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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court
Brooks Goldsmith, Circuit Court Judge

Case No. 2021-GS-07-00981
Case No. 2021-GS-07-00982
Appellate Case No. 2024-000692

The State,

Respondent,

v.

Stephan Quinton Polite,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Argument in Reply 1

Conclusion 7

TABLE OF AUTHORITIES

Cases:

<i>State v. Black</i> , 400 S.C. 10, 732 S.E.2d 880 (2012)	4, 5, 6, 7
<i>State v. Brewton</i> , 442 S.C. 169, 898 S.E.2d 132 (2024)	5
<i>State v. Cervantes-Pavon</i> , 426 S.C. 442, 827 S.E.2d 564 (2019)	2
<i>State v. Chhith-Berry</i> , 437 S.C. 527, 878 S.E.2d 352 (Ct.App. 2022)	2
<i>State v. Colf</i> , 337 S.C. 622, 525 S.E.2d 246 (2000)	4, 5, 6, 7
<i>State v. Dennis</i> , 444 S.C. 353, 907 S.E.2d 142 (Ct.App. 2024)	2
<i>State v. Marin</i> , 404 S.C. 615, 745 S.E.2d 148 (Ct.App. 2013), <i>aff'd as modified</i> , 415 S.C. 475, 783 S.E.2d 808 (2016)	2

Statutes:

S.C. Code Ann. § 16-11-410 <i>et seq.</i>	1
S.C. Code Ann. § 16-11-440(A)	3, 4
S.C. Code Ann. § 16-11-440(A)(1)	3, 4
S.C. Code Ann. § 16-11-440(A)(2)	3, 4
S.C. Code Ann. § 16-11-450(A)	2

Rules of Court:

Rule 609(b), SCRE	4, 6, 7
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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court abuse its discretion in limiting the evidence during the immunity hearing and in its 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 than 10 years involving dishonesty, under Rule 609(b) of the South Carolina Rules of Evidence?

ARGUMENT IN REPLY

The opening brief of Appellant argues the merits of the two issues raised in this appeal. Appellant adheres to those arguments and does not repeat them here. The arguments made by the state in the brief of respondent do not undermine the validity of the arguments made by Appellant. Both issues present meritorious grounds for reversal.

I. THE TRIAL COURT ABUSED ITS DISCRETION IN LIMITING THE EVIDENCE DURING THE IMMUNITY HEARING AND IN ITS FINDING THE DEFENDANT WAS NOT ENTITLED TO IMMUNITY PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT.

Appellant's appeal challenged two aspects of the court's rulings in the hearing on the issue of immunity under the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.* (hereafter, "the Act"). Both aspects of this issue warrant reversal.

A. The court erred in limiting the evidence on the issue of whether Appellant was in fear.

Appellant raised a claim of error as to the court's ruling in the immunity hearing sustaining an objection by the state to a defense question of the witness, Robert Byrd, concerning what

evidence there was that the defendant was not in fear.¹ R. pp. 110-11. The state's brief does not address the merits of this issue, instead raising procedural arguments.

First, without citation of any authority, the state contends the argument of this evidentiary issue is not preserved because Appellant did not continue to raise it in his trial motions. The state's preservation argument is unfounded.

In a criminal prosecution, a hearing on the issue of immunity under the Act is a separate and distinct procedural step from a trial to determine the issue of a defendant's guilt or innocence. Addressing the disparate nature of an immunity proceeding and a trial on the question of guilt or innocence, this Court has recognized: "Subsection 16-11-450(A) is a procedural provision that is not relevant to the work of a jury." *See State v. Marin*, 404 S.C. 615, 625, 745 S.E.2d 148, 154 (Ct.App. 2013), *aff'd as modified on other grounds*, 415 S.C. 475, 783 S.E.2d 808 (2016). Moreover, a court's immunity ruling must be based solely on the evidence presented at a pre-trial immunity hearing, while a jury's verdict must be based solely on the evidence presented at trial. *See State v. Cervantes-Pavon*, 426 S.C. 442, 452, 827 S.E.2d 564, 569 (2019); *State v. Dennis*, 444 S.C. 353, 367, 907 S.E.2d 142, 149 (Ct.App. 2024); *State v. Chhith-Berry*, 437 S.C. 527, 542, 878 S.E.2d 352, 360 (Ct.App. 2022).

