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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2023-000943

THE STATE,

Appellant,

vs.

JUSTIN TYLER ANDERSON,

Respondent.

APPELLANT'S PETITION FOR REHEARING

Through an unpublished decision issued on July 16, 2025, this Court affirmed the circuit court judge's order granting immunity to Respondent Justin Tyler Anderson pursuant to the South Carolina Protection of Person and Property Act. State v. Anderson, Op. No. 2025-UP-242 (S.C. Ct. App. filed July 16, 2025). In affirming the circuit court judge's order, this Court first rejected the State's contentions the circuit court judge reversibly erred because: (1) he failed to make an actual determination on whether the "without fault for the difficulty" element had been established; and (2) Anderson was not without fault for the difficulty based on the language he used during the incident. Next, finding the circuit court judge properly determined Anderson "actually believed he was in danger because of the physical confrontation initiated by" the victim and did not err by finding Anderson's use of deadly force was justified, this Court rejected the State's contention Anderson did not reasonably need to use deadly force against his unarmed victim based on the circumstances involved. Finally, despite the language used by the circuit

court judge in his order, this Court rejected the State's contention the circuit court judge's analysis was incomplete and determined his order "properly addressed each element of self-defense" and no abuse of discretion occurred. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant ("the State") respectfully petitions for rehearing because this Court appears to have misapprehended and overlooked several critical flaws with the circuit court judge's order that necessitated—and continue to necessitate—reversal on appeal.

Turning first to the propriety of the circuit court judge's ruling concerning the "without fault for the difficulty" element of self-defense, the circuit court judge recognized a business proprietor has the right to eject trespassers from the premises and will be considered to be without fault in bringing on the difficulty so long as the proprietor engaged in a legitimate good faith exercise of the right to eject. (R. p. 138). The circuit court judge further recognized the question of whether the right to eject was exercised in good faith can turn on the language used during the interaction. (R. p. 138). The circuit court judge then—in total—ruled as follows:

> In the facts of this case, [Anderson] 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. [Anderson] 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 [Anderson] had no duty to retreat*.

(R. p. 139) (emphasis added). Notably, absent from that ruling is any actual explanation as to whether or how Anderson was without fault for the difficulty based on the case-specific circumstances involved.

In its decision affirming the circuit court judge's grant of immunity to Anderson, this Court found the circuit court judge's ruling in that regard "did address the element of self-

defense." But the circuit court judge's own words from his order support a contrary conclusion. Critically, based on what the circuit court judge himself stated, the circuit court judge began what was identified as an analysis of that particular element, but his analysis ultimately ended not with a determination Anderson was without fault for the difficulty but with a finding Anderson "had no duty to retreat," which was something entirely separate and distinct from the "without fault for the difficulty" element. Therefore, since no true determination was made as to whether Anderson was without fault for the difficulty, the circuit court judge could not properly find Anderson had met his burden of establishing entitlement to immunity, and the circuit court judge's conclusion to the contrary constituted a legal error requiring reversal. See State v. Glenn, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019) (concluding it constituted "reversible legal error" for the circuit court judge to make an immunity ruling without addressing the requisite elements of self-defense as necessary); cf. Morris v. BB&T Corp., 438 S.C. 582, 588, 885 S.E.2d 394, 398 (2023) ("This 'thought process' requires analysis, and the 'discretion' standard we employ for reviewing the commission's analysis requires the analysis be explained. Because the commission offered no explanation for its decision, we find the commission did not act within its discretion in refusing to reinstate Proffitt's appeal."). As a result, this Court should grant rehearing and reevaluate the matter based on what the circuit court judge actually stated and ruled in his order.

Relatedly, turning to whether Anderson truly could have been without fault for the difficulty as necessary for him to have a viable claim of self-defense, Anderson, in fact, could not have been without fault for the difficulty as a matter of law because he readily contributed to and provoked the physical altercation with the victim that led to the supposed need to use deadly force. That is true because Anderson admittedly exchanged vulgar language and *threats* with the

