RECEIVED
Jan 22 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFERY BRUCE WISE, JR.,

APPELLANT.

APPELLATE CASE NO. 2024-000265

FINAL BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

ARGUMENTS

I.

The circuit court erred in denying immunity from prosecution where the evidence demonstrated Appellant satisfied the elements of the Protections of Persons and Property Act (the Act) by a preponderance of the evidence 3

Standard of review 3
Relevant facts 3
Discussion 8

II.

The circuit court erred in denying Appellant's motion for a direct verdict where the State failed to establish the statutory element of "great bodily injury" 15

Standard of review 15
Relevant facts 15
Discussion 18

CONCLUSION 21

TABLE OF AUTHORITIES

Cases

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) 18, 19

State v. Brown, 360 S.C. 581, 602 S.E.2d 392 (2004) 18

State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999) 10, 11, 12

State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019) 11

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) 18

State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) 3

State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) 10

State v. Frazier, 386 S.C. 526, 689 S.E.2d 610 (2010) 15

State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019) 9, 11

State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951) 10, 13

State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978) 10

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013) 19

State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009) 15

State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955) 10

State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016) 3

State v. Passio, 433 S.C. 666, 861 S.E.2d 785 (Ct. App. 2021) 15

State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) 18

State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000) 10, 13

State v. Stoots, 445 S.C. 127, 912 S.E.2d 248 (2025) 10

Statutes

S.C. Code Ann. § 16-11-410 .... *passim*

S.C. Code Ann. § 16-11-420(A) 9

S.C. Code Ann. § 16-11-420(B) 9

S.C. Code Ann. § 16-11-420(D) 9

S.C. Code Ann. § 16-11-420(E) 9

S.C. Code Ann. § 16-11-450(A) 9

S.C. Code Ann. § 16-11-440(C) 7, 9, 11

S.C. Code Ann. § 16-3-600(A)(1) 18, 19

S.C. Code Ann. § 16-3-600 (A)(2) 19

STATEMENT OF ISSUES ON APPEAL

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 direct verdict where the State failed to establish the statutory element of "great bodily injury"?

STATEMENT OF THE CASE

Appellant was initially indicted during the June 2021 term of the Lexington County grand jury for one count of assault and battery second degree (A&B 2nd). R. 364-65. During the April 2023 term of the Lexington County grand jury, the state directly indicted Appellant for assault and battery first degree (A&B 1st), subsequently dismissing the original indictment. R. 362-63. The state, represented by Whitney Taylor and Christy Oler, called the case to trial on February 20-23, 2024, before the Honorable Walton J. McLeod, IV, and a jury. Appellant was represented by Aimee Zmroczek. R. 1.

Prior to trial, Counsel Zmroczek filed a motion for an immunity pursuant to the Protections of Persons and Property Act (the Act), S.C. Code Ann. § 16-11-410, et seq. R. 354-55. The state filed a motion opposing immunity. R. 356-61. After jury selection, the trial court held an immunity hearing. R. 26, ll. 22-25. The trial court denied immunity, and the case proceeded to trial. R. 109, l. 15 – 110, l. 14.

Appellant was found guilty of assault and battery first degree. R. 328, ll. 11-16. Appellant was sentenced to ten years' incarceration, suspended upon the service of eighty-nine days in county jail and four years' probation. R. 350, ll. 11-21.

This appeal follows.

ARGUMENTS

I.

The circuit court erred in denying immunity from prosecution where the evidence demonstrated Appellant satisfied the elements of the Protections of Persons and Property Act (the Act) by a preponderance of the evidence.

Standard of Review

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [the appellate court] reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "An abuse of discretion occurs when the trial 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, 289, 786 S.E.2d 132, 136 (2016).

Relevant Facts

On February 27, 2021, Appellant was attacked and beaten at his home. The attackers were identified as his then-girlfriend's mother and her boyfriend. R. 28, ll. 11-13. The attack resulted in injuries to Appellant's face that were still apparent on the night of his arrest two days later. R. 39, ll. 1-3; Court's Exhibit 3 (on file with this Court). The night of the incident, Appellant had just cooked dinner when he noted blue lights across the road from his mobile home.[1] After eating dinner and smoking a cigarette, he went to investigate the blue lights when he saw his mother, Lea Ann Chandler (Chandler), sitting in her car at the top of the driveway. Chandler flashed her lights at Appellant, so he approached her car. R. 31, ll. 12-18.