Because the evidence presented in an immunity hearing has no bearing on the trial itself, no purpose would be served by imposing a requirement that an evidentiary objection made in the immunity proceeding must be renewed during the trial in order to be preserved for appellate review. To counsel's knowledge, our appellate courts have never imposed such a requirement.

¹ Sergeant Robert Byrd of the Beaufort County Sheriff's Department was the lead investigator and the only witness at the immunity hearing. The state and the defense agreed that the witness accounts would be elicited through the testimony of Byrd for purposes of the immunity hearing. R. pp. 21, 28-30.

The trial motions made by the defense pertained to the evidence presented in the trial before the jury. During the trial, there was no reason for the defense to revisit the evidentiary ruling made during the immunity hearing, and the failure of the defense to revisit that issue in its trial motions does not preclude raising that issue in the appeal of the court's rulings made in the pre-trial immunity proceeding. The evidentiary ruling made in the immunity hearing is properly before this Court for review.

Second, and again without citing any authority, the state makes the conclusory argument that it was up to Appellant to show he was in fear of his life and he did not introduce evidence to show his fear, and the evidentiary ruling did not have any bearing on what the state claims was a failure of proof on the issue of Appellant's fear. Contrary to the state's contention, the Act provides for a presumption as to the fear component of a claim of self-defense under specified circumstances, *see* S.C. Code Ann. § 16-11-440(A), and the defense expressly relied on that presumption in the immunity hearing. R. pp. 24-26, 127-28, 140. Under Section 16-11-440(A), a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury when using deadly force if (1) the person against whom the force is used is in the process of unlawfully and forcefully entering an occupied vehicle, or if he is attempting to remove another against his will from an occupied vehicle, and (2) the person who uses deadly force knows or has reason to believe that an unlawful or forcible entry or act is occurring. *See* S.C. Code Ann. § 16-11-440(A)(1), (2).

Appellant's opening brief sets out, with citations to the relevant parts of the transcript, the evidence presented in the immunity hearing as to the actions of the deceased, Anthony Rivers, Jr., after Appellant was in his vehicle and driving away. *See* Final Brief of Appellant, p. 5. Part of that evidence was Appellant's account that Rivers forcefully slammed open the driver's door of

the vehicle Appellant occupied and was climbing into the car. R. pp. 69, 93, 95. This evidence was sufficient to trigger the presumption of Section 16-11-440(A), and the defense did not have to present evidence affirmatively establishing Appellant's fear. The additional evidence the defense sought to elicit – that no witness claimed Appellant was not in fear – was relevant to one of the elements of the defense's claim of immunity and would have corroborated the presumption that Appellant was in fear based on the circumstances of the incident, under the language of Section 16-11-440(A)(1) and (2).

Based on the arguments articulated in Appellant's opening brief and the authorities cited therein, which the state makes no attempt to refute, the court's ruling sustaining the state's objection was controlled by an error of law and was an abuse of discretion, and the appropriate remedy is the grant of a new immunity hearing.

B. The court erred in denying immunity from prosecution.

Appellant relies on the argument and authorities set out in his opening brief on this issue. Based on the errors in the court's ruling on the immunity question articulated in the opening brief, this Court should reverse the lower court's denial of immunity and find Appellant is entitled to immunity from this criminal prosecution. In the alternative, the Court should remand for a new hearing on the question of immunity.

II. THE TRIAL COURT ERRED IN NOT ALLOWING IMPEACHMENT OF ALTHEA BROWN WITH MULTIPLE PRIOR CONVICTIONS OLDER THAN 10 YEARS INVOLVING DISHONESTY, UNDER RULE 609(b), SCRE.

Appellant relies on the arguments and authorities set out in his opening brief on this issue. The state agrees this issue is governed by application of four of the five factors set out in *State v. Black*, 400 S.C. 10, 732 S.E.2d 880 (2012), and *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000), for evaluating the admissibility of remote convictions under the balancing test of Rule 609(b),

SCRE. The state argues evaluation of these factors supports the trial court's decision to exclude the admission of the numerous convictions of Althea Brown for crimes involving dishonesty. The state's arguments are unpersuasive.