victim before any physical contact occurred between the two.[1] See State v. Brooks, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969) ("[I]f in the exercise of the right by a proprietor to eject a trespasser from his premises, the proprietor is assaulted by the trespasser and subjected to the danger of losing his life or of receiving serious bodily harm as would justify the killing of the assailant under the right of self-defense, obviously, he would have the right to stand on that defense and, if, in fact, engaged in the legitimate exercise in good faith of his right to eject, he would in such case be without fault in bringing on the difficulty, and would not be bound to retreat." (citation omitted)); cf. State v. Wiggins, 330 S.C. 538, 547, 500 S.E.2d 489, 494 (1998) (concluding a business proprietor's act of threatening to kick his victim's and his victim's sister's asses raised a question of fact as to whether the business proprietor truly "was exercising good faith in attempting to eject when the shooting occurred"); State v. Starnes, 213 S.C. 304, 316, 49 S.E.2d 409, 123 (1948) ("We think that whether or not Starnes was acting in good faith in attempting to evict a trespasser would be determinative of his rights in the premises, and that *if his acts were not in good faith, then he would not be without fault in bringing on the difficulty*." (emphasis added)). In fact, Anderson—by his own admission—even beckoned the victim to "come at [him]," which was an act starkly inconsistent with a genuine good faith effort to get the victim to *leave* the premises and could only reasonably be construed as an invitation for the physical confrontation that predictably ensued in response to it. See State v. Marshall, 428 S.C. 11, 20, 832 S.E.2d 618, 623 (Ct. App. 2019) (recognizing one who provokes an assault cannot escape criminal liability by asserting self-defense); cf. United States v. O'Neal, 36 C.M.R. 189, 192-193 (C.M.A. 1966) ("A plea of self-defense is a plea of necessity. It is generally not available to one who engages with another in mutual combat. Mere words of censure may not

[1] Notably, by his own admission, Anderson made statements to the victim like "Fuck you," "*Come at me*," and "What are you gonna do?" (R. p. 78) (emphasis added).

amount to provocation for an assault, but the accused's language went beyond critical comment. He invited the others to try to whip him. Both parties to a mutual combat are wrongdoers, and the law of self-defense cannot be invoked by either, so long as he continues in the combat." (citations, internal quotations, and brackets 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). Therefore, even accepting Anderson's account of the incident as entirely true and without need to consider the victim's testimony and credibility, Anderson could not validly claim to be *without* fault for the difficulty because the language he conceded he used contributed to, encouraged, and incited the physical confrontation with the victim that led to the stabbing. See 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. Patterson, 262 N.E.3d 595, 609 (Ohio Ct. App. 2025) ("Regarding the first element of a self-defense claim, the notion that an accused must not be at fault in creating the situation is broader than simply not being the immediate aggressor." (citations and internal quotations omitted));

McCarty v. Commonwealth, 51 S.W.2d 249, 250 (Ky. 1932) ("One cannot make a threatening demonstration and then shelter from the storm he has purposely raised under the shield of self-defense. . . . A challenge to a mortal combat, an assault, or a personal affront of such serious character as to be reasonably calculated to provoke and to precipitate a dangerous assault from another, are generally deemed sufficient to authorize a jury to deny the ordinary right of self-defense."). And, since Anderson could not establish self-defense's "without fault for the difficulty" element, Anderson was not entitled to immunity from prosecution as a matter of law. See State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) ("It is an axiomatic principle of law that the defense has not been established *if any one element is disproven*." (emphasis added)); cf. State v. 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."). Therefore, this Court should grant rehearing, and that is particularly true given the circuit court judge did not actually analyze the "without fault for the difficulty" element and, resultantly, offered no explanation or analysis as to how the language Anderson *self-admittedly* used did not preclude him from validly claiming to be without fault for the difficulty. Morris, 438 S.C. at 588, 885 S.E.2d at 398; cf. Strickland, 389 S.C. at 215, 697 S.E.2d at 684 (finding "shut your fucking mouth" constituted language that "might reasonably have been expected to bring on the difficulty").

Next, turning to self-defense's necessity element, the circuit court judge erred by finding Anderson was entitled to immunity pursuant to the Act because Anderson could not and did not establish it was reasonably necessary for him to use deadly force against the victim as was required for him to have a viable self-defense claim. Demonstrating that fact, nothing presented

during the immunity hearing established the victim did *anything* that would reasonably suggest he was armed or even attempting to arm himself with a deadly weapon, and the only thing Anderson could point to to suggest otherwise was the simple fact the victim returned to his vehicle a few times. Notwithstanding the fact Pickett interpreted the same occurrence as a sign the victim was attempting to retrieve his phone, the victim returning to his vehicle was the precise thing Anderson supposedly was trying to get the victim to do. Meanwhile, Anderson readily admitted he did not know if anything was in the victim's hands at the time the two became embroiled in a physical altercation, and Anderson certainly did not state he saw an object that could have reasonably led him to believe the victim, who—accepting Anderson's account as true—had merely shoved and attempted to punch Anderson, was armed at that time. 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); cf. State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) (concluding Fuller was entitled to an "act on appearances" jury instruction because he testified he thought he saw a shiny object in one of the victims' hands). Under those circumstances, Anderson could not possibly establish it was reasonably necessary for him to stab his unarmed victim in order to defend himself from death or great bodily harm, and, thus, he could not validly claim his use of deadly force was objectively reasonable, justified, or proper. See State v. Harvey, 110 S.C. 274, 277, 96 S.E. 399, 400 (1918) ("Tillman Harvey might have been without fault in provoking the difficulty, and still there might have been no necessity to kill. . . . While a man may take life in defense of himself or another, yet the slayer, or the person in whose behalf the slayer strikes, must not only be without fault in provoking the difficulty, but *there must be a necessity to kill*." (emphasis added)); cf. State v. Mincey, 14 So. 3d 613, 616 (La. Ct. App. 2009) (holding a rational factfinder could have

