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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Horry County
Court Of General Sessions
The Honorable H. Steven DeBerry IV, Circuit Court Judge

Appellate Case No. 2025-001888

THE STATE, Respondent,

v.

DRISCOLL RIGGINS, JR., Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF ISSUE

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 Petitioner was not without fault where Pyatt credibly testified Petitioner shot Victim without difficulty to avenge the death of his friends?

STATEMENT OF THE CASE

A Horry County Grand Jury indicted Petitioner 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. Petitioner was convicted of voluntary manslaughter and possession of a weapon during the commission of a violent crime. Petitioner pleaded guilty to unlawful possession of a firearm. Petitioner 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. The Court of Appeals affirmed the conviction in State v. Riggins, Op. No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025). Petitioner filed a timely petition for rehearing which was denied.

STATEMENT OF FACTS

Petitioner and McCray (Victim) knew each other growing up. (R. 400). Petitioner testified that the two grew apart over time. (R. 400-01). Notably, Petitioner stated in 2020 two of his friends were killed in a shooting. (R. 401). Petitioner testified he did not think Victim shot them and that Victim was not charged with the offense. (R. 402). Nonetheless, Petitioner stated that Victim's social media indicated to him that Victim was involved. (R. 402). Petitioner stated that more shootings ensued, resulting in Petitioner being shot in the leg by Victim. (R. 410-11).

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

Petitioner's coworkers made him aware of the fact that Victim was at the restaurant. (R. 416). One coworker made a statement to Detective Bellamy that Petitioner offered her a hundred dollars to tell him when Victim left the restaurant.[1] (R. 245-46). Pyatt testified that the group discussed going to another bar, but decided they were too tired and decided to go home. (R. 207). McCray and his girlfriend went to the parking lot while Sinclair went in another direction. (R. 208). She testified that as they were walking to the vehicle a man crashed into the dumpster while driving a moped. (R. 209). She stated several people gathered, and that Sinclair reappeared in his vehicle. (R. 210). She further testified that a guy walked up and said "this is for my ni*****" and that a shooting ensued. (R. 212). She testified that the man

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

walked up from the direction of the restaurant. (R. 212). She stated that Victim went to the hospital at this time. (R. 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. 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. 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. 94). He stated that when he got back into his vehicle, he heard a gunshot. (R. 92). Sinclair testified that at this point he did not know where the shots were coming from. (R. 93). Victim got in the car and they went to the hospital. (R. 94-95).

Petitioner testified he clocked out at around 11:40 PM and left to walk to his grandmother's house. (R. 419-20). Petitioner stated he walked through the parking lot and stopped by the car that Victim was in. (R. 421). Petitioner testified that they exchanged words.[2] (R. 424-25). Petitioner further stated that he shot Victim because he thought Victim was reaching for a gun. (R. 424-25).

Dr. Richards testified that Victim suffered from approximately eight gunshot wounds. (R. 192). She described that the wounds were to Victim's head, right side of chest, back, and wrist. (R. 192-93). Dr. Richards concluded that the gunshot wounds caused Victim's death. (R. 197). Dr. Richards was able to remove the projectiles from Victim's body. (R. 195).

Pyatt and Sinclair met with Detective Bellamy and gave descriptions of the shooter. (R. 271-72). Pyatt was able to identify Petitioner as the man that shot Victim. (R. 217). The

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

timestamped video shows Petitioner 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 Petitioner in Marion, SC. (R. 262). When arrested, Petitioner was in possession of a pistol. (R. 311).

Paul Green, a SLED firearms examiner, testified that all of the cartridge cases he received were fired from the weapon retrieved from Petitioner. (R. 311, 346, 363). Green also testified that he was able to match five projectiles that were fired from Petitioner's gun.[3] (R. 363).

[3] Some of the items were not suitable for identification due to damage. (R. 363-64).

STANDARD OF REVIEW

"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).

ARGUMENT

I. Under Davis, a grant of immunity requires the defendant establish, by a preponderance of the evidence, he was without fault in bringing on the difficulty. The Court of Appeals properly affirmed the trial courts finding that Petitioner was not without fault where Pyatt credibly testified Petitioner shot Victim without difficulty to avenge the death of his friends.

The Court of Appeals properly affirmed because evidence presented at trial showed Petitioner 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 Petitioner walked up and shot Victim to avenge his friend's death, video evidence established the shooting occurred mere seconds after Petitioner 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. 477). Ultimately, the court did not grant immunity on the basis that Petitioner was not without fault in bringing about the difficulty. (R. 490). Petitioner argued that he was rightfully at work, believed he was going to be murdered, and tried to stay out of the way. (R. 477-78). The State argued that Petitioner 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. 482-83). The court found Petitioner was not without fault in bringing about the difficulty because Petitioner left the restaurant shortly after Victim, the witnesses were credible, and video evidence corroborated testimony that showed Petitioner leaving the restaurant. (R. 490). The Court of Appeals found the evidence supported the trial court's finding that Petitioner was at fault in bringing on the difficulty. Op. No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025).

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).

This 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). This 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. This 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, this 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).

In Dennis, our Court of Appeals 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 Petitioner was not without fault in bringing on the difficulty due to testimony and video evidence presented at trial. Additionally, the Court of Appeals' 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, the Court of Appeals 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. Also, 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.[4]

Petitioner 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 Petitioner walked up to Victim as he was standing in a parking lot and shot him without confrontation. (R. 209-12). Sinclair testified he did not remember a commotion or anything other than Victim checking in on the man that crashed. (R. 421). Video evidence shows the shooting occurred mere seconds after Petitioner 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

[4] The State also argued Dennis was not entitled to another immunity hearing.
[5] The timestamped video shows Petitioner left the restaurant at 11:43 PM and depicts the reaction from the incident at 11:44 PM.

if he deliberately places himself in a position where he has reason to believe his presence would ... provoke trouble."). And, since Petitioner 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.").

The Court of Appeals also properly noted that the trial court's finding did not indicate Petitioner had a duty to retreat, but rather found Petitioner contributed to the conflict when he followed a man he had an extensive violent history with through a parking lot. Petitioner 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 trial court specifically found the testimony of Pyatt and Sinclair to be credible. (R. 490-1). 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."). Petitioner failed to meet his burden of establishing he was without fault. The trial court correctly denied immunity, and the Court of Appeals properly affirmed. This petition for certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Court deny the Petition for Writ of Certiorari.

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