 494, 56 S.E. 23 (1906) 16

State v. Scott, 424 S.C. 463, 819 S.E.2d 116 (2018) 14

State v. Strickland, 389 S.C. 210, 697 S.E.2d 681 (Ct. App. 2010) 17

United States v. Peterson, 483 F.2d 1222 (D.C. Cir. 1973) 17

Statutes

S.C. Code Ann. § 16-11-440 7

S.C. Code Ann. § 16-11-440(A) 3, 9, 12, 20

S.C. Code Ann. § 16-11-450(A) 14

Other Authorities

Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right of Self-Defense, 55 A.L.R.3d 1000 (1974) 10, 16, 18, 20

STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

Whether the court's decision to deny Appellant immunity from prosecution under the Protection of Persons and Property Act was based on legal errors and on factual findings which were without support in the record, and thus Appellant's convictions require reversal?

STATEMENT OF THE CASE

In November 2022, a Hampton County grand jury indicted Appellant for murder and possession of a weapon during the commission of a violent crime. (R. 529-532).

In August 2022, prior to indictment, Appellant filed a motion to dismiss pursuant to section 16-11-420. (R. 48). In her motion, Appellant asserted that Tijuana Deloach (Victim) was known to be aggressive and known to have issues with Appellant. (R. 48-49). Appellant summarized a surveillance video recording of the incident which resulted in Victim's death. (R. 49-50). Appellant argued she had a reasonable fear of Victim due to Victim's reputation for causing trouble and Victim's fourteen-year-old arrest for criminal domestic violence. (R. 50). Appellant asserted that she was not engaged in unlawful activity, was threatened and attacked by Victim, had no duty to retreat, had the right to engage in self-defense, and reasonably believed her actions were necessary to prevent death or great bodily injury to herself or another. (R. 51).

On November 3, 2022, the State filed a memorandum of law in response to Appellant's motion. (R. 52). The State also summarized a surveillance video of the incident. (R. 54-55). The State argued Appellant could not show that she was without fault in bringing on the difficulty. (R. 56). The State asserted that contrary to Appellant's assertion Victim followed her to the grocery store, the surveillance video showed that Victim did not arrive at the store until after Appellant had exited the store and returned to her car. (R. 56). When Appellant saw Victim, Appellant engaged in a conversation with Victim. (R. 56). The State asserted that rather than leaving the parking lot after the initial conversation with Victim, Appellant remained in her car and waited for Victim to exit the store. (R. 56). When Victim exited the store, Appellant drove toward Victim, holding up an object and facing Victim directly. (R 56). The State argued that due to Appellant's actions as displayed in the video, Appellant sought out a confrontation with Victim; therefore, the State

asserted that the court should find by a preponderance of the evidence that Appellant brought on the difficulty herself and that the provisions of the Protection of Persons and Property Act should not apply. (R. 56).

The State also argued that Appellant's fear was not reasonable. (R. 57). Arguing that if the court determined Appellant could establish a valid claim of self-defense, the State asserted the rebuttable presumption created under section 16-11-440(A) of the South Carolina Code—a presumption of reasonableness on the part of those using deadly force against others attempting to enter their occupied vehicles—was rebutted. (R. 57). The State asserted that Appellant was not a helpless driver who was suddenly and unsuspectingly attacked by a carjacker; rather, this was an ongoing argument between two individuals familiar with each other, in which one of the individuals goaded the other into an escalation. (R. 57). The State contended that Appellant knew Victim had no intention of taking Appellant's car because the confrontation occurred immediately adjacent to Victim's own vehicle. (R. 57). The State also argued that while Appellant did not have a duty to retreat, her ability to retreat by moving her foot from the brake pedal to the accelerator pedal should be considered evidence that her alleged fear was not reasonable. (R. 57).