concluded Mincey did not kill his victim in self-defense because "responding to an oncoming punch by shooting the other person in the chest is an excessive response"); Lambert v. State, 519 A.2d 1340, 1346 (Md. Ct. Spec. App. 1987) (recognizing "the question whether the force used in a given case was unreasonable is usually one for the trier of fact" and concluding Lambert was *not* entitled to have the issue of self-defense submitted to the jury because he used a knife against an unarmed victim and the victim's initial unarmed attack upon him "may have afforded a reasonable basis for a conclusion that the victim intended to inflict *some* harm" but "did not provide a reasonable basis for the belief he intended to inflict serious bodily harm or death or that deadly force was needed to prevent such harm"); State v. Walker, 966 P.2d 883, 889 (Wash. 1998) ("Any reasonable person standing in [Walker]'s shoes would have perceived that only 'an ordinary battery is all that was intended,' in which case the use of deadly force was unjustified." (citation and brackets omitted)). Therefore, because Anderson could not legally establish yet another required element of self-defense, he was not entitled to immunity pursuant to the Act, and the circuit court judge committed a clear legal error by reaching a contrary conclusion. See State v. Jones, 416 S.C. 283, 301, 786 S.E.2d 132, 141 (2016) ("[T]he defendant must demonstrate the elements of self-defense, save the duty to retreat, by a preponderance of the evidence."). As a result, this Court should grant rehearing.

Finally, turning to whether the circuit court judge actually considered all the required elements of self-defense in granting immunity to Anderson, the circuit court judge—based on the contents of his order—committed a clear reversible error of law by erroneously concluding Anderson was only legally required to establish two elements of self-defense—"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"—in order to be entitled to immunity. (R. p. 140). Contrary to that conclusion, it was unquestionably necessary for the circuit court judge to—at a minimum—*also* find Anderson had established self-defense's "without fault for the difficulty" element in order for it to be possible to validly grant immunity from prosecution in Anderson's case. Cf. State v. Cervantes-Pavon, 426 S.C. 442, 449, 827 S.E.2d 564, 568 (2019) ("To warrant immunity, a movant must show *he was without fault in bringing on the difficulty*, he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, and a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. He may also show that he actually was in imminent danger and the circumstances would have warranted a man of ordinary firmness and courage to strike the fatal blow to save himself from serious harm or death. Section 16-11-440(C) provides the movant has no duty to retreat if, at the time of the attack, he was in a place where he has a legal right to be." (emphasis added and citations omitted)). Therefore, since no such finding was made and, instead, the circuit court judge determined he did *not* even have to make such a finding, the circuit court judge reversibly erred by conducting an incomplete and inadequate analysis. Resultantly, this Court should grant rehearing.

For all the foregoing reasons coupled with the reasons advanced and articulated in the State's appellate brief, the State respectfully asks this Court to reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion reversing the circuit court judge's flawed immunity ruling and remanding for further proceedings. By doing so, this Court will ensure the circuit court judge—who, up to this point, has abused his discretion and committed a clear error of law by finding Anderson was entitled to immunity on the indicted charges *without* properly addressing or ruling upon all the

necessary elements of self-defense—conducts the appropriate analysis and actually explains how all the requisite elements of self-defense have or have not been established, which—based on Anderson's own admissions—could not legitimately be established in Anderson's case. See Morris, 438 S.C. at 585-586, 885 S.E.2d at 396 (instructing a court must offer an explanation for its decision and instructing "no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law"); cf. Glenn, 427 S.C. at 123, 830 S.E.2d at 499 (concluding the trial judge committed a reversible legal error by ruling upon a request for immunity without addressing the elements of self-defense and remanding with instructions for the circuit court to analyze *all* the elements of self-defense).

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

By: _____
Mark R. Farthing
S.C. Bar Number 76901

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PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Appellant's Petition for Rehearing on Respondent by sending an electronic copy via email to the address listed in AIS for the following individual:

Leland B. Greeley, Esquire
Post Office Box 2981
Rock Hill, South Carolina 29732

I further certify all parties required by Rule to be served have been served.
This 2nd day of September, 2025.

CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General