

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

Opinion No. 2025-UP-216 (S.C. Ct. App. Filed July 2, 2025)
Lower Court Case No. 2021-GS-26-03375, -03376, -03377

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Sep 16 2025

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DRISCOLL RIGGINS, JR.

APPELLANT

APPELLATE CASE NO. 2023-000868

APPENDIX

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Aug 06 2024

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in ruling appellant was at fault in bringing on the confrontation with McCray by imposing a duty to retreat on appellant who was acting lawfully by walking down a public street as the only means of travel from his place of employment following a full workday?
- II. Since appellant was acting lawfully, and in a place he had a right to be, did the trial court err in failing to grant immunity under the Protection of Persons and Property Act based upon the court's finding that appellant was reasonably in fear for his life from the actions of McCray?
- III. Whether the trial court erred in admitting into evidence a written statement of a witness who could neither remember the events from the statement nor providing the statement to law enforcement?

STATEMENT OF THE CASE

Appellant Driscoll Riggins, Jr., was indicted for murder, possession of a weapon during a violent crime, and unlawful possession of a firearm by a Horry County grand jury on August 18, 2021. R. 584. He was tried before the Honorable Steven DeBerry and a jury on May 15 – 19, 2023. R. 1. At trial, appellant was represented by Caitlyn Caldwell and Ricky Todd. George DeBusk and Dylan Bagnal represented the state.

By consent of all parties, the evidence concerning appellant's immunity and right to stand his ground under S.C. Code Ann. § 16-11-440 (2006) was taken during the jury trial. R. 29, ll. 11 - 22. Under this agreement, Judge DeBerry denied appellant immunity at the close of the evidence, finding appellant was not without fault in bringing on the difficulty. R. 490, ll. 3 – 9.

On May 19, 2023, the jury convicted appellant of voluntary manslaughter, as a lesser included offense to the murder charge, and guilty of the possession of a weapon during the commission of a violent crime charge. R. 567, ll. 7 - 24. Following the verdict, appellant plead guilty to the unlawful possession charge. R. 568, l. 18 – 570, l. 22. Judge DeBerry sentenced appellant to twenty-five years in prison for voluntary manslaughter, five years in prison for possession of a weapon during the commission of a violent crime, and 720 days in prison for the unlawful possession charge. R. 581, ll. 4 - 21.

This appeal follows.

STATEMENT OF THE FACTS

Appellant and Durance McCray had a long history of animosity. They grew up together, but the relationship deteriorated. R. 400, ll. 2 – 20. McCray’s involvement with the killing of two of appellant’s close friends was a significant factor in their conflict. R. 401, ll. 4 – 25. McCray actively celebrated the deaths, taunted appellant, and made threats that a similar fate was in store for appellant. R. 402, l. 7 – 405, l. 9; Defendant’s Exhibits 10, 11. McCray was involved in a drive by shooting incident in which appellant was shot in the leg. R. 410, l. 3 – 411, l. 13. The state admitted McCray and appellant had a long-standing grievance and acknowledged McCray was a “bad guy.” R. 42, ll. 6 – 17. Based on these facts, the trial court ruled appellant was rightfully afraid of McCray and that appellant had a reasonable belief an incident with McCray would endanger appellant’s life. R. 489, l. 21 – 490, l. 2.

Captain Archie’s is a bar located in North Myrtle Beach that is surrounded by water with a single point of access across a narrow strip of land. R. 38, ll. 15 – 19; R. 64, ll. 17 - 24. Appellant was a new employee of Captain Archie’s and worked as a dishwasher in the kitchen area of the bar. R. 57, ll. 7 - 20. On May 21, 2021, appellant clocked in at 3:55 p.m. and clocked out at 11:42 p.m. just before closing time for the bar and having worked a full shift. R. 60, ll. 12 – 25; R. 399, ll. 19 – 25. While working, appellant noticed McCray’s presence at the bar and took steps to keep himself informed of McCray’s location during the evening. R. 416, l. 2 – 418, l. 13.

Shortly after McCray left Captain Archie’s, appellant clocked out of work for the evening and also left the bar. R. 419, l. 8 – 420, l. 24. Since there is a single narrow access road surrounded by water, both appellant and McCray walked in the same direction, with appellant delaying his departure until McCray was well down the road. The portion of the video that captured the interaction in the parking area when the shooting occurred is viewable on channels 1 and 7 from

time stamp 11:42:00 as McCray enters the frame through time stamp 11:43:06 when appellant enters the frame until the fatal encounter at 11:44:06.¹ State's Exhibit 7. McCray and his companion, Jada Phyllatt, stopped on the single access road to investigate an unknown person who had crashed their moped into a dumpster. R. 209, ll. 2 – 24. McCray's other companion during the evening, Joey Sinclair, pulled up in his vehicle alongside McCray and Phyllatt, effectively creating a choke point for any other persons leaving the area. State's Exhibit 7 (channel 7 time stamp 11:42:49 shows Sinclair's vehicle following McCray).

Appellant was walking towards this choke point, the sole means available to leave the area, when the fatal confrontation occurred. State's Exhibit 7. McCray exchanged words with appellant and threatened that appellant's picture would be on a "t-shirt next" and made a movement towards his waist.² R. 422, l. 3 - 19. Appellant, well acquainted with McCray's prior history of violence, reacted by pulling his own handgun and firing. R. 424, l. 16 – 425, l. 24. McCray called out to Sinclair in the BMW blocking traffic to "get the chopper" so appellant pursued McCray around the front of Sinclair's vehicle and continued firing.³ R. 424, l. 16 – 425, l. 24.

To paint appellant as the initial aggressor in the altercation, the state relied upon the testimony of Phyllatt who claimed there was no confrontation between appellant and McCray and that appellant walked up and shot McCray. R. 211, l. 23 – 212, l. 25. Despite the video showing at

¹State's Exhibit 7 is the Captain Archie's video from several camera locations including the parking area introduced at trial that captured the interaction of the participants around the moment of the shooting from distance with small time jumps and is on file with this Court for review.

² The reference to "face on a t-shirt" was connected to the prior slaying of appellant's two friends which McCray celebrated through social media posts. R. 422, ll. 4 – 7.

³"Chopper" was identified by appellant as slang for an assault rifle. R. 425, ll. 9 - 13. This interpretation is supported by common slang guides. See *Chopper*, Urban Dictionary, <https://www.urbandictionary.com/define.php?term=chopper>.

least ten seconds of interaction between appellant and McCray, Phyllis described the shooting as an ambush with no instigating actions by McCray. R. 211, l. 23 – 212, l. 25. Sinclair testified that he did not see when the shooting started, but claimed he did not hear any commotion or shouting before the first shot. R. 93, ll. 6 – 13; R. 94, ll. 1 – 19.