On November 9, 2022, Appellant proceeded to a pretrial stand-your-ground hearing before the Honorable Robert J. Bonds. (R. 1). Appellant testified that she had known Victim since childhood. (R. 6). According to Appellant, she and Victim did not have many problems until her sister became involved with the father of Victim's son. (R. 6). Appellant tried to avoid Victim. (R. 6). However, Appellant stated Victim's attitude toward her was antagonistic and Victim always wanted to know why Appellant did not acknowledge or speak to her. (R. 7). Appellant testified she was afraid of Victim and knew of Victim's reputation for violence. (R. 7).

On the day of the incident, Appellant went to the grocery store to purchase groceries. (R. 7). She was supposed to meet her boyfriend at the grocery store. (R. 7). She arrived before her boyfriend and went inside to purchase some items. (R. 8). Appellant left the store before her boyfriend arrived. (R. 8). She stated that after she exited the store, she noticed Victim had "followed" her to the store and "was waiting outside." (R. 8). Appellant waited for her boyfriend in her car with the door open. (R. 8). As Victim approached the store, she saw Appellant and said, "Oh, you're not going to speak to me?" (R. 8-9). Appellant told Victim that she had not seen her approach. (R. 9). Appellant stated that Victim began cursing and accused her of lying. (R. 9). Victim told Appellant that Appellant "better not be there when [Victim got] back." (R. 9). Appellant confirmed she had a chance to leave after Victim entered the store. (R. 15-16). However, Appellant did not leave because she did not know Victim would "come attack [her] in [her] car as [she was] trying to leave." (R. 16). Appellant confirmed that Nash Elliott made a statement that before Victim entered the store, Appellant told Victim that she would still be in the parking lot when Victim exited the store. (R. 21). Appellant could not recall if her words matched Elliott's statement. (R. 21).

Appellant called her mother because she was afraid and thought "something was going to happen" because Victim told her not to be at the store when Victim left the store. (R. 9-10). Appellant testified she asked her mother to call law enforcement. (R. 10). According to Appellant, her mother told her that she would call law enforcement and that Appellant needed to leave. (R. 10). Appellant stated her phone call with her mother ended as Victim was coming out of the store. (R. 10). Appellant stated that when Victim left the store, Victim was walking with a store employee but was talking to her rather than the employee. (R. 18).

When Appellant went to leave, Victim "jumped in" her window and struck her. (R. 10). Appellant testified to feeling burning and seeing "a little blood." (R. 10). Appellant denied driving up next to Victim and slowing down. (R. 20). However, she confirmed she stopped her car when Victim began striking her because she could not see after Victim hit her. (R. 22). Appellant initially thought Victim struck her with a knife but noticed that Victim struck her with car keys. (R. 10). Appellant sustained cuts on her neck/shoulder area. (R. 10-11). Appellant stated that she was unable to pull Victim off her because she could not see after Victim began striking her. (R. 22). Appellant stated that she was afraid for her life, so she retrieved a gun from her center console to "scare" Victim. (R. 11). However, according to Appellant, when Victim grabbed Appellant's gun, Appellant "panicked" and shot Victim. (R. 11).

At the time of the incident, Appellant had a splint on her right arm due to a previous car accident. (R. 11). She was also four and a half months pregnant. (R. 11). Appellant stated that she thought Victim may have been intoxicated during the incident. (R. 12). However, Appellant stated she did not intend to hurt anyone and did not "know where the anger came from." (R. 12). Appellant testified she went to her mother's house and told her mother what happened. (R. 12). Her mother then drove her to the police station. (R. 12).

The court reviewed the surveillance video,[1] which does not have sound. (R. 23-25). The video shows Appellant arriving at the grocery store at 16:19:40. (State's Ex. 8). She parked in the fire lane, exited her vehicle, and went into the store. (State's Ex. 8). At 16:24:56, Appellant exited

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[1] The surveillance video is on file with this Court as Defendant's Exhibit 1 in five sequential videos. These videos were consolidated for trial in State's Exhibit 8, which is also on file, in a video file named "Consolidated_Exhibit1.mp4." Additionally, State's Exhibit 8 contains a second video ("Shortened_Exhibit1.mp4"), which is a 55 second clip from the consolidated video starting at the time Victim exited the store and ending when Appellant left the parking lot. The surveillance videos contain a timestamp within the footage, which is cited to in this brief.

