RECEIVED
Dec 08 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Brooks Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

STEPHEN QUINTON POLITE,

APPELLANT.

Appellate Case No. 2024-000692

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
S.C. Bar No. 104865

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

HON. ISAAC McDUFFIE STONE
Solicitor, Fourteenth Judicial Circuit
P.O. Box 1880
Bluffton, South Carolina 29910
(843) 779-8477

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Rules

Statutes

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial court abuse its discretion in limiting the evidence during the immunity hearing and in finding that the defendant was not entitled to immunity under the Protection of Persons and Property Act?

2. Did the trial court err in denying the defense's motion to impeach witness Althea Brown with multiple prior convictions older that than 10 years involving dishonesty, under Rule 609(b) of the South Carolina Rules of Evidence?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly find that Appellant was not entitled to immunity under the Protection of Persons and Property Act where Appellant did not prove by a preponderance of the evidence that he was without fault in bringing on the difficulty, was not reasonably in fear of his life, and did not fall under the exceptions provided by the Act?

2. Did the trial court properly prohibit Appellant from bringing up some of a witness' convictions when those convictions were barred by Rule 609(b), SCRE, and Appellant did not demonstrate that the convictions should have been admitted under the exceptions to the rule?

STATEMENT OF THE CASE

Respondent accepts Appellant's statement of the case for the purposes of this appeal.

STATEMENT OF FACTS

Early on the Saturday before Memorial Day in 2021, Beaufort County law enforcement responded to a call on Keystone Drive in St. Helena. (R. p. 29, ll. 6–10, p. 31, ll. 2–5). A group had been holding a card party and watching the NBA finals at a shed. (R. p. 35, ll. 11–23). Evidence at the trial would later show the chaos that had broken out.

According to the testimony at trial, Stephan Polite (Appellant) arrived at the party that evening in a good mood. (R. p. 225, l. 21–p. 226, l. 3). Later, Anthony Rivers Jr. showed up as well. (R. p. 226, ll. 15–18). Rivers' mood was decidedly different; according to at least one witness, he showed up screaming at the sky. (R. p. 226, l. 20–p. 227, l. 3). Rivers continued acting bizarrely, patting down other guests at the party looking for guns. (R. p. 229, l. 24–p. 230, l. 3).

At one point in the party, Rivers approached Appellant and asked if Appellant was carrying a gun. (R. p. 231, ll. 8–14). After Appellant asked Rivers if something was wrong, Rivers responded: "You're a b****, you can't kill me." (R. p. 231, ll. 17–21). He bumped Appellant in the chest. (R. p. 231, l. 22–p. 232, l. 4). According to Natasha Richardson's testimony at trial, Appellant eventually headed to his car and grabbed his gun and said that "ain't nobody gonna talk no s*** to me." (R. p. 233, ll. 5–25). She also testified that Appellant said, "I'll put your a** in a wheelchair." (R. p. 236, ll. 7–9).

Eventually, after the pair had been separated, Appellant tried to go to his car. (R. p. 239, l. 24–p. 240, l. 2). Appellant and Rivers then fought, with Appellant using his gun to pistol whip Rivers. (R. p. 240, ll. 3–15). Appellant again got into his car, and Rivers began banging on the vehicle. (R. p. 242, ll. 9–15). The door to the car at some point opened, and Appellant fatally shot Rivers. (R. p. 242, ll. 16–21). At trial, Althea Brown testified that she saw Appellant open the door before firing. (R. p. 310, ll. 18–22). Appellant would claim self-defense, arguing that Rivers had

reached the front driver's side door of the car and pulled it open. (R. p. 542, l. 19–p. 543, l. 22). It was only after the door opened that Appellant fired, according to his testimony. (R. p. 544, ll. 22–24).

At trial, the lead investigator testified at a hearing to determine whether Appellant was entitled to immunity under the Protection of Persons and Property Act, sections 16-11-410 to -450 of the South Carolina Code (the Act). The trial court denied Appellant's motion, finding that Rivers was not attempting to get into the car, that Appellant had a part in bringing on the fatal events, and that any fear Appellant had of Rivers was not reasonable. (R. p. 142, l. 22–p. 144, l. 7).

Appellant also sought to introduce evidence of previous convictions for crimes of dishonesty by Althea Brown that were more than 10 years old. (R. p. 154, l. 24–p. 156, l. 1). The circuit court ruled the convictions inadmissible under Rule 609(b), SCRE.