To bolster the idea that appellant was looking to get McCray, the state called Stephanie Cano, another employee of Captain Archie's. R. 243, ll. 8 – 16. Cano could not remember anything about her involvement with appellant or McCray, or her interview with investigators the next day, due to memory loss associated with black outs due to heavy alcohol abuse. R. 246, ll. 3 - 11. Over objection, a written statement from Cano was introduced into evidence in which she asserted appellant offered to pay her \$100 to let him know when McCray left the bar. R. 249, l. 23 – 250, l. 15.

During deliberations, the jury asked for clarification on the law of self-defense. R. 559, ll. 18 – 21. After being supplied with a copy of the complete jury charge, the jury asked about the definition of "reasonable." R. 560, ll. 21 – 23. Without objection from either party, the jury was told they had to reach a decision based on the evidence presented and the law provided in the jury charge. R. 561, ll. 11 – 13. The jury then requested testimony be reviewed from two of the investigating officers and asked if the defense attorney could do their own investigation. R. 561, ll. 20 - 25. Without objection from either party, the jury was again told they had to reach a decision on the evidence presented and the jury charge, but that testimony could be reviewed either in full or in part. R. 564, ll. 1 – 12.

After further deliberation, the jury again asked if the defense attorney could procure their own evidence without the state's approval. R. 564, l. 24 – 565, l. 4. The trial court again told the jury they "must reach a verdict based on testimony and evidence and the law you have been

provided.” R. 565, l. 21 – 23. Deliberations started at 11:45 a.m. and a verdict was returned at 5:36 p.m. R. 558, l. 23; R. 566, l. 6.

ARGUMENTS

I.

The trial court erred in ruling appellant was at fault in bringing on the confrontation with McCray by imposing a duty to retreat on appellant who was acting lawfully by walking down a public street as the only means of travel from his place of employment following a full workday.

Standard of review.

“A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review.”⁴ State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

The stand your ground law.

The pertinent part of the Protection of Persons and Property Act (hereinafter the Act) governing appellant’s actions is as follows:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440 (C)(2006).

⁴ By consent of both parties, the trial judge elected to conduct the immunity hearing in conjuncture with the jury trial and ruled on the immunity claim at the close of the evidence before submitting the case to the jury. R. 29, ll. 2 – 23.

As noted by our Supreme Court, “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. This includes all elements of self-defense, save the duty to retreat.” State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013).

There are “four elements that must be established to justify the use of deadly force” in connection with a stand your ground immunity claim. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). The elements 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.

Id. The fourth element is excused by the Act. *See Curry* 406 S.C. n. 4, 752 S.E.2d n. 4.

The trial court’s ruling improperly mixed a duty to retreat requirement in the without fault in bringing on the difficulty element.

At the conclusion of the evidence presented at trial, the trial court ruled that appellant had a reasonable fear for his own life due to the actions of McCray. R. 489, l. 21 – 490, l. 2. Despite this ruling, the trial court rejected immunity because appellant was “not without fault” in bringing about the confrontation, since appellant did not “have to leave the establishment at that point in time.” R. 490, ll. 3 – 9. This finding was an error of law, since it improperly incorporated the duty to retreat element of self-defense onto the immunity protections provided by the Act.

Appellant delayed leaving Captain Archie’s until after McCray left. While the state argued this action was evidence of appellant’s desire to create a confrontation, the video evidence

demonstrates that appellant was walking well behind McCray (there is almost a full minute between McCray leaving Captain Archie's and entering the video frame and appellant's first appearance). State's Exhibit 7 (Channels 1 and 7, time stamps 11:42:00 and 11:43:00). At the time appellant enters the frame, his ground view of McCray would have been from a considerable distance and blocked by parked cars. State's Exhibit 7 (Channels 1 and 7, time stamp 11:43:00). The fatal encounter occurred solely based upon McCray's actions in lingering at the narrow choke point on the public right of way that is the sole means of ingress and egress from Captain Archie's. State's Exhibit 7 (Channels 1 and 7, time stamp 11:43:00).

The video shows McCray and his girlfriend stopping at a very narrow choke point that is further blocked by the vehicle driven by Sinclair, McCray's other companion. State's Exhibit 7 (Channels 1 and 7, time stamp 11:42:00 – 11:43:27). Appellant's delayed departure from Captain Archie's of approximately sixty seconds allowed McCray to vacate the immediate area but for his stopping to investigate an accident involving a moped at this choke point. State's Exhibit 7 (Channels 1 and 7, time stamp 11:42:00 – 11:43:27).

Appellant approached the same choke point, as it was the sole means of leaving the area. State's Exhibit 7 (Channels 1 and 7, time stamp 11:43:00 - 11:43:52). While the video does not show the shooting in detail, the first shots were fired between time stamp 11:44:03 and 11:44:06 based upon the reaction of people in the video. State's Exhibit 7 (Channels 1 and 7). There are approximately 10 seconds of video interaction between appellant and McCray's group before the first shot is fired.

The trial court's ruling would have required appellant to turn around and go back towards Captain Archie's or clairvoyantly know to delay his departure an unknown additional amount of

time to allow McCray greater opportunity to depart the area.⁵ This requirement would add an element to S.C. Code Ann. § 16-11-440 which our legislature has specifically rejected: a duty to retreat. Allowing the concept of “without fault” in bringing on the difficulty to backdoor a duty to retreat would circumvent the legislative intent behind the Act. In the present case, appellant can be seen on video walking down a public right of way that is the sole means of ingress and egress from his place of employment. State’s Exhibit 7. He is seen on video leaving his place of employment a full minute after McCray and after working a full shift at the establishment. R. 419, ll. 8 – 24. Captain Archie’s also typically closed around midnight. R. 63, ll. 11 – 23.

The trial court’s interpretation of the without fault element of self-defense failed to properly consider the elimination of a duty to retreat under S.C. Code Ann. § 16-11-440(C). This is shown by our Supreme Court’s example outlined in State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019):

This absurdity is readily illustrated through this example: A person peaceably jogging through a public municipal park at 8:59 p.m. would be entitled to defend herself from an attacker under the protection of the Act, but should the clock turn to 9:00 p.m., at which time the park “closes” under the municipal code, when she is attacked, then she is categorically barred from immunity under the Act due to her technically not having the “right to be” there. Such an absurd result would undoubtedly thwart the Legislature’s intended objective to protect victims of crime.

Id., 429 at 120, 838 S.E.2d at 497.

In the present case, the trial court’s logic places appellant in a similar situation to the hypothetical jogger in Glenn based upon the passage of time. Under the lower court’s ruling, appellant would have been entitled to use deadly force in the same location and under the same facts if he had simply waited an unknown length of extra time before lawfully walking down the street. Much like the jogger in Glenn, appellant would have been at the whim of the clock in terms

⁵This was the same argument the solicitor made to the jury; that appellant had a duty to retreat from McCray. “To avoid a fight, you turn around and go back to Captain Archie’s. If you are scared, you call the police. . .” R. 521, ll. 22 – 24.

of whether he delayed his lawful activity (walking down the public street after getting of work) long enough to divorce himself from McCray's departure from the area.