the store and returned to her vehicle. (State's Ex. 8). At 16:25:33, Victim first appears walking toward the store from the parking lot. (State's Ex. 8). Her vehicle is not in frame. (State's Ex. 8). From 16:25:50 to 16:26:42, Appellant and Victim speak to each other. (State's Ex. 8). As Victim walked away from Appellant and toward the store, Appellant opened her car door and stands up to continue addressing Victim. (State's Ex. 8). Victim exited the frame when she entered the store. (State's Ex. 8).

At 16:31:06, Victim exited the store. (State's Ex. 8). She walks back in the direction from which she initially appeared. (State's Ex. 8). Victim was followed by a store employee, who was pulling a cart of groceries. (State's Ex. 8). At 16:31:13, Victim waived to someone on her right. (State's Ex. 8). Two seconds later, she turns her head to her left, in Appellant's direction, and appears to speak while not deviating from her path. (State's Ex. 8). At 16:31:29, Victim and the store employee reach the top of the frame. (State's Ex. 8). At the same time, Appellant begins to drive, having sat idle in the fire lane for almost five minutes since the end of her initial conversation with Victim. (State's Ex. 8).

Appellant makes a left turn down a lane of the parking lot, directly toward Victim. (State's Ex. 8, State's Ex. 38). Appellant appeared to be holding an object and facing Victim out of her driver's door window. (State's Ex. 8). At 16:31:34, Appellant got Victim's attention, and Victim began to approach Appellant's car while the car was moving at a slow rate of speed. (State's Ex. 8). Victim took a few steps toward the car before she sped up. (State's Ex. 8). Victim reached Appellant's car as the car came to stop. (State's Ex. 8). Victim swung her fists toward Appellant through Appellant's open window. (State's Ex. 8). From the video, it is unclear whether and to what extent Victim was able to strike Appellant. (State's Ex. 8). Appellant later presented injuries that she stated Victim inflicted upon her, which can be seen to some extent in State's Exhibit 9.

In the video, Victim and Appellant struggle. (State's Ex. 8). At 16:31:41, a puff of emerges from Appellant's car, after which Victim stumbles backward and falls to the ground. (State's Ex. 8). Appellant then begins to drive away, pausing at 16:31:46 when Victim falls to the ground. (State's Ex. 8). At 16:31:48, Appellant pulls away again and turns left out of the parking lot. (State's Ex. 8). By 16:32:01, Appellant's car is out of frame. (State's Ex. 8).

After hearing Appellant's testimony and reviewing the video, Judge Bonds heard arguments on whether Appellant was entitled to immunity. (R. 31). Appellant argued that she did not have a duty to retreat because she was lawfully in the grocery store parking lot, where she had a right to be, and she had no obligation to leave when she saw Victim. (R. 31-32). Appellant asserted that Victim attacked her while she was in a place she had a right to be doing something she had a right to do. (R. 32). Appellant argued that the video showed Victim raising her fist and striking Appellant through the window upon Victim reaching Appellant's car. (R. 33). According to Appellant, the video also shows Victim attempting to open Appellant's car door. (R. 33). She asserted that two eyewitnesses and the video all confirm that Victim attacked her. (R. 33). Appellant argued that everything that happened before Victim attacked her set the stage for the incident because of the history between the two. (R. 33). Appellant claimed she was afraid of Victim and that Victim was aggressive and upset. (R. 33).

Appellant argued that section 16-11-440 of the South Carolina Code creates a presumption of reasonable fear of imminent peril when someone is in the process of unlawfully and forcefully entering an occupied vehicle. (R. 33). She contended that section 16-11-440 applied in this case. (R. 33). Judge Bonds stated that the video actually showed that the two witnesses were inside the store when the incident occurred. (R. 34). Appellant corrected her argument, stating that the video does not show where the two witnesses were during the incident. (R. 34). Appellant concluded

by stating that she was in her car attempting to leave the parking lot when Victim ran toward her and began beating her up. (R. 35).

