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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2024-000265

THE STATE,

Respondent,

v.

JEFFERY BRUCE WISE, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

- I. Did the circuit court err in denying immunity from prosecution where the evidence demonstrated Appellant satisfied the elements of the Protections of Persons and Property Act by a preponderance of the evidence?
- II. Did the circuit court err in denying Appellant's motion for a directed verdict where the State failed to establish the statutory element of "great bodily injury?"

Respondent's Counterstatements

- I. Whether the trial court abused its discretion by denying Appellant immunity for first-degree assault and battery after Appellant could not show by a preponderance of the evidence that he was entirely without fault in bringing on the difficulty.
- II. Whether the trial court erred by declining to direct a verdict where, in the light most favorable to the State, evidence existed that reasonably tended to prove Appellant's guilt.

STATEMENT OF THE CASE

In June 2021, a Lexington County grand jury indicted Appellant for second-degree assault and battery. (Indictment No. 2021-GS-32-01464). In April 2023, the grand jury subsequently indicted Appellant for first-degree assault and battery. (Indictment No. 2023-GS-32-01311). The State nolle prossed the indictment for second-degree assault and battery before trial. (Memo 2).

Prior to trial, Appellant moved for immunity. (Motion 1). Following the filing of memoranda and before trial began, the trial court held a pretrial immunity hearing. (I Tr. 54-55).

Pretrial Immunity Hearing

Appellant testified at the pretrial immunity hearing. He stated that he recalled the incident, which occurred in the early morning hours of March 1, 2021. (I Tr. 56). Previously, on February 27, 2021, Appellant was "attacked" by his ex-girlfriend's mother and his ex-girlfriend's mother's boyfriend. (I Tr. 56). After that attack, he received help from his mother, Victim. (I Tr. 56). Victim owned the property Appellant lived on in a mobile home. (I Tr. 57). Appellant did not pay rent but did pay the bills for his mobile home. (I Tr. 57). Victim's mobile home was approximately 250 yards away from his. (I Tr. 58).

On the night of the incident, Appellant saw blue lights across the road and walked down a trail near his home to see why law enforcement was in the area. (I Tr. 59). Victim was sitting in her car nearby and flashed her lights at him, so he approached her. (I Tr. 59). Appellant conversed with his mother, which he stated started out fine before Victim became hostile toward him. (I Tr. 60). According to Appellant, Victim told him about a third party calling her a name, which lead Victim to become mad and began "acting crazy." (I Tr. 61). Appellant stated the conversation escalated within fifteen seconds. (I Tr. 61). He claimed he did not raise his voice or use foul

language toward his mother, despite Victim raising her voice and using foul language toward him. (I Tr. 61).

Appellant testified that as a result of the conversation becoming heated, Victim went to "take off" in her car, and he moved his hands off of the windowsill. (I Tr. 62). He speculated that Victim may have thought he was reaching into the car to "touch her in some way or something." (I Tr. 62). Appellant denied telling law enforcement on the night of the incident that he put his hand on his mother's arm while she was still in the car, insisting that he only touched the car door. (I Tr. 77). According to Appellant, Victim locked up the car's breaks, threw the car in park, and tried to get out of the vehicle. (I Tr. 62). Appellant confirmed he put his knee against the car door to keep Victim from getting out of the car because he knew her to have a short temper and did not want to escalate the situation any further. (I Tr. 62). He stated he moved his knee because Victim began shuffling through a side pocket in the car where he believed Victim kept a pistol. (I Tr. 62-63). Appellant confirmed that he never mentioned to law enforcement that he knew his mother to carry a gun in her car. (I Tr. 86). After moving his knee, Victim exited the vehicle, swung at him three times, hitting him twice. (I Tr. 63). Appellant confirmed Victim hit him in the face, where he had injuries from the incident the day before. (I Tr. 63). After his mother hit him, Appellant did "[t]he only thing that [he] felt that [he] was able to do at that time," which was to defend himself. (I Tr. 63). Appellant claimed that he was trying to get away when he swung at Victim. (I Tr. 63). He further claimed he only swung at her once. (I Tr. 63). Appellant hit Victim, who fell to the ground. (I Tr. 64). He then returned to his mobile home. (I Tr. 64).