This situation can be contrasted with other situations in which an accused "creates" the unlawful activity which properly precludes the use of self-defense. *See State v. Williams*, 427 S.C. 246, 250, 830 S.E.2d 904, 906 (2019) (holding "a defendant is not entitled to a charge of self-defense if the evidence supports only the conclusion that he acted 'in violation of law' in a manner 'reasonably calculated to produce [a violent] occasion.'"); *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999)(finding that one who provokes or initiates an assault cannot assert self-defense unless he withdraws in good faith and announces his intention to retire from the assault); 40 Am. Jur. 2d Homicide § 149 (1999) ("Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.").

The trial court's ruling that appellant was not "without fault" in bringing about the difficulty because he clocked out from work and walked along the only available route to leave placed a duty to retreat into S.C. Code Ann. § 16-11-440(C) that our legislature never intended. Appellant was "not engaged in an unlawful activity" when he was walking down the street. Appellant was confronted in a place he had a right to be and was under "no duty to retreat" and had "the right to stand his ground and meet force with force." S.C. Code Ann. § 16-11-440(C). Requiring appellant to retreat from McCray, as the trial court's ruling did, ignores the requirements set forth under the Act and requires reversal.

II.

Since appellant was acting lawfully, and in a place he had a right to be, the trial court erred in failing to grant immunity under the Protection of Persons and Property Act based upon the court's finding that appellant was reasonably in fear for his life from the actions of McCray.

The trial court erred in failing to grant immunity and this Court should rule appellant is entitled to immunity based upon the evidence presented and the findings of fact made by the trial court.

In ruling on the immunity issue, the trial court found appellant had a reasonable fear of his life from the actions of McCray. "I recognize the fact, that there was quite a history between these two individuals between the [appellant] and Mr. McCray, that that history was violent. Certainly [appellant] seemed to have appropriate beliefs that some day some incident might happen that would endanger his life." R. 489, ll. 21 – 24.

This ruling accepts the appellant's evidence that he had a reasonable fear for his life from McCray's comments about putting appellant's face on a t-shirt and reaching for his waist. R. 422, l. 4 – 425, l. 3. "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." State v. Starnes, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000).

Further, "a person has the right to act on appearances, even if the person's belief is ultimately mistaken." State v. Dickey, 394, S.C. 491, 501, 716 S.E.2d 97, 101 (2011). A citizen does not have to wait for an aggressor "to get the drop on him." State v. Rash, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936).

As explained in State v. Harris, 382 S.C. 107, 114, 674 S.E.2d 532, 536 (Ct. App. 2009), "[The defendant] doesn't have to wait until his assailant gets the drop on him, he has a right to act

under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.” One does not have to wait until being fired upon to use deadly force. State v. Nichols, 325 S.C. 111, 117-18, 481 S.E.2d 118, 121-22 (1997); *see also* Stames, 340 S.C. at 322, 531 S.E.2d at 913 (holding that once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act).

The video evidence of the encounter shows appellant walking down the public street. The trial court found appellant had a reasonable fear of McCray. McCray’s action of reaching towards his waist after threatening to put appellant’s face on a t-shirt would have put an ordinary person in reasonable fear for their own life. *See* Dickey, 394 S.C. at 499, 716 S.E.2d at 101. The proximity of Sinclair’s vehicle creating a confined space and McCray calling for the “chopper” justified appellant continuing to act in self-defense as McCray rushed around the front of Sinclair’s vehicle. R. 424, l. 16 – 425, l. 24; State’s Exhibit 7 (camera 1 time stamp 11:44:00 – 11:44:20). As our Supreme Court noted in a similar case involving a long simmering dispute that erupted in violence:

death was in the offing and the appellant, having no duty to retreat and being without fault in *bringing on the last and fatal confrontation*, was warranted in reacting to the situation with force in order to preserve his own life. Once the appellant's right to fire in self-defense arose, *he was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon.*

State v. Hendrix, 270 S.C. 653, 660–61, 244 S.E.2d 503, 507 (1978). It is also the law that “when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.” Id., 270 S.C. at 661, 244 S.E.2d at 507 (quoting 40 C.J.S. *Homicide* 131(b) at 1020 (1944)).

This Court should reverse the lower court and find appellant meets the requirements for immunity under S.C. Code Ann. § 16-11-440(C) and reverse his conviction for voluntary manslaughter.⁶

If this Court does not rule appellant is entitled to immunity under S.C. Code Ann. § 16-11-440(C) based upon the lower court’s ruling and the evidence presented due to lack of findings on each of the required elements, a remand would be proper for specific findings of fact on all the elements of immunity under the Act.

“We emphasize that a circuit court, as the designated factfinder in this matter, must provide adequate findings to support its decision so an appellate court can perform its role of reviewing the ruling under an abuse of discretion standard.” State v. McCarty, 437 S.C. 355, 374, 878 S.E.2d 902, 912–13 (2022). In McCarty, our Supreme Court ultimately remanded the case since the lower court failed to make specific findings to enable appellate review.

As noted in State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019), this Court may be reluctant to “infer findings of fact which do not appear in the record.” Id., 429 S.C. at 123, 838 S.E.2d at 499. As such, if this Court does not find the evidence supports a finding of immunity under S.C. Code Ann. § 16-11-440(C), a remand for a new immunity hearing would be proper to allow specific findings of fact and conclusions of law on the required elements.⁷

⁶ This would also negate appellant’s conviction for possession of a weapon during the commission of a violent crime under S.C. Code Ann. § 16-23-490 (2010) since it depended upon the guilty verdict for voluntary manslaughter.

⁷ A full evidentiary hearing would be proper since the evidence submitted before a jury and a judge can be substantially different. *See* State v. McCarty, 437 S.C. 355, 878 S.E.2d 902 (2022).

III.

The lower court erred in admitting the written statement of a witness who could neither recall the events from the statement nor recall providing the statement to law enforcement.

Stephanie Cano testified via remote video feed from Texas. Cano was a former employee of Captain Archie's who was present at the bar on the evening of the shooting. R. 243, ll. 8 - 16. Cano indicated a complete lack of memory concerning the events inside Captain Charlies on the night of the shooting. R. 246, ll. 3 - 11. The state tried to refresh her memory with a statement she wrote on the day following the shooting. Cano testified:

Q. So you did make a statement at that time and that is what it says?

A. I read the statement, and I know that is what it says, and I know it is my handwriting. My issue with this is, back then, that – I was telling the detective is that I have black-outs when I drink. So standing here today, I'm not going to confirm my statement back then since I don't technically remember it today.

R. 246, ll. 3 - 11.

The trial court then admitted this written statement into evidence over objection. R. 249, l. 23 - 250, l. 15. This was an error of law.