The State reminded Judge Bonds that he needed to make a factual finding and that merely finding the evidence in conflict was not enough. (R. 36). The State reiterated that Appellant bore the burden to show self-defense by a preponderance of the evidence to obtain immunity. (R. 36). The State agreed that Appellant did not need to show a duty to retreat and that the court did not need to determine whether Appellant retreated. (R. 36).

Regarding the first element of self-defense (that Appellant was without fault in bringing on the difficulty), the State argued that the video was directly contradictory to Appellant's testimony. (R. 37). Appellant testified that when Victim exited the store, they were immediately back into their argument, with Victim cursing at her and making her feel unsafe. (R. 37). However, the State noted that when Victim left the store, she waived to someone opposite from Appellant before proceeding directly to where her car was parked, all while accompanied by a store employee. (R. 37). The State acknowledged that the store employee made a statement in which he said both women were cursing at each other. (R. 37-38).

The State asserted that Appellant's argument that Victim was the sole aggressor in this incident was inaccurate. (R. 38). Appellant testified that she did not slow down when she decided to leave; however, the video shows otherwise. (R. 38). The State argued that Appellant had every opportunity to leave while Victim was in the store; even though Victim did not have a duty to retreat, she had the opportunity to avoid the conflict completely, which the court should consider for the reasonableness of Appellant's actions. (R. 38). The State contended that when Victim came out of the store, Appellant drove her car directly toward Victim and "quite clearly slows down as

she's getting close to [Victim]." (R. 38). The State noted that Appellant came to a complete stop as she approached Victim. (R. 38).

The State argued that Appellant's theory that if someone is attacked in their car, then a presumption of reasonable fear applies without considering reasonableness was incorrect. (R. 38-39). The State reasoned that such a theory would mean that the Legislature essentially granted everyone in this state a license to kill as long as they are in a car. (R. 39). The State asserted the Legislature did not mean such an outcome. (R. 39). The State, discussing eyewitness testimony about the interaction before Victim entered the store, argued that Appellant had been heard telling Victim that she would be waiting for Victim outside of the store. (R. 39-40). The State asserted that Appellant goated Victim into some kind of confrontation after Victim left the store, which can be seen on the video. (R. 40).

Regarding the element of reasonable fear of imminent peril or death, the State acknowledged that section 16-11-440(A) of the South Carolina Code presumes a reasonable fear of imminent peril of death or great bodily injury if the person against whom deadly force is used was in the process of unlawfully and forcibly entering an occupied vehicle. (R. 40). The State asserted that the only evidence of Victim attempting to open the car door came from Appellant, who was an interested party.[2] (R. 41). The State did not deny a physical fight occurred when Victim approached Appellant's car after leaving the store. (R. 41).

The State averred that when deadly force is introduced, a determination of reasonableness is critical. (R. 41). The State argued that Appellant was in a running car and sought out Victim. (R. 41). The State asserted Appellant was not an anonymous victim getting into her car when she

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[2] In the video of the incident, the point of view is from the rear passenger side of Appellant's car. The video does not show the driver's side of Appellant's car during the incident. (State's Ex. 8).

was suddenly attacked by a stranger who wanted to steal her car. (R. 41). Appellant knew Victim and knew Victim was not attempting to steal her car. (R. 41).

Citing *State v. Bryant*,[3] Judge Bonds discussed whether Appellant provoked or initiated the incident and noted that bringing on the difficulty required more than having prior animus, ill will, or prior disagreements. (R. 44). Judge Bonds took the matter under advisement. (R. 45).