Appellant confirmed that he normally carried a pocketknife with him and that he had his pocketknife on him during the incident despite not using it. (I Tr. 64). When he got to his front porch, he heard yells for help. (I Tr. 65). He went inside. (I Tr. 65). Law enforcement knocked

on his door shortly thereafter. (I Tr. 65). Appellant testified he complied with law enforcement and did what they asked of him. (I Tr. 65). He informed law enforcement that he acted in self-defense, claiming that his mother was short-tempered and "pretty aggressive." (I Tr. 66). Appellant told law enforcement that he was unaware of what his fist struck when he swung at his mother. (I Tr. 67). Law enforcement arrested Appellant, who was taken to the hospital and received seven stitches on one of his knuckles. (I Tr. 69-70). Appellant confirmed his right hand was bleeding "profusely" after he hit his mother. (I Tr. 79).

Jacob Caraway, a deputy with the Lexington County Sheriff's Department, testified that he responded to an unrelated incident on March 1, 2021. (I Tr. 98). While he was working on that unrelated incident, he heard Victim yell out from the darkness across the street. (I Tr. 99-100). He heard Victim yell that she had been assaulted by her son, Appellant. (I Tr. 100). Victim appeared "very, very distraught, very angry, [and] very emotional." (I Tr. 100). Caraway observed fresh blood coming from Victim's mouth. (I Tr. 100). Victim identified her son by name and spoke to Caraway for about a minute. (I Tr. 100). She directed Caraway as to where he could find Appellant. (I Tr. 100). Caraway followed her directions and found Appellant's trailer. (I Tr. 100-01). When he first spoke to Appellant, he noted that Appellant appeared to be out of breath. (I Tr. 101). Caraway also noticed Appellant's eye injury from a prior incident as well as a fresh, bleeding laceration on Appellant's right hand. (I Tr. 101-02). However, Caraway did not observe any fresh injuries to Appellant's face. (I Tr. 102).

Appellant told Caraway his version of events, including that Appellant was unsure of what he hit when he swung at his mother, stating that it could have been a fence post, the car, or his mother. (I Tr. 102). Caraway confirmed that both Appellant's injuries and Victim's injuries were

consistent with Appellant's story. (I Tr. 103). After Appellant stated that he was unsure of what he hit, Caraway placed him under arrest, believing he had probable cause to do so. (I Tr. 103).

Caraway testified that Victim's mouth injuries and Appellant's hand injuries were consistent with a closed fist punch to the face. (I Tr. 106). Caraway stated that at no point did either Appellant or Victim indicate that Appellant was boxed in and unable to get away from Victim. (I Tr. 111). According to Caraway, the hole in Appellant's story was that Victim's mouth was bloodied up and Appellant was not conclusive in what he told law enforcement about the event. (I Tr. 119). Caraway testified that had Appellant been blocking a motion by Victim, Appellant's blocking should not have been enough to break a tooth. (I Tr. 119). Further, he confirmed that Victim's injuries were not consistent with someone throwing up their arms to create distance. (I Tr. 129).

During Caraway's testimony, Court's Exhibit 2¹ was shown, which was Caraway's body camera footage from the night of the incident. (I Tr. 54, 114). When Caraway initially approaches Victim, she tells him that Appellant punched her in the mouth. (Def. Ex. 1 at 00:00 to 01:00). As Caraway walks away from Victim in search of Appellant, the camera shows a car several lengths past two fence posts. (Def. Ex. 1 at 00:30 to 01:30). Shortly thereafter, Caraway discusses the incident with Appellant, who tells him that Victim became upset while still in her car, so he put his hand on her arm. (Def. Ex. 1 at 03:30 to 05:00). Appellant could not specify what he hit when he swung, stating that it was either his mother, a fence post, or the car door. (Def. Ex. 1 at 03:30 to 05:00). After Caraway arrested Appellant, Caraway went back to Victim to get a more complete version of events from her. (Def. Ex. 1 at 14:00 to 22:00). During this conversation, Victim stated that she and Appellant were discussing his girlfriend, whom Victim did not appear to like, when Appellant became agitated. (Def. Ex. 1 at 14:30 to 16:00). Appellant began slamming her car

¹ Court's Exhibit 2 was subsequently introduced as Defendant's Exhibit 1 at trial. (I Tr. 186).

door, so Victim got out of the car. (Def. Ex. 1 at 14:30 to 16:00). Appellant punched Victim in the mouth. (Def. Ex. 1 at 14:30 to 16:00). Victim stated she saw his punch coming. (Def. Ex. 1 at 14:30 to 16:00).