The admission of the written witness statement is governed by Rule 803(5), SCRE, concerning recorded recollections. Rule 803(5), SCRE, allows a statement like Cano's to be "read into evidence" but the document itself is inadmissible unless offered by an adverse party. As noted by our Supreme Court, the adoption of the Rules of Evidence represented a change in approach to this type of recorded recollection. *See Ellis v. Oliver*, 323 S.C. 121, 129, 473 S.E.2d 793, 797 (1996) (noting that "Rule 803(5), SCRE, . . . states that such a memorandum may not be introduced as an exhibit unless offered by the adverse party. As the Comments to Rule 803 point out, this represents a change in South Carolina law.").

State v. Lindsey, 394 S.C. 354, 360, 714 S.E.2d 554, 557 (Ct. App. 2011) found that interview notes being read into evidence and received as an exhibit violated Rule 803(5), SCRE, when the witness did not assert a lack of memory. Here, while the questioning from the solicitor regarding Cano's memory of the statements and use of the statement to refresh her recollection may have been proper, the admission of the actual written statement was not.

Here, the factual dispute presented to the jury was not whether appellant shot McCray, but whether appellant acted in self-defense or as an aggressor. To establish that appellant was the aggressor, the state relied upon this written statement by Cano. R. 508, ll. 13 – 16. The state went further in using the written statement to bolster their version of events:

He also tried to get Stephanie Cano to work for him. He offered a hundred dollars to tell him when he left. She didn't want to testify. Like anyone, she didn't want to get involved here, but she gave a statement to the police the day after this happened, and she said when she wrote the statement, it was the truth.⁸ *In that statement, which is in evidence*, she said the dishwasher -- and the only one dishwasher that night was Mr. Riggins -- she was offered a hundred dollars to watch a fellow in white T-shirt and tell him when he left.

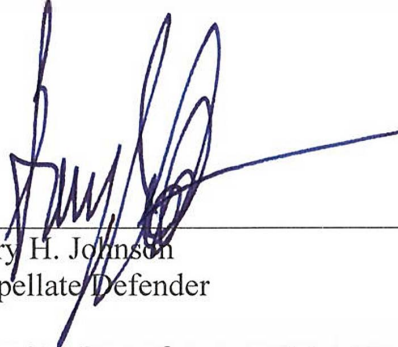
R. 514, ll. 13 – 24 (emphasis added).

The improper admission and use of the written statement to bolster the state's view that appellant was trying to ambush McCray was reversible error requiring a new trial. In a similar case, the Supreme Court of Mississippi found the admission of a similar written statement improper when the declarant could not remember due to a total lack of memory, much like Cano in the present case, as it implicated the Confrontation Clause and rights of the accused to effectively confront the witnesses against them. *See Goforth v. State*, 70 So. 3d 174, 186 (Miss. 2011).

⁸In reality, Cano testified she could not remember the evening in question, or even making the statement, let alone that it was the "truth" when she provided it to investigators. R. 246, ll. 3 – 25.

CONCLUSION

By reasons of the foregoing arguments, appellant's conviction should be reversed, and this Court should find appellant was immune from prosecution under the Act and set aside his conviction for voluntary manslaughter and possession of a weapon during the commission of a violent crime. In the alternative, the case should be remanded to the Horry County Court of General Sessions for a new trial and full evidentiary hearing on appellant's stand your ground right.



Gary H. Johnson
Appellate Defender
ATTORNEY FOR APPELLANT

This 6th day of August, 2024.

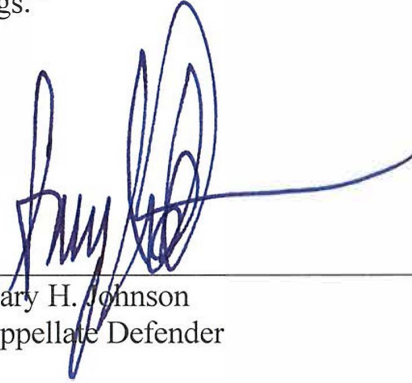
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Aug 06 2024

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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August 6, 2024.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

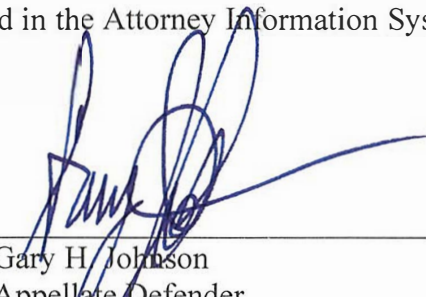
DRISCOLL RIGGINS, JR.

APPELLANT

APPELLATE CASE NO. 2023-000868

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 6th day of August, 2024.



Gary H. Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

Aug 06 2024

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.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. The trial court erred in ruling appellant was at fault in bringing on the confrontation with McCray by imposing a duty to retreat on appellant when despite appellant walking down a public street as the only means of travel from his place of employment following a full workday.
- II. Since appellant was acting lawfully, and in a place he had a right to be, the trial court erred in failing to grant immunity under the Protection of Persons and Property Act based upon the court's finding that appellant was reasonably in fear for his life from the actions of McCray.
- III. The lower court erred in admitting the written statement of a witness who could neither recall the events from the statement nor recall providing the statement to law enforcement.

COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. Under Davis, a grant of immunity requires the defendant to establish, by a preponderance of the evidence, he was without fault in bringing on the difficulty. Did the court err in determining Appellant was not without fault where Pyatt credibly testified Appellant shot Victim without difficulty to avenge the death of his friends was deemed credible?
- II. Under Rule 613, SCRE extrinsic evidence of a prior inconsistent statement is admissible if the witness is advised of the statement, the time and place it was made, the person to whom it was made, and given the opportunity to explain or deny the statement. Did the court err in admitting evidence of Cano's prior written statement where Cano was unable to recall writing that Appellant paid her to notify him when Victim left the restaurant?

STATEMENT OF THE CASE

A Horry County Grand Jury indicted Appellant Driscoll Riggins, Jr. for murder, possession of a weapon during a violent crime, and unlawful possession of a firearm. He proceeded to a jury trial on May 15-19, 2023, before the Honorable Steven DeBerry, IV. Appellant was convicted of voluntary manslaughter and possession of a weapon during the commission of a violent crime. Appellant pleaded guilty to unlawful possession of a firearm¹. Appellant was sentenced to twenty-five years' imprisonment for voluntary manslaughter, five years' concurrent imprisonment for possession of a weapon during the commission of a violent crime, and seven-hundred- and twenty-days' time served for unlawful possession of a firearm. This direct appeal follows.

¹ Because of this plea, immunity is irrelevant to this conviction. See State v. Sims, 423 S.C. 397, 402, 814 S.E.2d 632, 634 (Ct. App. 2018).

STANDARD OF REVIEW

The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845 (2006). “A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [an appellate court] reviews under an abuse of discretion standard of review.” State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). An “abuse of discretion” occurs when the conclusions of the trial court lack evidentiary support or are controlled by an error of law. Douglas, 369 S.C. 429, 632 S.E.2d 845.