On December 2, 2022, Judge Bonds issued an order denying Appellant's motion to dismiss. (R. 62). Judge Bonds determined Appellant failed to meet at least two elements of self-defense. (R. 67). First, Judge Bonds determined that evidence existed showing Appellant contributed to the difficulty. (R. 67). Judge Bonds stated that the video showed Appellant continuing her verbal altercation with Victim when Victim exited the store despite Victim appearing to be going about her own business. (R. 67). The video showed Appellant attempting to leave the parking lot only after Victim left the store and chose a path that took her directly past Victim despite having other routes to exit the parking lot. (R. 67-68). Judge Bonds determined it was not believable that Appellant's phone conversation with her mother ended and that Appellant began to leave the parking lot at the exact moment Victim exited the store. (R. 68).

Judge Bonds stated Appellant's window was down, as shown by Victim hitting Appellant through the window and Victim's keys subsequently being found in Appellant's car. (R. 68). Judge Bonds determined that Victim's physical pivot from her own car toward Appellant's car, followed by what was a physical attack, was so abrupt that it was more likely than not that Victim was provoked by some word or phrase uttered by Appellant. (R. 68).

[3] 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999) ("[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self defense . . . ." (quoting Ferdinand S. Tinio, *Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974))).

Second, Judge Bonds determined that evidence existed to show Appellant did not actually believe she was in imminent danger of losing her life. (R. 68). Judge Bonds found that Appellant's own testimony that Victim had a reputation for violence undermined her position. (R. 68). Judge Bonds stated that Appellant's contention that Victim was a dangerous individual along with Appellant continuing to argue with Victim and then drive toward Victim suggest that Appellant was seeking out a confrontation rather than merely attempting to leave the parking lot. (R. 68).

Further, Judge Bonds found that the eyewitness statement that Appellant told Victim she would be waiting for Victim outside of the store tended to show Appellant was not scared of Victim. (R. 68). Judge Bonds noted Appellant's testimony that Appellant did not know where the anger came from, which the court viewed as Appellant acknowledging that she was not in fear for her life; rather, she was merely angry. (R. 68-69).

Judge Bonds also found that the route Appellant took in exiting the parking lot tended to show that she was not in fear of losing her life because she had other possible routes but chose the one that took her directly next to Victim. (R. 69). Judge Bonds found that it was not believable, if Appellant was in fear of losing her life, that she would have slowly passed Victim, bring her car to a stop only feet away from an allegedly violent individual, all the while with her car window down. (R. 69). Judge Bonds concluded by stating that Appellant failed to show by a preponderance of the evidence that she was without fault in bringing on the difficulty and that she actually believed she was in imminent danger of losing her life or sustaining great bodily injury. (R. 69).

Judge Bonds also determined that Appellant failed to show by a preponderance of the evidence that her actions were based on the reasonable belief that such action was necessary to prevent death or great bodily injury to herself or to prevent the commission of a violent crime.

(R. 69). Noting the rebuttable presumption created in section 16-11-440(A), Judge Bonds ruled that the presumption had been rebutted. (R. 70). He determined it was not reasonable to believe that someone who was in fear of losing their life would drive directly past the person of whom they were fearful at a slow rate of speed before coming to a stop all while their car window was open. (R. 70). Judge Bonds also noted the eyewitness testimony that Appellant told Victim she would be waiting for Victim outside the store. (R. 70). He concluded by stating that Appellant's actions were not reasonable, which made her unable to prove an entitlement to immunity under the Protection of Persons and Property Act. (R. 70).

On January 8 and 10-11, 2024, Appellant proceeded to a jury trial before the Honorable Carmen T. Mullen. (R. 89, 92, 424). During the jury charge, Judge Mullen charged the jury with self-defense. (R. 497-500). The jury found Appellant guilty of the lesser included crime of voluntary manslaughter as well as possession of a deadly weapon during the commission of a violent crime. (R. 513-514). Judge Mullen sentenced Appellant to twenty years' incarceration for voluntary manslaughter and a concurrent five years' imprisonment for possession of a deadly weapon during the commission of a violent crime. (R. 526; 533-536).

This appeal followed.

STANDARD OF REVIEW

"Circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard." *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019). Appellate courts, in turn, review immunity determinations for an abuse of discretion. *Id*. "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016).