The trial court then heard arguments regarding immunity. Appellant argued that he met force with force and established that he demonstrated to law enforcement how he moved to get away from Victim after being struck twice by her. (I Tr. 130). He asserted that it was possible he could have acted in a way that could have resulted in Victim's injuries. (I Tr. 131). He contended that he had a right to be on the property and no evidence presented had asserted otherwise. (I Tr. 131). Appellant emphasized his testimony that Victim became angry and lashed out at him, hitting him twice, and that he hit his mother back to push away from her. (I Tr. 131). Appellant argued that he was restrained in his reaction to Victim's actions. (I Tr. 132).

The State focused on Appellant's inconsistencies, which it argued made this a question for the jury. (I Tr. 133). The State asserted that Appellant could not get past the first element of self-defense—being without fault in bringing on the difficulty. (I Tr. 133). The State pointed to Appellant's own testimony that he approached Victim in her driveway, put his hand on her arm or windowsill, confirmed Victim's car was in gear, and confirmed Victim was attempting to move forward during their conversation. (I Tr. 133). This, the State asserted, made it clear that Appellant was trying to continue the argument with his mother while she was attempting to leave. (I Tr. 133). The State emphasized that Appellant's testimony on the stand had inconsistencies from his initial discussion with law enforcement directly following the incident, which made this an issue of weight and credibility. (I Tr. 134-35). The State argued that because Appellant could not show he was without fault in bringing on the difficulty by a preponderance of the evidence, he was not entitled to immunity. (I Tr. 135).

Appellant replied that no testimony presented supported the State's argument that he started the confrontation. (I Tr. 135). He argued *Jackson* did not apply because that case is only applicable when a defendant provoked or initiated an assault. (I Tr. 135). Appellant claimed the testimony supported only that Victim started the fight. (I Tr. 135). The trial court, reading from *State v. Oates*, stated that Appellant's testimony was not "just accept[ed] as established" merely because he testified. (I Tr. 136). Appellant then recognized that his testimony by itself did not establish that he was without fault and argued that there was no testimony that he was at fault. (I Tr. 136). The State noted that Appellant, by his own admission, would not let Victim withdraw from this confrontation despite Victim's wish to do so. (I Tr. 137).

The trial court determined Appellant failed to meet his burden of proving self-defense by a preponderance of the evidence. (I Tr. 137). The trial court found that the testimony of Appellant and Caraway, along with Caraway's body camera footage that was supplied to the court, supported an "argument" that Appellant had some fault in bringing on the difficulty. (I Tr. 137). The trial court did not address any element of self-defense except for the first element. (I Tr. 137-38). On February 20 and 22-23, 2024, Appellant proceeded to a jury trial before the Honorable Walton J. McLeod, IV. (I Tr. 1; II Tr. 1).

Trial

At trial, Caraway again testified that he responded to an unrelated incident on March 1, 2021. (I Tr. 167-68). As the unrelated incident concluded, he heard a cry for help from across the street. (I Tr. 169). After crossing the street, he made contact with Victim, who appeared to be emotionally distraught and had "fresh" blood coming from her mouth. (I Tr. 170). As Caraway approached Victim, her car was just up the driveway from two fence posts. (I Tr. 172). He testified that Victim had a "broken, serrated" tooth and that Victim told him that her son, Appellant, had

punched her in the face. (I Tr. 175). Victim directed him in the direction he was likely to find Appellant. (I Tr. 175). When he arrived at Appellant's mobile home, he spoke with Appellant, who appeared to be slightly out of breath. (I Tr. 176). Caraway observed a fresh, bleeding injury to Appellant's right hand. (I Tr. 176). Appellant told Caraway that he was unsure of what he hit that caused his hand injury. (I Tr. 176). Caraway determined that the information Appellant provided was inconsistent with the injuries to Appellant's hand as well as those to Victim's face. (I Tr. 177). He placed Appellant in custody and returned to talk to Victim. (I Tr. 177-78). Caraway testified that Appellant and Victim's injuries were not consistent with Appellant's version of events or his demonstration of those events. (I Tr. 181-82). Further, Victim did not have any injuries consistent with her striking Appellant. (I Tr. 184). Defendant's Exhibit 1, which was Caraway's body camera footage in relevant portion, was played for the jury. (I Tr. 185-86). Caraway confirmed he did not take any pictures of Victim's face on the night of the incident. (I Tr. 192-93). Caraway also confirmed that Appellant told law enforcement that he had a knife and paint scraper on his person on the night of the incident. (I Tr. 200). Caraway stated Victim's injury consisted of at least one broken and serrated tooth, which was at a 45-degree angle in her mouth. (I Tr. 209). He believed that alone was moderate bodily injury because it would require surgery to correct. (I Tr. 209).