---

[1] At the time of the incident, Appellant was living in his mobile home on a piece of land Chandler owned. Appellant had lived on the land since he was about thirteen years old. Appellant did not pay rent, but he was responsible for paying the power bill and the taxes on the mobile home. R. 29, l. 1 – 30, l. 5.

The pair began to converse, and within fifteen seconds, Chandler became hostile. Appellant informed officers that evening that Chandler was upset with him for not siding with her. Defense Exhibit 1 @ 4:47 (on file with this Court).[2] Appellant clarified during the immunity hearing that Chandler was upset about someone calling her a bad name and that as she talked about it, she "went to acting crazy." R. 32, l. 1 – 33, l. 13. As Chandler went to drive off in her car, Appellant moved his hands from the windowsill.[3] Chandler then put the car in park and attempted to exit the vehicle. Appellant placed his knee against the door to prevent Chandler from exiting the vehicle "because I have known her for 29 years at the time and I know how short her temper is," and he did not want things to "get completely escalated." He stepped back when Chandler began rummaging in the side pocket of the car door where she was known to keep a pistol.[4] R. 34, l. 7 – 35, l. 2.

Chandler then got out of the car and swung at Appellant three times, striking him twice in his freshly injured face. Defense Exhibit 1 @ 4:06-4:40; R. 35, ll. 4-13; R. 36, ll. 1-8. Appellant reacted by swinging back one time to defend himself. He then returned to his mobile home. Although he was aware that he struck something due to the injury to his hand, Appellant was unsure that he had struck Chandler until he spoke with police and learned he had knocked her to

---

2 Prior to the start of the immunity hearing, Counsel Zmroczek moved the redacted copy of Officer Carroway's body worn camera into the record as Court's Exhibit 2. R. 25, l. 11 – 26, l. 4. During trial, Counsel Zmroczek entered the same redacted copy of Officer Carroway's body worn camera into the record as Defense Exhibit 1. R. 142, l. 20 – 143, l. 11. The Clerk's office was unable to copy Court's Exhibit 2, therefore Appellant is relying on Defense Exhibit 1 for the purposes of this brief.

3 In the body camera video of the arresting officer, Appellant states that when he was talking to Chandler that she was being mean, and as she started to leave, he stepped forward and placed his hand on Chandler's arm while she was in the car. Defense Exhibit 1 @ 3:56.

4 Appellant alleged in the written motion for immunity that Chandler was known to keep a gun in her car. R. 354-55.

the ground. Defense Ex. 1 @ 4:15 & 6:36-7:26; R. 35, l. 14 - 36, l. 15; R. 39, ll. 9-20. Appellant's right hand was bleeding freely while he was being interviewed by officers. Seven stitches were placed in Appellant's pinky knuckle at the ER. Defense Ex. 1 @ 4:10-4:4:40; R. 41, l. 14 – 42, l. 1.

Officer Jacob Carroway with the Lexington County Sherriff's Department was involved in a vehicle pursuit that ended on Fairview Road in Pelion that same evening. While tending to that incident, he heard a voice from across the street call out for help exclaiming, "my son just assaulted me." He encountered Chandler who identified Appellant as her son, stated "he broke my f***ing tooth," and confirmed she wanted to press charges. Chandler had a small amount of blood in her mouth and on her lip, along with a broken tooth. R. 71, l. 14 – 72, l. 12; Defense Exhibit 1 @ 0:00-0:50; Court's Exhibit 5 (on file with this Court).

Carroway walked to Appellant's mobile home and banged on the side, before walking onto the porch to knock on the door. Appellant exited his home and explained to Carroway what had occurred with Chandler, stating that she hit him twice in his already injured face before he swung to defend himself. Appellant demonstrated the motion he made to defend himself from Chandler multiple times and repeatedly asserted that he reacted to Chandler's attack with a single swing so that he could get away from her. Appellant also explained that he had been assaulted a day or two prior to the incident with Chandler which accounted for the injuries to his face. Within approximately two minutes of speaking with Carroway, Appellant was placed under arrest for A&B 2nd. Defense Ex. 1 @ 2:25-5:46; R. 38, l. 21 – 39, l. 11

Carroway continued to speak with Appellant about the incident while walking him back to a patrol vehicle. Appellant again explained how he reacted in self-defense, retelling Carroway that he had been assaulted the previous day by two people and then Chandler had gotten out of

the car "swinging like hell" as he tried to avoid getting hit in his already injured face. Carroway opined that Appellant's story did not sound like self-defense but merely like Appellant had gotten the last lick in. Defense Ex. 1 @ 11:37-12:17.