ARGUMENT

I. The circuit court did not abuse its discretion by denying Appellant immunity from prosecution under the Protection of Persons and Property Act because Appellant failed to show by a preponderance of the evidence that she was entitled to such immunity.

The Act provides immunity from prosecution for a person who has used deadly force when acting in defense of themselves or others if a trial court determines that the person was justified in using such force. *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 495 (2019). Specifically, the immunity section of the Act provides that a person who uses deadly force "as permitted by the provisions of this article *or another applicable provision of law*" is justified in using deadly force and is therefore immune from criminal prosecution and civil action for the use of such force. S.C. Code Ann. § 16-11-450(A) (emphasis added). Our Supreme Court has acknowledged that "another applicable provision of law" includes the common law of self-defense. *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018). Therefore, a defendant may seek immunity from prosecution under the Act by "demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence." *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013).

For immunity claims under this theory, "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." *Id*. at 371, 752 S.E.2d at 266. Accordingly, a trial court should consider whether a defendant has proved the elements of self-defense by a preponderance of the evidence before determining whether section 16-11-440(A) or (C) is applicable. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496.

The general four elements a defendant must meet to justify the use of deadly force under the common law of self-defense are as follows:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, 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. If the defendant actually was 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. Fourth, 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.

Id. at 116, 838 S.E.2d at 495.

As should be obvious from its elements, self-defense is "based upon necessity[.]" *State v. Osborne*, 202 S.C. 473, __, 25 S.E.2d 561, 563 (1943). Thus, a person may not employ deadly force unless there is a reasonable necessity to kill. *State v. Harvey*, 110 S.C. 274, __, 96 S.E. 399, 400 (1918). Likewise, due to the "without fault in bringing on the difficult" requirement, a person can deprive himself or herself of the right of self-defense through either actions or words. *State v. Council*, 129 S.C. 116, __, 123 S.E. 788, 789 (1924). Significantly, if even one of the requisite elements is lacking, "[i]t is an axiomatic principle of law that the defense has not been established[.]" *State v. Bixby*, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010).

A. The record shows Appellant was not without fault in bringing on the difficulty.

Evidence in the record supports Judge Bond's determination that Appellant was not without fault in bringing on the difficulty. The surveillance video shows that Appellant continued her prior verbal argument with Victim shortly after Victim left the store. (State's Ex. 8). The video also shows that Appellant attempted to leave the parking lot only after Victim left the store. (State's Ex. 8). Appellant testified during the pretrial hearing that she began to leave as soon as she finished a phone conversation with her mother, which happened to be at the same time Victim left the store. (R. 10). Judge Bonds found Appellant's testimony not credible. (R. 68).

Judge Bonds noted that when Appellant decided to leave, she chose a route that took her directly past Victim despite other available routes existing that would not have taken her near Victim. (R. 68; State's Ex. 8; State's Ex. 38). This finding, contrary to Appellant's contention, was not an effort to impose a duty to retreat; rather, this finding was part of Judge Bonds' analysis that Appellant was not completely without fault in bringing on the difficulty as highlighted by a subsequent sentence finding that Appellant more likely than not provoked Victim into the physical confrontation as Appellant drove toward Victim. (R. 68). *See State v. McCarty*, 437 S.C. 355, 372, 878 S.E.2d 902, 911 (2022) ("[T]he circuit court must weigh the evidence and make its own credibility and factual findings before reaching a decision as to immunity."); *State v. Chhith-Berry*, 437 S.C. 527, 542-43, 878 S.E.2d 352, 360 (Ct. App. 2022) ("[T]he [trial] court's [immunity] ruling must be based solely on the evidence presented at a pretrial hearing, while the jury's verdict must be based solely on the evidence presented at trial, which may be considerably different." (quoting *Cervantes-Pavon*, 426 S.C. at 452, 827 S.E.2d at 569)).