> All right, in attempting to interpret the rule based on what's been presented this morning, I find that the 609 states, in part, "That if a conviction is more than 10-years-old, it is not admissible, unless the probative value of the conviction, supported by facts and circumstances, substantially outweighs the prejudicial effect," and I do not find it exists, and will not permit those convictions outside of 10 years to be brought up.

(R. p. 165, l. 22–p. 166, l. 7). The court later noted: "I found no factual circumstances supporting the use of the convictions or having any probative value of these convictions." (R. p. 170, ll. 6–9).

The State asked Althea Brown about a 2019 conviction that both sides conceded was admissible.

> Q In 2019 were you convicted of felony, a breach of trust offense?
>
> A Yes.

(R. p. 314, ll. 11–13).

The jury would convict Appellant on charges of murder and possession of a deadly weapon during a violent crime. (R. p. 726, ll. 2–9). The court sentenced Appellant to 30 years on the murder charge and five on the weapons charge, to run concurrently. (R. p. 743, ll. 6–17). This appeal followed.

STANDARD OF REVIEW

This court reviews the circuit court's determination of immunity under an abuse of discretion standard. *See State v. Rosenbaum*, 438 S.C. 91, 102, 882 S.E.2d 180, 185–86 (Ct. App. 2022). "In determining the validity of an immunity hearing's outcome, 'this court cannot reweigh the evidence or second-guess the circuit court's assessment of witness credibility.'" *Id.* (quoting *State v. Oates*, 421 S.C. 1, 17, 803 S.E.2d 911, 920 (Ct. App. 2017) (cleaned up)). The same standard applies to a circuit court's decision on the admission of evidence. *See State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247–48 (2000).

ARGUMENT

I. Appellant was not entitled to immunity from prosecution because he did not show by a preponderance of the evidence that he was entitled to use deadly force against the victim.

A. Appellant's evidentiary objection was not preserved.

Appellant argues that the court should have allowed a question to the investigator at the immunity hearing about evidence that law enforcement developed that Appellant was not afraid. First, this argument is not preserved, as Appellant did not continue to raise it in his trial motions. Second, it was up to the Appellant to show at the immunity hearing that he was in fear of his life; any failure of proof on that comes because Appellant did not affirmatively put in evidence that would show his fear, not because he was barred from developing evidence that law enforcement had not disproven fear.

B. The trial court properly found that Appellant helped bring on the difficulty, was not reasonably afraid of the victim, and did not prove by a preponderance of the evidence that the victim was trying to enter the car.

Despite the evidentiary complaint, Appellant argues that the circuit court should have granted him immunity because the Act filled in the gaps in his self-defense claim. But Appellant never produced a preponderance of the evidence to show that he qualified for immunity under the Act.

Again, in the context of immunity, it is Appellant who must show that he is entitled to it. *See State v. McCarty*, 437 S.C. 355, 373, 878 S.E.2d 902, 912 (2022) ("Thus, the relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence." (quoting *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019))). "To warrant immunity under the Act, there must be a pretrial determination where the accused must demonstrate the elements of self-

defense, save the duty to retreat, to the satisfaction of the circuit court by a preponderance of the evidence." *State v. Marshall*, 428 S.C. 11, 18, 832 S.E.2d 618, 622 (Ct. App. 2019). The Act also "provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle." *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013).

The circuit court properly found that the Appellant did not prove self-defense by a preponderance of the evidence. The fact that Appellant does not agree with the conclusion does not mean that the circuit court abused its discretion.

Appellant first argues that he was not at fault for bringing on the difficulty—and if he was, he regained the right to self-defense by withdrawing. The first problem Appellant runs into is that there is testimony indicating he responded to the victim's admittedly rowdy behavior by going to his car, grabbing his weapon, and making sure that Appellant saw it. The tension between the two men ratcheted up at that point, and the episodic fight between them was grounded in the decision to bring a gun into the shed. The second problem is that he had not clearly shown that he was withdrawing, in part because he stopped his car. "One's right to self-defense is restored after a withdrawal from the initial difficulty with the victim if that withdrawal is communicated to the victim by word or act." *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). If Appellant was attempting to withdraw, it was not necessarily clearly communicated.