After Appellant was arrested, Carroway returned to speak with Chandler who was waiting against her car smoking a cigarette. According to Chandler, Appellant had come to see what the blue lights were about, and the two began a conversation. She confirmed that Appellant had "the hell beaten out of him" by two people. Chandler stated everything was fine until she brought up Appellant's "crazy girlfriend." Chandler told Appellant that he and his girlfriend could stay on his corner of the property but not to come onto other areas of her property, which purportedly angered Appellant who said Chandler was on a "power trip." Chandler claimed Appellant began slamming her car door. She exited the vehicle saying "I ain't your little b****. You don't get to punch on me." Chandler then claimed Appellant struck her one time, breaking her tooth. She believed Appellant's hand had been injured on her tooth. Defense Ex. 1 @ 14:14-15:28; 24:32-26:07.

Carroway confirmed that the injuries he observed on both Chandler and Appellant were consistent with Appellant's story. R. 75, ll. 1-5. Carroway acknowledged Appellant's repeated statements that he was acting in self-defense but noted that Appellant had also said Chandler was trying to drive away. He concluded that Appellant "was preventing her from driving away" by placing his hand on her arm which negated any claim of self-defense. R. 82, ll. 12-17. However, he ultimately admitted that Appellant's explanation of the incident was "in the realm of possibility." R. 95, ll. 2-8. The state did not call Chandler to testify during the immunity hearing.

Counsel Zmroczek argued that Appellant had shown by a preponderance of the evidence that he was entitled to immunity under 16-11-440(C). She reiterated that Carroway had conceded during his testimony Appellant's story was a possibility and that Appellant had, from the beginning, told police he was acting in self-defense. In reviewing the elements of the Act, Counsel Zmroczek argued Appellant had a right to be on the property, that Chandler had started the argument, that Chandler got out of her car and swung at Appellant multiple times escalating the incident, and only then did Appellant react with a single swing, resulting in the injury to Chandler. R. 102, l. 19 – 104, l. 7. She surmised,

> The evidence clearly established that Mr. Wise was acting in self-defense. He did not go overboard, he did not continue to strike, he didn't pull out his knife that was in his pocket, he simply swung to get away which is exactly what he told and in [sic] which is what the evidence shows.

R. 104, ll. 7-12.

The state argued that the inconsistencies of Appellant's statement made "his testimony a question of credibility" which made the issue a jury question. The state also argued that Appellant had not shown that he was without fault in bringing on the difficulty. The solicitor's position was that Appellant, by placing his hand on Chandler's arm or windowsill, was continuing the argument and therefore was at fault for bringing on the difficulty. Notably, the state conceded Appellant had a right to be on the property. R. 104, l. 17 – 107, l. 7. Counsel Zmroczek countered that there was no testimony to the contrary that anyone other than Chandler escalated the incident and that if she was trying to withdraw, she would not have gotten out of her vehicle. R. 107, l. 9 – 109, l. 11.

In denying Appellant immunity, the trial court ruled,

> I think, I will start by saying, Ms. Taylor, you mentioned the word issue of fact at some point. Now I can't deny immunity simply

> based on an issue of fact. It is my ruling, respectfully don't believe the Defendant met the burden of establishing stand your ground. I certainly think there was testimony from the Defendant and the officer, from the evidence I saw on the video to show, to show an argument that the Defendant was, had some fault in bringing on this difficulty. Whether or not the victim here will testify, I do not know at trial.
>
> But based upon what I heard now I don't believe the burden has been met to grant outright immunity. I certainly think there is going to be some issues for the jury to hear, well, should he decide to testify. We don't know that yet. But we will cross that bridge when we get to it. As far as, and ordinarily I would do a stand your ground in advance, in more thorough order but I don't have that luxury today so that is why I am trying to be as to the point as I can. But if I, the element without fault on bringing on the difficulty I think is certainly not, not established by a preponderance of the evidence. So could be fifty/fifty but it is not fifty-one/forty-nine.