The state essentially concedes the first factor weighs in favor of admission of the remote convictions, as Appellant contends. The state contends the second factor, which it characterizes as "when the crimes occurred and what the witness has done since," weighs in favor of the state, and it particularly relies on a decade-long gap between the witness's convictions in 2009 and 2019. The second factor, as articulated in *Colf* and reiterated in the Supreme Court's later cases, is "[t]he point in time of the conviction and the witness's subsequent history." See *Colf*, 337 S.C. at 627, 525 S.E.2d at 248; see also *State v. Brewton*, 442 S.C. 169, 179, 898 S.E.2d 132, 137 (2024); *Black*, 400 S.C. at 19, 732 S.E.2d at 885. Contrary to the state's contention, a review of the dates of the witness's convictions demonstrates this factor weighs in favor of admission of all the prior convictions. Witness Brown had an almost 20-year history of crimes involving dishonesty, with any significant gaps between her convictions likely attributable to periods of incarceration. The case the state primarily relies on, *State v. Brewton*, similarly had years-long gaps without convictions, but nonetheless allowed admission of a remote conviction. See *Brewton*, 442 S.C. at 181, 898 S.E.2d at 138 (convictions in 1999 and 2008, each followed by a period of incarceration, and testimony given in 2018). In this case, Brown was convicted of crimes involving dishonesty in 2001, 2002, 2008, 2009, and 2019, and her testimony was given in 2024. Her conviction history demonstrates a lengthy and continuing pattern of dishonesty, not a long-ago spate of crimes in her youth followed by long-term reformed adult behavior. Had there been no conviction in 2019, the state's argument on this factor might have some level of appeal. Instead, the witness's conviction in 2019 for breach of trust with fraudulent intent demonstrates her propensity for dishonesty was

on-going, not truly reformed and not truly in her distant past. Contrary to the state's argument, the second factor weighs in favor of admission of all the witness's older convictions for crimes involving dishonesty.

The state agrees with Appellant that the third factor is not applicable in this case.

As to the fourth and fifth factors, the state offers nothing that tends to negate the importance of the witness's testimony (factor four)² or the centrality of the credibility issue (factor five). The state merely points to testimony of Byrd that he did not see blood near the driver's seat and speculates "one might expect" to see blood there if Rivers had been close enough to open the door. Such speculation does not account for other reasons blood may not have been seen in that location and it does not alter the fact that Althea Brown was the *only* witness who testified contrary to Appellant's claim that it was Rivers who opened the door of the vehicle. Her testimony on this vital fact in issue was extremely important, and her credibility or lack of credibility was crucial to the jury's resolution of the conflict in the testimony on this critical point. The fourth and fifth factors weigh in the defense's favor and compel a finding that the probative value of the witness's remote prior convictions substantially outweighed their prejudicial effect. All the remote convictions for crimes involving dishonesty were admissible under the standard of Rule 609(b), and the trial court committed reversible error in excluding them.

Finally, in the last paragraph of its argument, the state points to a few passages of Appellant's testimony that the state claims undermine his own credibility. To the contrary, those passages involve mere clarification of earlier testimony and do not impact Appellant's credibility.

² The fourth factor is stated in *Colf* and later cases as "the importance of the defendant's testimony." As *Black* noted, the factors must, as a practical matter, be adjusted where the witness whose remote convictions are sought to be admitted is not the defendant. See *Black*, 400 S.C. at 19, 732 S.E.2d at 885. Accordingly, as in *Black*, where the witness is a non-defendant, the court evaluates the importance of the witness's testimony. See *id.*, 400 S.C. at 20, 732 S.E.2d at 886.

Importantly, passages of Appellant's testimony have no bearing on the question whether the court erred in excluding Althea Brown's remote convictions. The admissibility of those convictions had to be determined on the basis of Rule 609(b) and the factors articulated in *Colf* and *Black* for deciding issues under Rule 609(b). For the reasons outlined above and in Appellant's opening brief, the court abused its discretion in excluding the remote convictions, and the error was not harmless. This Court should reverse and remand for a new trial.

CONCLUSION

The Court should reverse the immunity ruling due to errors of law in the limitation of the evidence and in applying the applicable standard for immunity. The Court should find Appellant was entitled to immunity from this prosecution or, alternatively, remand for a new immunity determination.

The Court should also find reversible error in the court's exclusion of Althea Brown's remote prior convictions for impeachment purposes and remand for a new trial.

Respectfully submitted,



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