Additionally, in reaching for a circumstance that would entitle him to self-defense under the Act, Appellant finely dices the circuit court's ruling, pointing out that the circuit court said there was "no evidence that the victim was attempting to remove the Defendant from the vehicle, or had forcibly tried to occupy the vehicle." The clear import of the court's ruling is that it did not believe Appellant's contention that the victim was trying to get in the car. The court was doing its

duty as a fact-finder at the immunity hearing. *See State v. Cervantes-Pavon*, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019) ("[T]he court must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act. Of course, at the conclusion of any given hearing, if the circuit court determines the movant has not met his burden of proof as to immunity, the case will go to trial, and the issue of self-defense may—depending upon the evidence presented at trial—be presented to the trial jury."). With that portion of the Act now out of play and the circuit court clearly believing that the victim did not attempt to enter the car, the court would have needed to find that Appellant was reasonably afraid that an intoxicated individual banging on his car after Appellant had soundly beaten him was a threat worth using lethal force. The court obviously did not find that, and in fact found that Appellant fell short of showing that a reasonably prudent person would feel that way.

For all of those reasons, this Court affirm the circuit court's ruling on immunity and affirm Appellant's conviction.

II. Appellant did not demonstrate that Brown's remote convictions could be used to impeach her under Rule 609(b), SCRE.

Appellant contends that he should have been allowed to use convictions stretching back more than 20 years to try to impeach one of the witnesses against him at the trial. But Appellant is incorrect, because he did not demonstrate that the evidence of those convictions should have been admitted.

A note of clarity: Rule 609(b) is not an inclusionary rule, but an exclusionary one. It is not intended to bring evidence into the courtroom, but to keep it out unless it falls under one of the exceptions. *See* Rule 609(b), SCRE ("Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the

witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.").

In other words, as our supreme court has held, a conviction that is more than 10 years old is not automatically included unless prejudice is shown; it is presumptively excluded unless its relevance is shown. *See State v. Black*, 400 S.C. 10, 18, 732 S.E.2d 880, 885 (2012) ("Rule 609(b), however, contains a time limit that *establishes a presumption against the admissibility of remote convictions*, i.e., those more than ten years old, for impeachment *unless the trial court expressly finds the probative value of the conviction 'substantially outweighs' its prejudicial effect.*" (emphases added)); *see also State v. Johnson*, 363 S.C. 53, 57, 609 S.E.2d 520, 522 (2005) ("The evidence is admissible, however, if the trial judge determines that the probative value of the conviction substantially outweighs its prejudicial effect."). And it is on the defendant in this case to rebut that presumption. *See State v. Brewton*, 442 S.C. 169, 176, 898 S.E.2d 132, 135 (2024) ("The proponent of the evidence must overcome this presumption by establishing, as the rule provides, that the probative value of the conviction substantially outweighs its prejudicial effect.")

Our courts have provided a roadmap, most notably in *Colf* and *Black*. Following the principles in those decisions leads to the conclusion that the evidence was properly admitted. Our supreme court first adopted the principles in *State v. Colf*, then explained how to apply them to a case like this in *Black*. *See generally Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000); *Black*, *supra*.[1]

[1] Generally, a trial court should perform an on-the-record review of each factor for appellate review. *See Brewton*, 442 S.C. at 180, 898 S.E.2d at 137. However, when the record is clear enough for the appellate court to make a determination and a remand would be pointless, appellate courts do sometimes consider whether a factor would have been fulfilled. *Id.* at 182, 898 S.E.2d at 138.

Black provides a list of non-exclusive factors that courts should consider, including "(1) the impeachment value of the prior crime, (2) the point in time of the conviction and the witness's subsequent history, (3) the similarity between the past crime and the charged crime, (4) the importance of the defendant's testimony, and (5) the centrality of the credibility issue." *Id.* at 19, 732 S.E.2d at 885. Those were first spelled out—as they applied to a defendant—in *Colf*. *See* 337 S.C. at 627, 525 S.E.2d at 248. In *Black*—which concerned a defense witness but not the defendant—our supreme court noted that because the test might need to be tweaked in other circumstances. *See Black*, 400 S.C. at 19, 732 S.E.2d at 885 ("Some of these factors must, as a practical matter, be adjusted for this particular case, which involves the convictions of a non-defendant.").