STATEMENT OF FACTS

Appellant and Victim knew each other growing up. (R. p. 400). Appellant testified that the two grew apart over time. (R. p. 400-401). Notably, Appellant stated in 2020 two of his friends were killed in a shooting. (R. p. 401). Appellant testified he did not think Victim shot them and that Victim was not charged with the offense. (R. p. 402). Nonetheless, Appellant stated that Victim's social media indicated to him that Victim was involved. (R. p. 402). Appellant stated that more shootings ensued, resulting in Appellant being shot in the leg by Victim. (R. p. 410-411).

On the evening of May 21, 2021, Appellant was working his shift at Captain Archies in North Myrtle Beach. (R. p. 398-400). Appellant clocked in for his shift at around 3:00 PM. (R. p. 399). That evening McCray (Victim) and his girlfriend, Pyatt, went to Captain Archies to watch a basketball game. (R. p. 205). Victim and Pyatt noticed a fellow acquaintance, Sinclair, at the restaurant and sat with him for a while. (R. p. 205).

Appellant's coworkers made him aware of the fact that Victim was at the restaurant. (R. p. 416). One coworker made a statement to Detective Bellamy that Appellant offered her a hundred dollars to tell him when Victim left the restaurant.² (R. p. 245-246). Pyatt testified that the group discussed going to another bar, but decided they were too tired and decided to go home. (R. p. 207). McCray and his girlfriend went to the parking lot while Sinclair went in another direction. (R. p. 208). She testified that as they were walking to the vehicle a man crashed into the dumpster while driving a moped. (R. p. 209). She stated several people gathered, and that Sinclair reappeared in his vehicle. (R. p. 210). She further testified that a guy walked up and said "this is for my ni*****" and that a shooting ensued. (R. p. 212). She testified that the

² The coworker testified that the statement consisted of her handwriting but that she was unable to confirm her statement due to alcohol abuse. (R. p. 246).

man walked up from the direction of the restaurant. (R. p. 212). She stated that Victim went to the hospital at this time. (R. p. 214).

Sinclair testified that he left the group because he parked in a different area but drove to the dumpster when he noticed the group gathered. (R. p. 90-91). He testified that he probably got out of his vehicle for a second or so but not for a long period of time. (R. p. 92). Sinclair stated that he did not remember a commotion or anything other than Victim and his Girlfriend checking in on the man that had crashed. (R. p. 94). He stated that when he got back into his vehicle, he heard a gunshot. (R. p. 92). Sinclair testified that at this point he did not know where the shots were coming from. (R. p. 93). Victim got in the car and they went to the hospital. (R. p. 93).

Appellant testified he clocked out at around 11:40 PM and left to walk to his grandmother's house. (R. p. 419-420). Appellant stated he walked through the parking lot and stopped by the car that Victim was in. (R. p. 421). Appellant testified that they exchanged words.³ (R. p. 424-425). Appellant further stated that he shot Victim because he thought Victim was reaching for a gun. (R. p. 424-425).

Dr. Richards testified that Victim suffered from approximately eight gunshot wounds. (R. p. 192). She described that the wounds were to Victim's head, right side of chest, back, and wrist. (R. p. 192-193). Dr. Richards concluded that the gunshot wounds caused Victim's death. (R. p. 197). Dr. Richards was able to remove the projectiles from Victim's body. (R. p. 195).

Pyatt and Sinclair met with Detective Bellamy and gave descriptions of the shooter. (R. p. 271-272). Pyatt was able to identify Appellant as the man that shot Victim. (R. p. 217). The

³ Pyatt testified that the group did not exchange words with the man that walked up and shot Victim. (R. p. 212).

timestamped video shows Appellant left the restaurant at 11:43 PM and depicts the reaction from the incident at 11:44 PM. (State's Exhibit 7). Police subsequently arrested Appellant in Marion, SC. (R. p. 262). When arrested, Appellant was in possession of a pistol. (R. p. 311).

Paul Green, a SLED firearms examiner, testified that all of the cartridge cases he received were fired from the weapon retrieved from Appellant. (R. p. 311; 346; 363). Green also testified that he was able to match five projectiles that were fired from Appellant's gun.⁴ (R. p. 363).

⁴ Some of the items were not suitable for identification due to damage. (R. p. 363-364).

ARGUMENT

- I. Under Davis, a grant of immunity requires the defendant to establish, by a preponderance of the evidence, he was without fault in bringing on the difficulty. Did the court err in determining Appellant was not without fault where Pyatt credibly testified Appellant shot Victim without difficulty to avenge the death of his friends was deemed credible?

The trial court properly found Appellant was not without fault in bringing on the difficulty, because 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.

Relevant Facts

After evidence was presented at trial, the court heard arguments relating to the immunity offered by S.C. Code Ann. § 16-11-420. (R. p. 477). Ultimately, the court did not grant immunity on the basis that Appellant was not without fault in bringing about the difficulty. (R. p. 490). Appellant argued that he was rightfully at work, believed he was going to be murdered, and tried to stay out of the way. (R. p. 477-478). The State argued that Appellant unlawfully was carrying a firearm, testimony from Pyatt indicated he caused the difficulty, and Sinclair's testimony did not support the idea that Victim contributed to difficulty. (R. p. 482-483). The court found Appellant was not without fault in bringing about the difficulty because Appellant left the restaurant shortly after Victim, the witnesses were credible, and video evidence corroborated testimony that showed Appellant leaving the restaurant. (R. p. 490).

Discussion

Under S.C. Code Ann. § 16-11-440 (hereafter "Act"), any law-abiding person who uses deadly force in a manner permitted by the provisions of the Act is immune from criminal prosecution for the use of deadly force. S.C. Code Ann. § 16-11-450(A); see S.C. Code Ann. §

16-11-420(B) (“[I]t is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution ... for acting in defense of themselves and others.”). In carrying out that intention, the legislature instructed:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person 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 or forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or 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.

S.C. Code Ann. § 16-11-440(C). Additionally, the legislature further instructed:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C).

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 in establishing entitlement to the 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). If so, the defendant would be entitled to a grant of immunity. Id. at 117-118, 838 S.E.2d at 496; see State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120-121 (2018) (“Self-

defense is the classic provision of law that justifies the use of deadly force. It was clearly the Legislature’s intent that if a person seeking immunity under subsection 16-11-450(A) could prove the elements of self-defense in an immunity proceeding, immunity must be granted.”).

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).

As entrenched in the elements, self-defense is “based upon necessity[.]” State v. Osborne, 202 S.C. 473, 25 S.E.2d 561, 563 (1943). Correspondingly, 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). And, significantly, if even one of the requisite element 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).

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 defendant’s approaching an altercation that was already underway with a loaded gun supported the trial courts 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).