Victim testified that Appellant is her son and that both she and Appellant lived on her property at the time of the incident. (I Tr. 218). On the night of the incident, she noticed some blue lights down by the road and went to see what was happening. (I Tr. 219). After seeing that law enforcement was engaged in the unrelated incident across the street, she turned her car around and drove back up her driveway, which is when she saw Appellant walking toward her. (I Tr. 219). Victim rolled down her window, and Appellant asked what was going on with law enforcement.

(I Tr. 220). She told Appellant what she had seen. (I Tr. 220). Victim confirmed her car was in gear during this conversation. (I Tr. 221). She testified that both her tone and demeanor, as well as those of Appellant, were "fine" during this conversation. (I Tr. 221). She stated that Appellant's demeanor changed due to a disagreement between the two about allowing Appellant's girlfriend to move back onto the property. (I Tr. 222). Victim stated that Appellant became progressively more angry during this part of the conversation. (I Tr. 222). She testified that at this point of the conversation, she wanted to end the conversation, go home, and go to bed. (I Tr. 222). However, despite her attempts to drive toward her home, Appellant would not let her, so she was "just easing along" because she did not want to run him over. (I Tr. 222). The only thing preventing Victim from going up her driveway was Appellant, who was hanging on her door. (I Tr. 240).

Victim testified that Appellant escalated the conversation by "popping the latch, opening [her car] door and slamming it, opening the door and slamming it really hard." (I Tr. 223). Victim stated Appellant broke the inside panel of her car door while he was opening and slamming it. (I Tr. 238). At no point did she attempt to force her way out of the car; however, she did get out of the car to talk with Appellant because she did not understand why he was so angry and had never seen him that distraught before. (I Tr. 223). Victim testified she wanted to sort out the issue. (I Tr. 223). According to Victim, after she exited the car, she took two steps toward Appellant and attempted to ask him what was wrong with him. (I Tr. 223-24). However, before she finished asking her question, Appellant punched her in the mouth. (I Tr. 223-24). Victim stated that this happened quickly and that at no point did she threaten Appellant. (I Tr. 224). Victim denied charging at Appellant and also denied swinging at him. (I Tr. 224). According to Victim, Appellant punched her only once, but that punch was enough to knock her to the ground. (I Tr. 224).

Victim testified that after Appellant punched her, he just stood there. (I Tr. 224). She stood up, spitting out blood and teeth. (I Tr. 225). Victim told Appellant "you know you are going to jail," and Appellant responded that he knew before walking away. (I Tr. 225). Victim confirmed that Appellant did not attempt to flag down law enforcement, who were across the street, nor did Appellant attempt to withdraw or otherwise leave when he started becoming angry. (I Tr. 225-26). Victim testified she did not have any weapons on her or in her car. (I Tr. 226).

According to Victim, both of her front teeth were "destroyed" and had to be extracted. (I Tr. 227). She eventually received implants to replace both teeth. (I Tr. 227). Victim went to a dentist the morning after this incident and was in "a lot of pain." (I Tr. 227). After having her "destroyed" two front teeth removed, she wore a "flapper," which she described as a dental retainer with fake front teeth attached. (I Tr. 228). Victim discussed receiving several treatments over the course of 18 months following the incident. (I Tr. 229). Due to damage to the bone that her upper two front teeth sat in, Victim required a bone graft before she could receive implants to replace her two front teeth. (I Tr. 229). After receiving the bone graft, she had to wait for that to heal before having studs placed for the implants to sit on. (I Tr. 230-31). After the studs healed, she was able to get the actual artificial teeth. (I Tr. 230-31). All of her dental procedures were done under local anesthesia rather than general anesthesia. (I Tr. 233). Victim assumed the damage to the bone of her upper jaw was due to Appellant's punch because she required the bone graft due to the damage rather than bone loss. (I Tr. 245, 251). Victim confirmed she was a long-time smoker. (I Tr. 245).