R. 109, l. 15 – 110, l. 14

Discussion

The trial court erred in denying Appellant immunity. The court found that, based on the testimony and Carroway's body worn camera, an argument existed that the Defendant had some fault in bringing on the difficulty. Respectfully, this ruling was not supported by the facts in the record. A review of the evidence presented during the immunity hearing shows that Appellant proved it was more likely than not that his use of force was justified under the Act. He showed by a preponderance of the evidence that he was attacked in a place he had a legal right to be, he was not engaged in an unlawful activity, he was without fault in bringing on the difficulty, he was in actual imminent danger of sustaining bodily injury, and he reacted with proportional force. This Court should find that Appellant is entitled to immunity.

In 2006, the South Carolina General Assembly adopted the Protection of Persons and Property Act. S.C. Code Ann. § 16-11-410, et seq. The General Assembly explained its intent was to "codify the common law Castle Doctrine which recognizes that a person's home is his

castle and to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A). The General Assembly found it "proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others." S.C. Code Ann. § 16-11-420(B). The General Assembly recognized "that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles." S.C. Code Ann. § 16-11-420(D). Finally, the General Assembly explained "that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." S.C. Code Ann. § 16-11-420(E).

To effectuate this intent, the General Assembly created a statute providing for immunity from prosecution to "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law." S.C. Code Ann. § 16-11-450(A). Our Supreme Court explained that "another applicable provision of law" found within the Act "includes the common law of self-defense." State v. Glenn, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019). "This means 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." Glenn, 429 S.C. at 18, 838 S.E.2d at 496 (internal quotation omitted). "Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable." Id.

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) 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, or if the defendant was actually 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; and (4) 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 the particular instance. State v. Hendrix, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); see also State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). "The law requires a person fear imminent *serious* harm or death before using deadly force to defend oneself because the use of defensive force is justified only to the extent such force is proportional to the threat the person faces." State v. Stoots, 445 S.C. 127, 134, 912 S.E.2d 248, 252 (2025). Importantly, "[w]here the provoking attack is less serious, a person may still be justified in responding, but only with proportional force. Thus, there is no requirement the defendant anticipate serious bodily injury or death before responding with non-deadly force in self-defense." Id.

An individual has the right to act on appearances. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000); see also State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955). Additionally, "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense." State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951). However, an individual who provokes or initiates an assault may not assert self-defense. 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 [crime]." Id.

The Act provides:

> 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). Thus, "in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(C) is applicable because the provision was enacted to extend the protections of the Castle Doctrine to other places where he has a right to be." Id. at 118-119, 838 S.E.2d at 496. "Where this section is applicable, it replaces the duty to retreat element required to establish self-defense." Id. at 119, 838 S.E.2d at 497. "In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be." Id. On appeal from the denial of immunity, an appellate court must limit its review to the evidence presented during the immunity hearing. See State v. Cervantes-Pavon, 426 S.C. 442, 452–53, 827 S.E.2d 564, 569 (2019) (While the trial court's pretrial immunity ruling and the jury's verdict on a claim of self-defense may apply the same statutory justification standard, the court's 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. Consequently, we have limited our review to the evidence presented at the immunity hearing.)

There was no contention that Appellant was not in a place that he had a right to be at the time of the incident. The state conceded as much during argument to the trial court. R. 106, ll. 19-22. Appellant had lived on the property owned by Chandler since he was approximately thirteen years old, and he had free use of the property prior to the incident. There was also no contention that Appellant was engaged in an unlawful activity at the time of the incident. Therefore, the only question before the trial court, and subsequently this Court, was whether Appellant met the elements of self-defense, save the duty to retreat, by a preponderance of the evidence.

The only element that the state argued, and that the trial court ruled on, was whether Appellant was without fault in bringing on the difficulty. The state argued that Appellant was not without fault in bringing on the difficulty because he placed his hand on Chandler's arm or windowsill and would not let the argument go. However, the record reflects that Chandler was free to leave and drive away at any time – Appellant was not standing in front of her car, nor did he have the physical ability to prevent her from driving away. While the parties disagreed about who became upset first, the evidence showed that Chandler alone escalated the confrontation by getting out of her car and approaching Appellant stating "I'm not your little b****. You don't get to punch on me." Appellant then reported that Chandler swung at him three times before he swung once in self-defense. The record lacks evidence that any of Appellant's actions where "in violation of the law *and* reasonably calculated to produce the occasion" as necessary for a finding that he was with fault in bringing on the difficulty. See State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999).

