

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County
Honorable H. Steven DeBerry IV, Circuit Court Judge
Certiorari to the Court of Appeals

RECEIVED

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

DRISCOLL RIGGINS, JR.

APPELLANT

APPELLATE CASE NO. 2025-001888

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS

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ARGUMENT IN REPLY
ARGUMENT

1. The State's Return argues a factual finding based upon an evaluation of the credibility of witnesses not made by the trial court and that was addressed with the Court of Appeals in the Petitioner for Rehearing as unsupported by the record.

The State argues a factual finding regarding credibility not made by the trial court as a basis to deny certiorari. The State's Return argues that immunity under the Protection of Persons and Property Act (hereinafter the Act) was properly denied based upon the trial court's ruling that petitioner shot and killed his adversary without provocation based upon the testimony of witnesses Pyatt and Sinclair. State's Return p. 12. Petitioner acknowledges that if the trial court had made such a credibility finding, it would preclude immunity under the Act and there would be no error of law for this Court to review.

However, as pointed out to the Court of Appeals, the trial court never made a factual determination, based upon the credibility of the witnesses, about who the initial aggressor was in the confrontation between petitioner and McCray. To the contrary, the trial court based its ruling to deny immunity under the Act to petitioner's decision to leave work and follow McCray down the public street. The two sides of the shooting were before the trial court. Pyatt claimed McCray was shot in ambush without warning or argument. R. 211, l. 23 – 212, l. 25. Petitioner described McCray verbal threat and physical motions which made petitioner fear for his life and respond with deadly force. R. 422, l. 3 – 19; 424, l. 16 – 425, l. 24. Had the trial judge made the decision to deny immunity on a credibility finding between these contrasting stories, the State would be correct that the trial court simply found Pyatt more credible than petitioner.

However, the trial judge specifically avoided making this decision, ruling solely that "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. 490, ll. 3 - 9.

The State is conflating the trial court’s acknowledgement that most of the facts leading up to the shooting were undisputed in terms of when McCray, Sinclair, Pyatt, and petitioner left Captain Archies since the actions were caught on video tape with a finding that Pyatt’s version of events was more credible than petitioner’s account.

But as far as the immunity statute that I'm determining the facts under at this point in time, I can't find that he was without fault in bringing on the difficulty based on the evidence and based on the credibility of the witnesses.

Furthermore, in large part, based on the video evidence, and even the defendant himself admitted to him being the person on the video as it was suggested throughout the trial, and also that Mr. McCray and Ms. Pyatt and Mr. Sinclair were also in the same place and doing the same things as was suggested throughout the trial. So all of those things were corroborated.

R. 490, ll. 12 – 24.

The State has elevated this language into a finding that Pyatt’s version of events at the time of the shooting was the basis of the ruling. The trial court’s ruling, however, was solely based on the issue that petitioner “brought himself” to the difficulty by walking down the public street in the same direction as McCray.

The trial court never made a factual finding that petitioner’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. The Court of Appeal’s statement in the opinion below 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 only had such a credibility finding been made by the trial court. *See State v. Driscoll Riggins, Jr.*, Op. No. 2025-UP-216 (S.C. Ct. App. filed July 2, 2025). However, there was no such finding by the trial court and the impropriety of this reference was addressed in the Petition for Rehearing pointing out the problem with the alleged factual finding before the Court of Appeals as substituting the Court of Appeals’ view of the credibility of the witnesses for that of the trial court. Respectfully, should such a credibility ruling be required on the issue of whether petitioner “reasonably believe[d] it [was] necessary to prevent death or great bodily injury”, then a remand would have been the appropriate remedy not specifically creating a factual conclusion not supported by the Record. *See 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).

Again, Petitioner acknowledges that had the trial court made the factual finding that Pyatt’s version of events was true and that petitioner lacked credibility, the Court of Appeals would not have been in error in upholding such a factual determination. However, as argued in the Petition for Certiorari, the actual basis for the trial court’s ruling and the decision of the Court of Appeals to affirm was based upon the concept of a generalized duty to avoid potential confrontation with known adversaries. As that holding contradicts the Legislative intent surrounding the Act and requires citizens of South Carolina to actively avoid public places they have a right to access simply on the chance that an adversary may elect that moment to settle old scores, this Court should grant the Petition and clarify that there is no implied duty to avoid as an unwritten rule in the application of the Act.

2. The State's implication that the presence of the weapon itself somehow negates a finding of immunity under the Act is in direct contradiction to established precedent.

The State's Return cites this Court's opinion in State v. Williams, 427 S.C. 246, 830 S.E.2d 904 (2019) as a basis for denying the petition. Apparently, the State is arguing that this Court's opinion in Williams extends a general bar on asserting self-defense following a drug deal gone bad to a bar under the Act when the handgun itself is unlawfully carried.¹ Admittedly, when an accused "creates" the unlawful activity which results in firing a weapon may be properly precluded from asserting self-defense. *See Williams*, 427 S.C. at 250, 830 S.E.2d at 906 (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). The general carrying of a handgun upon one's person, even you are legally prohibited from carrying such a weapon, does not create the unlawful activity nor would it preclude the assertion of self-defense either under common law or the legal protections afforded by the Act. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) ("Read together, McCaskill and Goodson stand for the proposition that a person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting."). The correct rule, under Williams and Burriss logic, is whether the possession of the unlawful weapon was a proximate cause of the eventual difficulty. Bringing a loaded weapon to a drug deal would be the proximate cause

¹ Petitioner was not lawfully able to carry a firearm due to prior criminal convictions and this fact was not contested during trial.

of any shooting should the drug deal go wrong. *See State v. Plumer*, 439 S.C. 346, 350, 887 S.E.2d 134, 136 (2023) (“The only reasonable inference to be derived from the record is that Plumer intentionally took a loaded firearm to what he knew would be an illegal drug transaction. It matters not who drew his weapon first or who fired first.”). The same proximate cause analysis would be applied to an immunity claim under the Act. *See State v. Glenn*, 429 S.C. 108, 120, 838 S.E.2d 491, 497 (2019) (finding a “proximate cause analysis must also be applied to the unlawful activity element of subsection (C)” of the Act).

Here, the trial court’s ruling that petitioner 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. As argued in the Petition for Certiorari, the Court of Appeals erred in adding an element that citizens of South Carolina have a duty to avoid locations they have the right to be when an adversary may also happen to be and may elect to settle a long standing grievance. This added element contravenes the expressed intent of the Legislature as expressed in the Act and surrenders a person’s right (in this instance walking down the public street from his place of employment) to the whim of an aggressor.

CONCLUSION

Based upon the argument set forth in the Petition for Certiorari and this Reply, petitioner requests that this Court grant the petition and review the decision of the Court of Appeals and remand this matter to the lower court for a ruling on petitioner's entitlement to immunity free of the improper duty to avoid requirement.



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This 18th day of November 2025.