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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court Of General Sessions
The Honorable H. Steven DeBerry IV, Circuit Court Judge

Appellate Case No. 2023-000868

THE STATE, Respondent,

v.

DRISCOLL RIGGINS, JR., Appellant.

RETURN TO APPELLANT'S AMENDED PETITION FOR REHEARING

On July 2, 2025, this Court issued an opinion affirming the trial court's ruling that Appellant contributed to bringing about the difficulty in his altercation with Victim. State v. Riggins, Op. No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025). This Court properly affirmed, because evidence presented at trial showed Appellant contributed to bringing on the difficulty by following Victim through a parking lot and shooting him to avenge the death of his friends. Specifically, Pyatt credibly testified Appellant walked up and shot Victim to avenge his friends, video evidence established the shooting occurred mere seconds after Appellant left the restaurant, and Dr. Richards testified Victim's wounds were to the back, side, head, and wrist.

Pursuant to the Act, the burden is on the defendant to establish his entitlement to immunity. State v. Andrews, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019). To meet the burden of establishing entitlement to immunity the defendant must prove all necessary elements of self-

defense by a preponderance of the evidence. State v. Glenn, 429 S.C. 108, 118, 838 S.E.2d 491, 496 (2019).

Regarding self-defense, the following four elements must be present in order for that particular defense to be established in South Carolina:

> *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.

State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) (emphasis added).

Our Supreme Court found intentionally bringing a loaded unlawfully possessed pistol to a drug transaction contributed to bringing on difficulty and thus barred an individual from asserting self-defense. State v. Williams, 427 S.C. 246, 830 S.E.2d 904 (2019). The Court noted defendant's pistol "was not simply a convenience for him so he could protect himself just in case violence arose." Williams, 427 S.C. 251, 830 S.E.2d 907. The Williams Court reasoned that the defendant illegally armed himself before he entered a situation that he understood to be unlawful and likely violent. Williams, 427 S.C. 254, 830 S.E.2d 908.

Similarly, in Slater, our Supreme Court found a defendant approaching an altercation that was already underway with a loaded gun supported the trial court's finding that defendant was not entitled to a self-defense charge. State v. Slater, 373 S.C. 66, 71, 644 S.E.2d 50, 53 (2007).

In Dennis, this Court remanded for a new immunity hearing. State v. Dennis, 444 S.C. 353, 372, 907 S.E.2d 142, 152 (Ct. App. 2024) cert. granted (Apr. 22, 2025). In Dennis, when discussing the merits of the immunity hearing, this Court found the trial court erred in deferring to the jury simply because conflicting evidence was introduced at trial and addressed the duty to retreat and avoid danger elements for the trial court's edification on remand. Here, unlike in Dennis, the trial court made a specific finding that Appellant was not without fault in bringing on the difficulty due to testimony and video evidence presented at trial. Additionally, this Court's determination in Dennis related to the duty to retreat and avoid danger elements, not the fault in bringing about the difficulty element relied upon in this case. Specifically, in the present case this Court stated:

> We hold that the circuit court's statement that Riggins "didn't have to leave the establishment at that point in time" did not indicate the circuit court thought Riggins had a duty to retreat, but that it found Riggins was not without fault in bringing on the difficulty because he followed the victim into the parking lot when he could have stayed in the restaurant while the victim left the parking lot.

State v. Riggins, Op. No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025).

Additionally, Dennis is factually distinct from this case. Dennis involved the stabbing of a student from a rival high school at a local fast-food restaurant. Dennis, 444 S.C. 353, 372, 907 S.E.2d 142, 152. Evidence was presented that the defendant was in his vehicle when individuals began throwing drinks at the vehicle and ultimately one witness stated a man reached in the car as if to stab someone. Id. at 360. Additionally, testimony was offered that a witness assumed the defendant did not leave the area because the group of students continuously moved around the vehicle and doing so would have resulted in injury to the students. Id. at 361.

Here, Pyatt testified that Appellant walked up to Victim as he was standing in a parking lot and shot him without confrontation. (R. p. 209-212). Sinclair testified he did not remember a

commotion or anything other than Victim checking in on the man that crashed. (R. p. 421). Additionally, video evidence shows the shooting occurred mere seconds after Appellant left the restaurant.[1] See Howard v. United States, 656 A.2d 1106, 1111 (D.C. 1995) ("[A] defendant is not entitled to a self-defense instruction if he deliberately places himself in a position where he has reason to believe his presence would ... provoke trouble."). And, since Appellant did not establish self-defense's without fault element, he was not entitled to immunity. cf. Bryant, 336 S.C. 340, 345-346, 520 S.E.2d 319, 322 (1999) ("[Bryant]'s statements fail to establish the elements of self-defense entitling [Bryant] to a self-defense charge. . . . Accordingly, [Bryant] was not entitled to a self-defense charge and the trial judge correctly refused the charge.").

This Court properly found that Appellant was not without fault for bringing about the difficulty because he readily contributed to and provoked the confrontation with Victim that led to the supposed need to use deadly force. This Court properly noted that the trial court's finding did not indicate Appellant had a duty to retreat, but rather found Appellant contributed to the conflict when he followed a man he had an extensive violent history with through a parking lot. Appellant failed to establish that he was without fault in bringing about the difficulty, because he, by his own admission, deliberately placed himself with a weapon in a place where his presence would provoke trouble. Lastly, the court specifically found the testimony of Pyatt and Sinclair to be credible. (R. p. 490). See State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015) ("Credibility findings are treated as factual findings, and therefore, the appellate inquiry is limited to reviewing whether the trial court's factual findings are supported by any evidence in the record."). Appellant failed to meet his burden of establishing he was without fault. The trial

[1] The timestamped video shows Appellant left the restaurant at 11:43 p.m. and depicts the reaction from the incident at 11:44 p.m.

court correctly denied immunity and this Court correctly affirmed. This petition for rehearing should be denied.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

ANDREW D. POWELL
Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

P.O. Box 1688
Georgetown, SC 29442

BY: _____
Andrew D. Powell
Bar # 106415

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 4, 2025

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Return to Appellant's Amended Petition for Rehearing on Gary H. Johnson, II, 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 4th day of August, 2025.

Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727