Appellant could not have been without fault for the difficulty as a matter of law because he readily contributed to and provoked the confrontation with Victim that led to the supposed need to use deadly force. 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). Video evidence shows the shooting occurred mere seconds after Appellant left the restaurant.⁵ See State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (“Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.”); see also State v. Council, 129 S.C. 116, 123 S.E. 788, 789 (1924) (“A man may deprive himself of the right of self–defense by words as well as by acts[.]”); 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

⁵ The timestamped video shows Appellant left the restaurant at 11:43 PM and depicts the reaction from the incident at 11:44 PM.

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.”).

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. Further, the court found the testimony of Pyatt and Sinclair to be credible. (R. p. 490). Because the testimony of Pyatt and Sinclair clearly supports a finding that Appellant contributed to the difficulty the court’s finding should not be reversed. 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 has failed to meet his burden in establishing he was without fault.⁶ This Court should affirm.

⁶ If the court erred in finding Appellant contributed to bringing on the difficulty, a remand is proper to analyze the remaining elements. See State v. McCarty, 437 S.C. 355, 360, 878 S.E.2d 902, 905 (2022) (“[w]e emphasize that a circuit court, as the designated fact-finder in this matter, must provide adequate findings to support its decision so an appellate court can perform its role of reviewing the ruling under an abuse of discretion standard.”).

II. Under Rule 613, SCRE extrinsic evidence of a prior inconsistent statement is admissible if the witness is advised of the statement, the time and place it was made, the person to whom it was made, and given the opportunity to explain or deny the statement. Did the court err in admitting evidence of Cano's prior written statement where Cano was unable to recall writing that Appellant paid her to notify him when Victim left the restaurant?

Cano's statements were properly admitted as evidence of a prior inconsistent statement because she was advised that the statements were made on the day after the shooting at the police station, that the statement was made to Detective Bellamy, was unable to recall the substance of the statement, and was able to authenticate the statement as her own.

Relevant Facts

Cano was working with Appellant at the restaurant on the night of the shooting. (R. p. 243). She testified that she went to the police station and gave a statement to Detective Bellamy on the day after the incident at around 1:25 PM. (R. p. 244-245; 254). When asked whether she remembered telling Detective Bellamy that Appellant gave her a hundred dollars to tell him when Victim left, Cano stated she did not remember. (R. p. 245-246). Cano explained that due to alcohol abuse she could not remember what she told Detective Bellamy. (R. p. 246). Nonetheless she testified "I know I wrote that statement, and it is my handwriting." (R. p. 246). Before offering the statement into evidence, Cano examined the document and confirmed her handwriting and that she wrote the statement for Detective Bellamy on May 22. (R. p. 247). Detective Bellamy confirmed he arranged an interview and that Cano gave a written statement. (R. p. 297).

Appellant first objected to the line of questioning as leading. (R. p. 245). The State responded by explaining "I'm impeaching her with a prior statement." (R. p. 245). Appellant objected to the admission of this statement arguing Cano did not remember its truthfulness, that it was not corroborated, and that it could have been coerced. (R. p. 249-250). The State argued

Cano testified she wrote the statement and that it was truthful at the time written. (R. p. 250). The court admitted the document on the basis that Cano authenticated it as her handwriting. (R. p. 250). During the examination of Detective Bellamy, Appellant objected stating “I object. Renewing my objection to the statement as Ms. Cano already stated that she doesn’t know if she wrote that.” (R. p. 297). The court overruled this objection. (R. p. 297).

First, Appellant’s issue is not preserved. In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). An argument not raised and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (objection must be entered on a specific ground at trial to preserve an appeal); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001).

Here, Appellant’s objections did not specify hearsay to sufficiently bring attention to the relevant issue. Cano’s ability to determine the statement’s truthfulness is immaterial in determining whether the statement qualifies as a recorded recollection. Cf. State v. Byers, 392 S.C. 438, 446, 710 S.E.2d 55, 59 (2011) (“An objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error.”).

Here, the statement’s admission was not supported by Rule 803(5) but rather supported by Rule 613(b). Cano’s statement to Officer Bellamy is admissible as a prior inconsistent statement. Extrinsic evidence of a prior inconsistent statement is admissible if the witness is advised of the substance, time and place of the statement and either denies making the statement, states she does not fully recall, or does not unequivocally admit he made the statement. State v.

Blalock, 357 S.C. 74, 591 S.E.2d 632 (Ct. App. 2003); State v. Bottoms, 260 S.C. 187, 195 S.E.2d 116 (1973).

In State v. Miller our Supreme Court found no error in the admission of extrinsic impeachment evidence where a witness was unable to recall his previous statement. State v. Miller, 262 S.C. 369, 204 S.E.2d 738 (1974). In Miller, the co-defendant was called as a witness and asked whether he remembered making a statement to law enforcement. Miller, 262 S.C. 371, 204 S.E.2d 738-9. The co-defendant responded, “I don’t remember.” Id. The Miller Court found that the co-defendant’s prior written statement was admissible to impeach his testimony.

Prior inconsistent statements can be used as substantive evidence as well as for impeachment purposes if the declarant testifies and is subject to cross-examination. State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982).

Here, Cano was made aware of her prior statement and was unable to fully recall what she told police. Cano’s testimony that she did not recall her prior statement, like the codefendant in Miller, was not an unequivocal admission. See Blalock, 357 S.C. 74, 80, 591 S.E.2d 632, 636 (Ct. App. 2003) (“Generally, where the witness has responded with anything less than an unequivocal admission, trial courts have been granted wide latitude to allow extrinsic evidence proving the statement.”). Her statement was properly admitted as both impeachment and substantive evidence. Her inability to recall the statements does not inhibit the admission of extrinsic evidence.

Regardless, any error in the admission of this statement is harmless. See State v. Haselden, 353 S.C. 190, 196–97, 577 S.E.2d 445, 448–49 (2003) (finding an admission of improper evidence is harmless when the evidence is merely cumulative to other evidence). Here, Cano’s statement was offered for the purpose of showing Appellant’s interest in knowing the

whereabouts of Victim. Appellant's animosity and interest in Victim were also demonstrated by other testimony relating to the deterioration of the relationship, video evidence that established Appellant left shortly after Victim left the restaurant, and testimony from Pyatt that Appellant killed Victim to avenge his friend's death.

Further, the State produced sufficient evidence to support a conviction. The State elicited testimony from Pyatt who stated the shooter announced "this is for my ni****'s" right before Victim was shot.⁷ (R. p. 212). Ballistic evidence established the weapon found on Appellant was used at the scene. (R. p. 363). Appellant's testimony placed himself at the scene and established him as the shooter. (R. p. 424-425). Video evidence shows Appellant leaving the restaurant and the reaction to the shooting shortly thereafter. Lastly, Dr. Richard's testimony shows Victim's wounds were to his head, back, wrist, and side. (R. p. 192-193). Under such circumstances, the error in admission of this statement is harmless. This Court should affirm.