In the current case, the State agrees with Appellant that the third factor does not apply here; instead, the Court should consider the first two and last two factors. The State disagrees with Appellant's argument that the evidence on remaining factors here overcomes the presumption and that the trial court should have admitted the convictions.

First, the impeachment value. This is likely the strongest ground for Appellant, because our courts have noted before that crimes of dishonesty—those like fraud—are the more relevant kind of crime for impeachment purposes. *See State v. Robinson*, 426 S.C. 579, 598–99, 828 S.E.2d 203, 213 (2019) ("When employing a *Colf* analysis and addressing the impeachment value factor, we stated, 'A rule of thumb is that convictions that rest on dishonest conduct relate to credibility, whereas crimes of violence, which may result from a myriad of causes, generally do not.'" (*quoting Black*, 400 S.C. at 22, 732 S.E.2d at 887)). But his fortune pretty much runs out there.

The second factor in the analysis—when the crimes occurred and what the witness has done since then—weighs in favor of the State. Between the last crime that Brown was convicted

for and the one that everyone agrees is admissible, there is essentially a decade-long stretch without convictions. The record indicates that the latest her probation would have run out on the final charges was likely 2011. (R. p. 155, ll. 2–6). While South Carolina courts have never laid out a bright-line test on this, at least one decision indicates that courts are looking for shorter "gaps" between the remote convictions and the admissible convictions to satisfy this factor. *See Brewton*, 442 S.C. at 181, 898 S.E.2d at 138 (convictions admissible when witness was convicted in 1999, released in 2004, convicted again in 2008, released in 2011, and testified in 2018).

As to the fourth and fifth factors: While Brown's testimony was the only testimony definitively saying that Appellant opened the door, her testimony was not the *only evidence* indicating that Appellant opened the door. Investigator Byrd testified that he did not see any blood near the driver's seat of the vehicle—as one might expect if the victim had been close enough to open the door. (R. p. 357, ll. 5–20). Jurors also heard about Appellant's aggressive attitude toward the victim that night.

Additionally, Appellant's own credibility was undermined by his own testimony. He testified variously that the clip for the gun was "sitting on the floor," (R. p. 541, ll. 15–16), and that it "was on the passenger seat," (R. p. 574, ll. 15–16). Asked on direct examination to describe the look on the victim's face, Appellant testified that "[h]is look was -- he wanted to -- his look was like he wanted to -- he was ashamed of what happened to him, and he wanted to do whatever he could to hurt me in that car, sir." (R. p. 545, l. 12–15). However, on cross examination, Appellant had the following exchange with the solicitor:

> Q Okay, but you did see his face appearing to be ashamed of what he had done is what you testified to on direct, right?
>
> A No, I was just scared.

> Q You said, "The door opened, you saw the look on his face, ashamed of what happened, and him trying to hurt you."
>
> A No, ma'am, I said, "My door opened," I said, "He probably was ashamed because of that." I never said he had an ashamed look on his face, no.

(R. p. 576, l. 19–p. 577, l. 4). Appellant also testified that he carried his gun unloaded at card parties, where its purpose presumably was to protect him. (R. p. 582, l. 17–p. 583, l. 2).

CONCLUSION

Appellant did not carry his burdens at trial under either the Protection of Persons and Property Act or Rule 609(b), SCRE. As a result, the circuit court properly found that he was not entitled to immunity, and was prohibited from bringing up a witness' remote convictions. Appellant's conviction should be affirmed.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
S.C. Bar No. 104865

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

By: s/*R. Brandon Larrabee*
R. BRANDON LARRABEE
ATTORNEYS FOR RESPONDENT

December 8, 2025.

RECEIVED
Dec 08 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Brooks Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

STEPHEN QUINTON POLITE,

APPELLANT.

Appellate Case No. 2024-000692

PROOF OF SERVICE

I, **R. Brandon Larrabee**, of counsel for the Respondent, hereby certify that pursuant to Rule 262(c)(3), SCACR, and the Supreme Court Order of April 24, 2024, the Final Brief of Respondent, has been forwarded to Appellant's counsel, Jack Swerling, Esq., via email today, December 8, 2025 to jacklaw@aol.com.

I further certify that all parties required by Rule to be served have been served.

This 8th day of December, 2025.

s/ R. Brandon Larrabee

R. Brandon Larrabee
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305