Dr. Rama Yelisetty, an expert in general dentistry, testified that he treated Victim the day after the incident. (I Tr. 263, 266). When Victim arrived at his office, Victim informed the office that she had been in a fight, was in pain, and had two broken front teeth. (I Tr. 263). Dr. Yelisetty opined that Victim's injuries were not the result of a slip and fall. (I Tr. 264). He stated that a "lot

of force" was needed to displace both front teeth out of their sockets. (I Tr. 264). Dr. Yelisetty stated both of Victim's front teeth had fractures and that he observed signs of blunt force trauma. (I Tr. 264). He testified the level of force needed for Victim to sustain such injuries would have been significant and that a punch to the mouth could have provided such a significant impact. (I Tr. 264). Dr. Yelisetty testified that he took x-rays of Victim's mouth and that neither of her front teeth could not be saved. (I Tr. 265). He removed both teeth and fitted her with a temporary partial, or fake dentures, because Victim wanted something to replace those two teeth temporarily. (I Tr. 266). Dr. Yelisetty testified that he could not tell if Victim had any facial fractures, that Victim would have needed more advanced scans to determine if she had facial fractures, and that he referred Victim to an oral surgeon for more in-depth care. (I Tr. 267). Dr. Yelisetty confirmed that an injury such as Victim's would cause a loss of teeth or impairment of the function of her teeth. (I Tr. 268). He also confirmed that tooth extractions are common in dentistry and are done under local anesthesia. (I Tr. 270-71).

Dr. Grant Dye, an expert in dental surgery and conscious sedation, testified that Victim had bone loss around her tooth sockets where her front two teeth had been. (I Tr. 278-80). Prior to Dr. Dye's treatment, Victim required a bone graft because she had insufficient bone around those two sockets to support implants. (I Tr. 281). Dr. Dye testified that the surgery to place the implants was extensive and serious. (I Tr. 282). Four months after he placed the implants, the implants and surrounding bone had healed enough for him to place crowns on the implants. (I Tr. 282). Dr. Dye confirmed that teeth are members of the body. (I Tr. 285). Further, if Victim had not had the implants, she could have had issues with tooth separation, movement of teeth, bite complications, and chewing issues. (I Tr. 286). Dr. Dye stated that Victim could have lost other surrounding teeth due to further bone loss. (I Tr. 286). He confirmed that dental implants are common, that smoking

can cause tooth decay, tooth loss, and weakened enamel, that tooth extraction is a relatively minor procedure, that bone grafting is a simple procedure that can usually heal in a few weeks, and that implant placement is usually a minor oral surgery. (I Tr. 292). Dr. Dye testified that Victim did not have enough bone loss for her front teeth to have come out without some sort of trauma. (I Tr. 294).

After the close of the State's case, Appellant moved for a directed verdict. (I Tr. 295). Appellant argued that the State failed to show Victim suffered great bodily injury, which is an element of first-degree assault and battery. (I Tr. 295-96). He asserted teeth are not a vital organ. (I Tr. 296). He contended that all of Victim's dental procedures were considered minor by Victim's own expert witnesses. (I Tr. 296).

The State argued that a directed verdict motion is viewed in the light most favorable to the State. (I Tr. 297). The State asserted Victim suffered a protracted loss of a bodily member, which was supported by testimony about the loss or impairment of a bodily member. (I Tr. 297). The State noted the multiple months between the incident and when Victim had healed enough to have the implants place. (I Tr. 297). The State noted that no specific statutory timeframe existed for great bodily injury. (I Tr. 297). Further, expert testimony supported that Victim's injuries were serious and extensive. (I Tr. 297). The State asserted overwhelming evidence existed and there were issues of fact for the jury to decide. (I Tr. 297).

The trial court denied Appellant's directed verdict motion, stating that whether a protracted, long-term loss of a bodily member occurred was a question for the jury. (I Tr. 298). The trial court determined that "the evidence clearly shows that . . . there is an impairment of function. And I heard testimony about the bodily member. [The jury] can take that for what they think its worth." (I Tr. 298).

During Appellant's case in chief, he recalled Caraway, who testified that Appellant initially told him that he hit his hand on either his mother, a fence post, or the car door. (I Tr. 310). Caraway stated that the fence post was not close to the car. (I Tr. 310). According to Caraway, if Appellant had hit the car door, then Victim would not have had a broken tooth. (I Tr. 310).

After Appellant rested, he reasserted his directed verdict motion, which the trial court denied. (II Tr. 5-6). The jury found Appellant guilty of first-degree assault and battery. (II Tr. 54). The trial court sentenced Appellant to ten years' imprisonment suspended on the service of 89 days, with the balance suspended with four years of probation, mental health counseling, anger management counseling, and maintenance of steady employment and residence. (II Tr. 76).

