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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Hon. Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001287

The State..... Respondent,

v.

Eugene Turner, Jr..... Appellant.

**EUGENE TURNER, JR.’S
PETITION FOR REHEARING**

Pursuant to Rule 221, SCACR, Eugene Turner, Jr. (“Mr. Turner”) petitions for rehearing of the Court’s opinion in *The State v. Eugene Turner, Jr.*, Op. No. 2025-UP-258 (S.C. Ct. App. filed July 23, 2025). As explained more fully below, the Court overlooked or misapprehended the requirement that the trial court make specific findings as to each element of self-defense in analyzing Mr. Turner’s motion for immunity under the Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410, *et seq.* (the “Act”).

The Court further misapprehended the law and the facts in its own analysis of the immunity defense, straying at times into the same error as the lower court by failing adequately to analyze specifically the facts supporting each element of self-defense, including evidence of an attack on Mr. Turner.

Finally, the Court overlooked or misapprehended the law and facts relevant to Mr. Turner’s appeal from the lower court’s denial of a mistrial. The Court’s ruling that the issue was not

preserved for appellate review misapprehends the law regarding issue preservation and deprives Mr. Turner of appellate review of the trial court's ruling, contrary to his constitutional, statutory, or common law rights.

ARGUMENT

1. In its opinion, the Court held the trial court did not commit reversible error even though the trial court failed to make specific findings as to each element of self-defense in analyzing Mr. Turner's motion for immunity under the Act. *See Op.* at 10. The Court acknowledged that binding precedent required the trial court to consider each element of the Act and to make specific findings to support its ruling, *id.* at 11 (citing *Curry* and *Ford*), and the Court acknowledged that the trial court did *not* enumerate and discuss each element of the Act and the factual findings pertinent to them. *Id.* Nevertheless, the Court erroneously concluded that because "the trial court orally explained its reasoning," that is all that was needed to satisfy the requirement of specific analysis and findings on each element. *Id.*

The Court's holding on this point is incorrect and insufficient. The Court did not explain why the trial court should be excused from the requirement, how the trial court's ruling satisfied this obligation, or what authority supports the Court's bald assertion that an oral "explanation" is adequate despite its failure to address each element of the immunity defense. Mr. Turner respectfully disagrees with the Court's conclusion that the trial court's ruling was sufficient to meet its obligations to consider each element of self-defense and identify the facts relevant for each element. The Court should reconsider, reverse, and clarify that trial courts are required to list each element of self-defense in a ruling on a motion for immunity under the Act and the trial court should also identify the specific facts relevant for why each element of self-defense does or does not apply.

2. The Court’s opinion does not address or apply precedent that requires courts to address the specific elements of self-defense. Under the Act, a defendant is immune from prosecution if he was attacked where he had a right to be, and a valid case of self-defense exists. *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). The Supreme Court of South Carolina stated in *Curry* that “the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity,” which “includes all elements of self-defense, save the duty to retreat.” *Id.* These elements of self-defense are (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have believed he was in imminent danger of losing his life or sustaining serious bodily injury; and (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief. *See id.* at 371 n.4, 752 S.E.2d at 266 n.4.

In ruling on a motion for immunity, a trial court may provide its analysis orally on the record rather than in a written order, but it still must consider and address each specific element. *See State v. Glenn*, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019) (“While we understand that written orders are not always practical given the timing of the immunity hearing, the circuit court, in announcing its ruling, should at least make specific findings on the elements on the record.”). “While the Act does not require a written order upon an immunity determination, specific findings of fact and conclusions of law are critical to reviewing courts, particularly given the gravity of the circumstances these cases necessarily involve.” *State v. Cervantes-Pavon*, 426 S.C. 442, 452 n.4, 827 S.E.2d 564, 569 n.4 (2019). Failure to address each of the elements of self-defense makes appellate review difficult and constitutes reversible error. *Glenn*, 429 S.C. at 123, 838 S.E.2d at 499. The precedent from this Court and the Supreme Court of South Carolina is clear that trial courts must address the individual elements of self-defense when analyzing a motion for immunity under the Act.

In its opinion, the Court noted that the trial court must consider the elements of self-defense and make specific findings that support its immunity decision. Op. at 11. The Court conceded that the trial court did not list each element of self-defense and specifically connect each finding to an element. *Id.* The Court instead relied on its interpretation of the trial court’s ruling that the “substance” of the ruling sufficient covered each element. *Id.* This is in contradiction to *Glenn*, which held that failure to actually address each of the elements of self-defense is reversible error. 429 S.C. at 123, 838 S.E.2d at 499. This Court should have reversed the trial court’s ruling on the motion for immunity under the Act and required the trial court issue a ruling that specifically addresses each element of self-defense and identifies the facts the trial court used to find each element of self-defense was either satisfied or not satisfied. The Court’s reliance on the substance of the trial court’s ruling leaves the ruling still deficient of identifying the specific elements of self-defense and does not allow Mr. Turner to identify which elements of self-defense were considered or to properly challenge the facts used in making the determinations on each element of self-defense.

3. Mr. Turner argued on appeal that the lower court erred by denying his motion for mistrial. This Court ruled that the issue was unpreserved for appellate review. *See* Op. at 12. This ruling, like the trial court’s ruling below, deprived Mr. Turner of a fair trial—or, in this case, meaningful appellate review—that is guaranteed by constitutional, statutory, or common law rights. On appeal, the State did not argue the issue was unpreserved. Admittedly, this Court can raise issue preservation *sua sponte*; however, it erred in doing so in this case. That’s because Mr. Turner’s decision to decline a curative instruction was based on the fact that the cure would be worse than the disease—a curative instruction would simply have drawn *more* attention to the impermissible evidence that both parties and the court agreed was prejudicial. For this Court now

to rely on an unbending application of the prudential principle of issue preservation is unjust, unfair, contrary to South Carolina law, and perpetuates the deprivation of Mr. Turner's rights to a fair trial. *See Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) (“We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner.”); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (noting the doctrine of issue preservation “is not a ‘gotcha’ game”).

CONCLUSION

For the foregoing reasons, Mr. Turner respectfully requests that the Court rehear and reconsider the aspects of the appeal relating to the trial court's reversible error of failing to make specific findings as to each element of self-defense in analyzing Mr. Turner's motion for immunity under the Act, this Court's failure to consider each element itself, and this Court's refusal to consider the trial court's denial of a mistrial.

Respectfully submitted,

/s/ Miles E. Coleman

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August 7, 2025
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Honorable Perry H. Gravely, Circuit Court Judge

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Trial Court Case No. 2018GS2306134, 2018GS2306137,
2018GS2306139, 2018GS2306141, 2018GS2306142

The State, Respondent,

v.

Eugene Turner, Jr. Appellant.

PROOF OF SERVICE

Pursuant to Rule 262(a)(3), SCACR, undersigned counsel hereby certifies I have served a copy of Appellant’s Petition for Rehearing on Josh Edwards at the primary e-mail address listed in the Attorney Information System (AIS).

By:  _____

Miles E. Coleman

Attorney for Appellant

August 7, 2025
Greenville, South Carolina

Miles Coleman

From: Miles Coleman
Sent: Thursday, August 7, 2025 11:08 PM
To: jedwards@scag.gov
Cc: Adam McCoy
Subject: Turner v. State (No. 2022-001287) -- service of Petition for Rehearing
Attachments: 2025.8.7 -- State v. Turner -- Turner's Petition for Rehearing.pdf

Josh, please find attached for service upon you a copy of Mr. Turner's Petition for Rehearing, which we'll be filing with the South Carolina Court of Appeals shortly.

Regards,

Miles



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