⁷ Appellant stated that in 2020 two of his friends were killed in a shooting. (R. p. 401).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that 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
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ATTORNEYS FOR RESPONDENT

August 6, 2024

Aug 06 2024

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.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Gary 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 6th day of August, 2024.



Grace Sommer
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Driscoll Riggins, Jr., Appellant.

Appellate Case No. 2023-000868

Appeal From Horry County
H. Steven DeBerry, IV, Circuit Court Judge

Unpublished Opinion No. 2025-UP-216
Heard May 13, 2025 – Filed July 2, 2025

AFFIRMED

Appellate Defender Gary Howard Johnson, II, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Andrew Douglas Powell, both of
Columbia, for Respondent.

PER CURIAM: Driscoll Riggins, Jr. appeals the circuit court's denial of his request for immunity under the Protection of Persons and Properties Act (the Act).¹ Riggins argues the circuit court erred in (1) ruling he was at fault in bringing on the confrontation with the victim by imposing a duty to retreat, (2) denying immunity under the Act based on its finding that he reasonably feared for his life due to the victim's actions, and (3) admitting the written statement of a witness who could not recall the events of the statement or providing the statement to law enforcement. We affirm.

1. We hold the circuit court did not abuse its discretion in denying Riggins's immunity request because evidence supported its finding that Riggins was at fault in bringing on the difficulty. *See State v. Gray*, 438 S.C. 130, 141, 882 S.E.2d 469, 475 (Ct. App. 2022) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [appellate] court[s] review[s] under an abuse of discretion standard of review." (alterations in original) (quoting *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016))); *State v. Marshall*, 428 S.C. 11, 18, 832 S.E.2d 618, 621-22 (Ct. App. 2019) ("A circuit court abuses its discretion when its ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support."); S.C. Code Ann. § 16-11-440(C) (2015) ("A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force . . . if he reasonably believes it is necessary to prevent death or great bodily injury to himself . . ."); *State v. McCarty*, 437 S.C. 355, 368, 878 S.E.2d 902, 909 (2022) (holding that to establish immunity under the Act, "a defendant must show, by a preponderance of the evidence, that he has a valid claim of self-defense," and in deciding whether to grant immunity, the circuit court must "consider all of the elements of self-defense—except the duty to retreat"); *id.* at 369, 878 S.E.2d at 909 (holding the first element of self-defense requires that the defendant must be "without fault in bringing on the difficulty" (quoting *State v. Curry*, 406 S.C. 364, 371 n.4, 752 S.E.2d 263, 266 n.4 (2013))). The video evidence admitted showed Riggins leaving Captain Archie's restaurant and walking towards the victim one minute after the victim left the restaurant. Additionally, the victim's girlfriend and friend testified the victim did not say anything to Riggins when he approached them in the parking lot. 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

¹ S.C. Code Ann. §§ 16-11-410 to -450 (2015).

parking lot when he could have stayed in the restaurant while the victim left the parking lot. *See McCarty*, 437 S.C. at 368, 878 S.E.2d at 909 (holding that to establish immunity under the Act "a defendant must show, by a preponderance of the evidence, that he has a valid claim of self-defense" and that, when deciding to grant immunity, the circuit court must "consider all of the elements of self-defense—except the duty to retreat"). Because the circuit court found Riggins failed to establish this element of self-defense, we hold it did not abuse its discretion in denying his request for immunity under the Act. *See Gray*, 438 S.C. at 141, 882 S.E.2d at 475 (stating the appellate court reviews a circuit court's immunity determination under an abuse of discretion standard of review); *Marshall*, 428 S.C. at 18, 832 S.E.2d at 621-22 ("A circuit court abuses its discretion when its ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.").

2. We hold that Riggins failed to preserve his argument regarding the witness's written statement for appellate review because Riggins did not specify that he objected to the admission of the statement as hearsay. *See State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court."); *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) ("For an objection to be preserved for appellate review, the objection must be made . . . with sufficient specificity to inform the circuit court judge of the point being urged by the objector." (citation omitted)). Riggins objected to the admission because the witness "did not remember what she wrote" and "did not remember [the statement's] truthfulness." He also argued the written statement was not corroborated and could have been coerced. Riggins's arguments do not relate to whether the statement was hearsay or to why the statement did not qualify as a recorded recollection to satisfy the hearsay exception. Therefore, we hold this issue is not preserved for appellate review.

AFFIRMED.

KONDUROS, MCDONALD, and VINSON, JJ., concur.

RECEIVED

Jul 23 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DRISCOLL RIGGINS, JR.

APPELLANT

APPELLATE CASE NO. 2023-000868

Appeal from Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

Opinion No. 2025-UP-216

AMENDED PETITION FOR REHEARING

On July 2, 2025, this Court issued an unpublished opinion denying the trial court erred in its ruling that appellant had brought on the difficulty in his encounter with McCray by walking down the street after McCray left the Captain Archie's establishment. See State v. Riggins No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025). In affirming the trial court, this Court noted:

The video evidence admitted showed Riggins leaving Captain Archie's restaurant and walking towards the victim one minute after the victim left the restaurant. Additionally, the victim's girlfriend and friend testified the victim did not say anything to Riggins when he approached them in the parking lot. 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, No. 2025-UP-216 pp. 2 – 3 (emphasis added).

Pursuant to Rule 221(a), SCACR, Driscoll Riggins requests that this Court grant rehearing because this Court has overlooked the impact of appellant being lawfully on the street at the time of the incident and misapprehended the impact of a generalized “duty to avoid” concept on the South Carolina Legislature’s clear directive in S.C. Code Ann. § 16-11-440 (C)(2006) that citizens of the State of South Carolina, when lawfully at a location where they have a right to be, do not have a duty to retreat from an aggressor.

This Court’s opinion is in direct conflict with the opinion in State v. Dennis, 444 S.C. 353, 907 S.E.2d 142 (Ct. App. 2024), *cert. granted* (Apr. 22, 2025). In Dennis, the trial court ruled that Dennis actively “sought out the DFHS students and chose the situation.” *Id.*, 444 S.C. at 370, 907 S.E.2d at 151. This Court noted this conclusion was contrary to the clear right of Dennis to be at the Cook-Out and the trial court’s conclusion that Dennis could have exited the establishment from other exits available added a duty to retreat element that was specifically rejected by the Legislature in in S.C. Code Ann. § 16-11-440:

Dennis argues the court erred in denying immunity based on Dennis's failure to retreat and because he went to Cook-Out. In its order, the court found Dennis sought out the DFHS students and chose the situation, *which is in contradiction to Dennis's right to be there*. In addition, the court found Dennis chose not to leave using other exits available to him, *indicating the application of the duty to retreat element of self-defense*.

Dennis, 444 S.C. at 370, 907 S.E.2d at 151 (emphasis added). If Dennis had no duty to avoid the DFHS students because the Cook-Out was open to members of the public, then appellant likewise had no duty to avoid McCray walking down the public right of way.