This appeal followed.

STANDARD OF REVIEW

Pretrial Immunity

"Circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard." *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019). Appellate courts, in turn, review immunity determinations for an abuse of discretion. *Id.* "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016).

Directed Verdict

"On appeal from the denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Pearson*, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (quoting *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). "If the [S]tate has presented 'any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,' this [c]ourt must affirm the [circuit] court's decision to submit the case to the jury." *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013) (quoting *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004)). "The case should be submitted to the jury if there is any substantial evidence [that] reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly or logically deduced." *State v. Robinson*, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). An appellate court may reverse the circuit court only if "there is no evidence to support" the circuit court's ruling. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

ARGUMENT

I. The trial court properly denied Appellant immunity for first-degree assault and battery because Appellant could not show by a preponderance of the evidence that he was entirely without fault in bringing on the difficulty.

The Act provides immunity from prosecution for a person who has used force when acting in defense of themselves or others if a trial court determines that the person was justified in using such force. *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 495 (2019). Specifically, the immunity section of the Act provides that a person who uses force "as permitted by the provisions of this article *or another applicable provision of law*" is justified in using force and is therefore immune from criminal prosecution and civil action for the use of such force. S.C. Code Ann. § 16-11-450(A) (emphasis added). Our Supreme Court has acknowledged that "another applicable provision of law" includes the common law of self-defense. *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018). Therefore, a defendant may seek immunity from prosecution under the Act by "demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence." *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013).

For immunity claims under this theory, "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." *Id.* at 371, 752 S.E.2d at 266. Accordingly, a trial court should consider whether a defendant has proved the elements of self-defense by a preponderance of the evidence before determining whether section 16-11-440(A) or (C) is applicable. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496.

The general four elements a defendant must meet to justify the use of deadly force under the common law of self-defense are as follows:

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.

Id. at 116, 838 S.E.2d at 495.

As should be obvious from its elements, self-defense is "based upon necessity[.]" *State v. Osborne*, 202 S.C. 473, ___, 25 S.E.2d 561, 563 (1943). Thus, 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). Likewise, due to the "without fault in bringing on the difficult" requirement, a person can deprive himself or herself of the right of self-defense through either actions or words. *State v. Council*, 129 S.C. 116, ___, 123 S.E. 788, 789 (1924). Significantly, if even one of the requisite elements 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).

Here, evidence in the record supports the trial court's determination that Appellant was not without fault in bringing on the difficulty. In Caraway's body camera footage, Appellant admitted that he grabbed Victim's arm while she was still in her car. (Def. Ex. 1 at 3:00 to 5:00). In Caraway's body camera footage, Victim told Caraway that Appellant was repeatedly opening and slamming her door shut during their conversation. (Def. Ex. 1 at 14:30 to 16:00). She got out of her car to calm Appellant down and was met with a punch to her mouth that resulted in at least one tooth being broken. (Def. Ex. 1 at 14:30 to 16:00). On Caraway's body camera footage, when Victim is recounting the incident, she stated that she told Appellant when she got out of her car that "I'm not your little b****. You don't get to punch on me." (Def. Ex. 1 at 14:30 to 16:00).

This language is not provoking and did not require Appellant to punch his mother to the ground. If anything, it suggests that Victim was preparing to defend herself from her own son. Moreover, Appellant testified that he attempted to keep Victim at the scene and attempted to prevent her from exiting her own vehicle while he was, according to Victim, opening and slamming the car door. (I Tr. 62-63; Def. Ex. 1 at 14:30 to 16:00). *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self defense" (quoting Ferdinand S. Tinio, *Comment Note: Withdrawal, After Provocation of Conflict, As Revisiting Right of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974)) (alterations in original)).

Appellant's claim of Victim having a gun did not appear at all on Caraway's body camera footage, despite this footage occurring within moments of the incident occurring. Instead, this new-found and self-serving claim appeared for the first time at the immunity stage and, conveniently, only in Appellant's motion and testimony. (I Tr. 63, 86). Appellant's testimony alone, which was not corroborated by the video evidence regarding who started the confrontation, was not sufficient to make his claim of self-defense more likely than not. *See State v. Oates*, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017) ("Further, 'the General Assembly did not intend' to require the circuit court 'to accept the accused's version of the underlying facts' in determining a motion for immunity under the Act." (quoting *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013))). Therefore, Appellant failed to show he was without fault in bringing on the difficulty by a preponderance of the evidence.