Judge Bonds determined, after viewing and weighing the evidence presented to him, that Victim's physical pivot from her own car toward Appellant's car, which was slowing moving toward Victim with the driver's window down, was so abrupt that it was more likely than not caused by some provocation from Appellant. (R. 68). *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self defense . . . ." (quoting Ferdinand S. Tinio, *Comment Note: Withdrawal, After Provocation of Conflict, As Revisiting Right of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974)) (alterations in original)); *State v. Rowell*, 75 S.C. 494, __, 56 S.E. 23, 29 (1906) ("[T]he plea of self-defense is not available to one who uses language so opprobrious that a reasonable man would expect it to bring on a physical encounter, and which did actually contribute to bringing it on.");

see also United States v. Peterson, 483 F.2d 1222, 1231 (D.C. Cir. 1973) ("It has long been accepted that one cannot support a claim of self-defense by a self-generated necessity to kill. The right of homicidal self-defense is granted only to those free from fault in the difficulty; it is denied to slayers who incite the fatal attack, encourage the fatal quarrel or otherwise promote the necessitous occasion for taking life. . . . This body of doctrine traces its origin to the fundamental principle that a killing in self-defense is excusable only as a matter of genuine necessity." (emphasis added and footnotes omitted)); *State v. Strickland*, 389 S.C. 210, 215, 697 S.E.2d 681, 684 (Ct. App. 2010) (concluding Strickland's statement of "shut your fucking mouth" to his victim created a jury question as to whether that particular language might reasonably have been expected to bring on the difficulty that ensued).

Judge Bonds' finding that Appellant was not without fault in bringing on the difficulty is not only supported by the video evidence but is also supported by Judge Bonds' factual finding that Appellant chose to take the one route which took her directly next to Victim, whose actions were more likely than not in response to some statement or provocation made by Appellant.

Therefore, because the evidence in the record supports Judge Bonds' determination that Appellant was not completely without fault in bringing on the difficulty, Appellant cannot show that Judge Bonds abused his discretion in making such a determination. Moreover, because evidence in the record supports Judge Bonds' determination regarding this element of self-defense, this Court need not determine whether Appellant showed that she met the remaining elements of self-defense by a preponderance of the evidence or whether the statutory presumptions apply. Appellant was required to meet all four elements of self-defense to be entitled to immunity, or alternatively have statutory presumptions apply satisfy certain elements; thus, by failing to show that she met this first element, to which no statutory presumption applies, she has failed to show

any entitlement to immunity. *See Bixby*, 388 S.C. at 554, 698 S.E.2d at 586 ("It is an axiomatic principle of law that the defense has not been established *if any one element is disproven*." (emphasis added)).

B. The record indicates Appellant did not have a belief of imminent danger of losing life or sustaining serious bodily injury.

Second, regarding whether Appellant had an actual belief that she was in imminent danger of losing her life or sustaining serious bodily injury, evidence in the record shows that Appellant did not have an actual belief of harm. As Judge Bonds noted in his order, Appellant's testimony that Victim had a reputation for violence and fighting served to undermine Appellant's position. (R. 7, 48-49, 68). If Appellant considered Victim to be a dangerous individual as Appellant testified, then Appellant's actions in continuing a verbal argument with Victim as Victim exited the store in addition to slowly driving toward Victim thereafter indicates that Appellant sought out a confrontation with Victim. *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 ("[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self defense . . . ." (quoting Ferdinand S. Tinio, *Comment Note: Withdrawal, After Provocation of Conflict, As Revisiting Right of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974)) (alterations in original)). Appellant's actions in further seeking out Victim after Victim exited the store tends to show that Appellant was unafraid of Victim and of what Victim might do.

Moreover, at the immunity hearing, Appellant did not deny that she told Victim she would be waiting for Victim outside of the store as Victim walked inside. (R. 21). This also tends to show Appellant was not scared of Victim. Appellant testified at the immunity hearing that she did not know where her anger came from, which Judge Bonds viewed as Appellant acknowledging that at no point was she in fear for her life; rather, she was "merely angry." (R. 12, 69).