Importantly, this road was the only means of ingress and egress from the Captain Archie's establishment where appellant worked and had finished his full shift, and the restaurant was approaching closing for the night. R 60, ll. 12 – 25; 64, ll. 17 – 24; 399, ll. 19 – 25. Appellant and McCray had equal rights to be present on the roadway entrance, just as Dennis and the DFHS students had equal rights to be at the Cook-Out. Appellant was under no obligation to avoid walking down the roadway just because McCray, with whom he had a longstanding feud, was potentially going to be in the same area. Appellant was acting lawfully at the time of the incident (walking down the entrance from his place of work towards the public roadway) and was under no duty to retreat from an aggressive move by McCray. As in Dennis, this Court should not have added an element to S.C. Code Ann. § 16-11-440 about a general duty to avoid locations *open to the public* out of fear that an adversary will elect that moment and location to threaten death or great bodily injury.

This imposition of a duty to avoid walking down the public road was the basis for the trial court's ruling:

Furthermore, when we consider the video evidence that shows Mr. McCray and Mr. Riggins just prior to the fatal event, it certainly seems, and looks as though, Mr. Riggins notices Mr. McCray leaving the establishment, and as has been testified to many times throughout the trial, there is only one way in and one way out. This business is at the end of a peninsula.

There is no question, and I recognize the fact, that there was quite a history between these two individuals between the defendant and Mr. McCray, that that history was violent. Certainly Mr. Riggins seemed to have appropriate beliefs that some day some incident might happen that would endanger his life.

But the problem that I would grant immunity under these facts is that Mr. Riggins didn't have to leave the establishment at that point in time. I mean, I have to consider whether or not he was without fault in bringing upon the difficulty. *Certainly, it looks like, from the video evidence, that he brought himself to the difficulty.*

R. 489, l. 13 – 490, l. 9 (emphasis added).

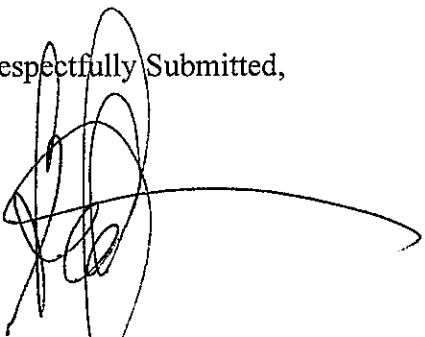
The trial court never made a factual finding that appellant's version of the events surrounding the shooting were not credible – that McCray threatened appellant verbally and made a motion towards his waist for what appellant believed would be weapon. R. 422, l. 3 – 19; 424, l. 16 – 425, l. 24. This Court's statement in the opinion that "the victim's girlfriend and friend testified the victim did not say anything to Riggins when he approached them in the parking lot" would be important *had such a credibility finding been made by the trial court.* However, since there was no such finding, the Court's reference to the testimony that contradicted appellant's version of events substitutes this Court's view of the credibility of the witnesses for that of the trial court. Appellant would assert that, should such a credibility ruling be required on the issue of whether appellant "reasonably believe[d] it [was] necessary to prevent death or great bodily injury", then a remand would be the appropriate remedy. S.C. Code Ann. § 16-11-440(C) (2006); *see also State v. Gray*, 438 S.C. 130, 142, 882 S.E.2d 469, 475 (Ct. App. 2022) (remanding to the trial court for specific factual findings under the act when there is conflicting evidence). Appellant would point out that in *State v. Gray*, Gray initially left the home where a disagreement began but returned to the house where the victim was still present, and the argument continued. *Id.*, 438 S.C. at 136, 882 S.E.2d at 472. Under this Court's ruling in the present case, Gray would have failed under S.C. Code Ann. § 16-11-440(C) (2006) as soon as he returned to the home since he could have avoided further interaction with the victim had he continued walking home.

Such a holding would subvert the clear intention of the Legislature, which specifically applied two requirements before a court is to analyze the appropriateness of the use of deadly force: #1 the person must not be engaged in an unlawful activity and #2 must be “attacked” in a “place where he has a right to be.” S.C. Code Ann. § 16-11-440(C). A general duty to avoid places where every citizen has the right to be would add an element to the statutory scheme that is inconsistent with the legislative intent. “The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.” S.C. Code Ann. § 16-11-420 (2006). A general duty to avoid public places out of fear you may be attacked by an adversary would require a citizen to needlessly retreat from public areas in contradiction to the clear legislative intent. This Court’s concern, that conflicts may be avoided, is addressed with the requirement that one who relies upon the immunity must be acting lawfully. An initial aggressor would be acting unlawfully. Someone who disturbs the peace and instigates an altercation would be acting unlawfully. A person merely walking down a public road is acting lawfully. If attacked, under S.C. Code Ann. § 16-11-440(C), citizens of South Carolina have every right to meet a threat of death or great bodily injury with force if they are in place they have the right to be and are acting lawfully. This Court’s addition of a generalized duty to avoid potential conflicts with persons who may respond to your lawful presence with violence would cede a lawful action (walking down the street) to an unlawful response (attacking someone walking down the street due to prior difficulties). To the extent that a person must be “without fault” in bringing on the difficulty element, that obligation should be established whenever someone is acting lawfully in a place where they have a right to be.

CONCLUSION

For the reasons stated above, appellant petitions for rehearing pursuant to Rule 221(a) SCACR, and requests this Court reconsider its opinion of July 2, 2025, and reverse the trial court's determination that S.C. Code Ann. § 16-11-440 contains a duty to avoid.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'GARY H. JOHNSON', written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

GARY H. JOHNSON
Appellate Defender

This 23rd day of July, 2025.

RECEIVED
Jul 23 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DRISCOLL RIGGINS, JR.

APPELLANT

APPELLATE CASE NO. 2023-000868

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Amended Petition for Rehearing in the above-entitled case has been served upon Andrew Douglas Powell, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Driscoll Riggins, #349152, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 23rd day of July, 2025.



Gary H. Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

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.

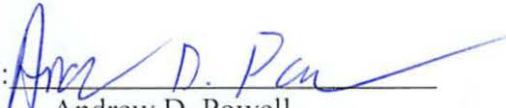
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 4, 2025

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.

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

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The South Carolina Court of Appeals

The State, Respondent,

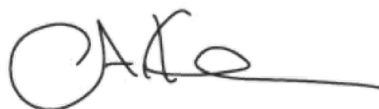
v.

Driscoll Riggins, Jr., Appellant.

Appellate Case No. 2023-000868

ORDER

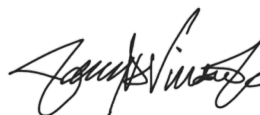
After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Gary Howard Johnson, II, Esquire
Andrew Douglas Powell, Esquire
The Honorable H. Steven DeBerry, IV

FILED
Aug 18 2025