The trial court's determination that Appellant was not without fault is supported by evidence in the record, specifically Caraway's body camera footage and Caraway's testimony about what he observed while investigating the incident shortly after it occurred. *See State v. McCarty*,

437 S.C. 355, 372, 878 S.E.2d 902, 911 (2022) ("[T]he circuit court must weigh the evidence and make its own credibility and factual findings before reaching a decision as to immunity."); *State v. Chhith-Berry*, 437 S.C. 527, 542-43, 878 S.E.2d 352, 360 (Ct. App. 2022) ("[T]he [trial] court's [immunity] ruling must be based solely on the evidence presented at a pretrial hearing, while the jury's verdict must be based solely on the evidence presented at trial, which may be considerably different." (quoting *Cervantes-Pavon*, 426 S.C. at 452, 827 S.E.2d at 569)).

Because Appellant could not show he was without fault in bringing on the difficulty, the trial court did not need to address the remaining elements of self-defense at the immunity hearing. *See Bixby*, 388 S.C. at 554, 698 S.E.2d at 586 ("It is an axiomatic principle of law that the defense has not been established *if any one element is disproven*." (emphasis added)).

II. The trial court properly declined to direct a verdict because, in the light most favorable to the State, evidence existed that reasonably tended to prove Appellant's guilt.

"A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury." *Id.* at 292-93, 25 S.E.2d at 648. "[W]hen ruling on a directed verdict motion, the circuit court is concerned with the existence of evidence, not its weight." *State v. Oates*, 421 S.C. 1, 19, 803 S.E.2d 911, 921 (Ct. App. 2017) (citation modified).

"A person commits the offense of assault and battery in the first degree if the person unlawfully . . . offers or attempts to injure another person with the present ability to do so, and the act . . . is accomplished by means likely to produce death or great bodily injury" S.C. Code Ann. § 16-3-600(C)(1)(b)(i). "'Great bodily injury' means bodily injury which causes a substantial

risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. § 16-3-600(A)(1).

Here, Appellant asserts that the State failed to show that Victim suffered a protracted loss or impairment to her two front teeth and, therefore, the State could not show Victim suffered great bodily injury, meaning the trial court should have granted his motion for a directed verdict. (Initial App. Br. 18-19). However, like the trial court determined, evidence exists in the record reasonably tending to support that Victim suffered protracted loss or impairment of her teeth due to Appellant's actions.

First, Dr. Dye testified that teeth are bodily members. (I Tr. 285). Appellant does not contest that teeth are bodily members on appeal.

Second, Victim fully lost her two front teeth due to Appellant's punch. (I Tr. 265-66). She underwent multiple procedures, including a bone graft due to bone loss around the tooth sockets, to receive *artificial* teeth. (I Tr. 266, 281-82, 294). Victim went without any permanent, artificial replacement for her front teeth for eighteen months while healing between her various oral surgeries. (I Tr. 229). The need for a bone graft elongated the time she would otherwise have needed to heal from placement of implants and crowns. Despite Victim's treatment following standard timelines and healing times, Victim's original teeth were not "restored" or otherwise fixed. Her teeth were removed because they were damaged beyond repair. (I Tr. 227, 265-66). She received implants upon which crowns were placed a year and a half after the incident, and she suffered bone loss because of the trauma from how her teeth were damaged. (I Tr. 282, 294). Merely because Victim was fortunate enough not to suffer any complications beyond requiring a bone graft due to Appellant's actions—at least so far—and only required routine oral surgeries performed under local anesthesia, which Dr. Dye described as extensive and serious, to receive

artificial teeth does not mean Victim did not suffer great bodily harm. (I Tr. 281-82, 291-92). Victim lost her natural teeth and went eighteen months without front teeth due to Appellant's actions. (I Tr. 227, 229, 265-66, 294). Therefore, some evidence in the record reasonably tends to prove Victim suffered great bodily harm due to Appellant's actions; thus, this case was properly submitted to the jury.

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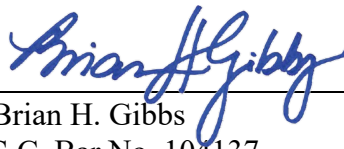
CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for first-degree assault and battery, as well as his associated sentence.

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