Further, the route Appellant chose to take toward the parking lot exit tends to show that she was not in fear of losing her life. Appellant had multiple routes toward the exit but chose a path that took her directly next to Victim. (State's Ex. 8 and 38). Appellant proceeded down this route at a slow rate of speed with her window down and came to a stop near Victim, an individual she testified was a dangerous individual. (R. 7, 69). Judge Bonds determined that Appellant's testimony that she was fearful of Appellant was not credible given that Appellant slowly approached Victim, who she claimed was known to be violent, with her window down despite multiple other routes toward the exit that would have taken Appellant away from Victim. (R. 69). *See State v. McGreer*, 13 S.C. 464, 466 (1880) (explaining the question of whether self-defense was applicable is dependent on more than just the defendant's own beliefs).

Despite Appellant's contention that Judge Bonds' analysis for the second element imposed an improper duty to retreat, Judge Bonds' analysis focused on whether an individual who believed Victim was dangerous would have taken the route closest to Victim at a slow speed with the window down and coming to a stop mere feet away from Victim. (R. 68-69). Judge Bonds did not state that Appellant had a duty to retreat. He determined that someone with a belief of imminent danger would not have undertaken the actions that Appellant did; therefore, Appellant did not have a belief of imminent danger. (R. 68-69).

Therefore, because Judge Bonds' ruling regarding this element is not without evidentiary support in the record, Judge Bonds did not abuse his discretion in determining that Appellant lacked a belief of imminent danger.

C. The presumption of reasonable fear found in section 16-11-440(A) was rebutted in this case.

Section 16-11-440(A) provides a rebuttable presumption of reasonable fear of imminent peril of death or great bodily injury when the person against whom deadly force is used is in the

process of or has unlawfully and forcibly entered an occupied vehicle. *See* S.C. Code Ann. § 16-11-440(A) ("A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself . . . 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[n] . . . 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.").

Judge Bonds noted this presumption in his order and found that the evidence presented to him tended to rebut the presumption of reasonableness of Appellant's actions. (R. 70). In addition to finding Appellant's testimony not credible, Judge Bonds determined that it was not reasonable that someone who was allegedly in fear of losing their life would drive at a slow rate of speed directly next to the allegedly dangerous person of whom they were fearful and then bring their car to a stop with the driver's window down. (R. 70). Judge Bonds also noted the evidence in the record that Appellant told Victim that she would be waiting on Victim to exit the store. (R. 70). *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 ("[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self defense . . . ." (quoting Ferdinand S. Tinio, *Comment Note: Withdrawal, After Provocation of Conflict, As Revisiting Right of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974)) (alterations in original)).Thus, Judge Bonds determined Appellant failed to show by a preponderance of the evidence that she was entitled to the presumption of section 16-11-440(A), which is supported by evidence in the record. (R. 70).

However, to reiterate, Appellant fails to meet the first element of self-defense—that she was entirely without fault in bringing on the difficulty. Because she fails to satisfy this first element and Judge Bonds did not abuse his discretion in finding that she failed to satisfy that element, this

Court need not consider anything further than the first element to affirm Judge Bonds' order denying immunity. *See Bixby*, 388 S.C. at 554, 698 S.E.2d at 586 ("It is an axiomatic principle of law that the defense has not been established *if any one element is disproven*." (emphasis added)).

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for voluntary manslaughter and possession of a weapon during the commission of a violent crime, as well as her associated sentences.

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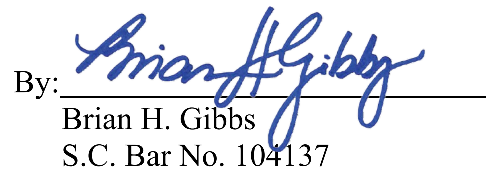

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July 30, 2025
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of General Sessions

Robert J. Bonds, Circuit Court Judge
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2024-000085

THE STATE, Respondent,

v.

TIFFANY REBECCA OWENS, Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Final Brief of Respondent on Joanna K. Delany, 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 30th day of July 2025.

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