The state offered no argument that Appellant was not in actual imminent danger of sustaining bodily injury or that he did not actually believe he was in imminent danger of sustaining bodily harm. The trial court did not rule on this element. The evidence showed that Appellant had been assaulted two days prior to the incident with Chandler, and his face still reflected the injuries of that attack. He testified Chandler had a short temper and would escalate matters, so much so that he initially attempted to prevent her from exiting her vehicle but stepped back when she began to rummage in the side door of her car where she was known to keep a pistol. When Chandler exited the car, he reported she struck him twice, creating an actual imminent danger of sustaining further injury to his already injured face. However, even if Chandler did not hit Appellant, she admitted she approached Appellant in an aggressive manner stating "I'm not your little b****. You don't get to punch on me." Her aggressive words and actions in approaching Appellant gave him the right to act with proportional force to defend himself. See State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (An individual has the right to act on appearances); State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951) (Words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense). The record demonstrates that Appellant was in actual imminent danger of sustaining bodily harm. Even if the Court was to find that Appellant was not in actual danger, Chandler's temper, aggressive demeanor and words upon exiting the vehicle, coupled with the relatively fresh injuries to Appellant's face from the previous assault amounted to a reasonable belief that he was in imminent danger of sustaining bodily harm.

Appellant has met his burden of proof under the Act. He has shown that he was in a place he had a right to be, he was not engaged in any unlawful activity, Chandler brought on the difficulty by exiting the vehicle and approaching Appellant in an aggressive manner, and he was

in actual danger when Chandler began to swing at him. Further, he had a reasonable belief of actual danger of bodily injury based on Chandler's words and actions, and his pre-existing injuries. Appellant had no duty to retreat under the Act and was entitled to meet force with proportional force and stand his ground. The trial court's denial of immunity was error.

II.

The circuit court erred in denying Appellant's motion for a direct verdict where the State failed to establish the statutory element of "great bodily injury".

Standard of Review

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) quoting State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). "A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." Id. "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) quoting State v. Frazier, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). "When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." Id.

Relevant Facts

On March 1, 2021, Appellant was arrested and charged with A&B 2nd for purportedly striking Chandler causing "moderate bodily injury to her mouth, resulting in the damage and partial loss of a tooth, which will require surgery to fix." R. 353. Although initially indicted for A&B 2nd, the state directly indicted Appellant for A&B 1st in April 2023. At trial, the state elicited testimony from Chandler and the two dentists she saw about her injury.

Chandler testified that she had both of her front teeth extracted because they "were destroyed" and had implants placed. R. 184, ll. 9-15. Prior to the implants being placed, Chandler also had to undergo a bone graft due to bone loss which she assumed "was damaged

from the punch." R. 186, ll. 18-21; R. 202, ll. 7-17. The procedures took over a year-and-a-half to complete because her mouth had to heal from one procedure before the next could be performed. R. 186, ll. 11-15. Chandler confirmed that all the procedures were performed under local anesthesia. R. 190, ll. 19-23. She also admitted that when filing out her victim impact statement she checked "no" on the box that asked if the injuries she suffered caused permanent long-term disability or disfigurement. R. 200, ll. 9-23. She had no recollection of how often she had been to the dentist prior to the incident and confirmed she had been a smoker for over twenty years. R. 202, l. 18 – 203, l. 2.

Dr. Rama Yelisetty was qualified as an expert in general dentistry without objection. R. 218, l. 6 – 219, l. 21. Dr. Yelisetty testified that Chandler was in significant pain when she presented to her office. She took X-rays of Chandler which revealed two broken front teeth that had been displaced out of the sockets due to blunt force trauma. R. 220, l. 14 – 221, l. 25. Dr. Yelisetty's biggest concern, besides the broken teeth, was potential facial fractures, but she did not see any bone displacement on the X-rays. R. 224, ll. 2-19. She confirmed that teeth are members of the body and that an injury such as the one suffered by Chandler could cause loss of the teeth or impairment of the function of her teeth. R. 224, l. 20 – 225, l. 12. After the initial appointment and extraction, Chandler visited Dr. Yelisetty one time to have a temporary partial denture fitted, then two more times to ensure she was healing well from the extraction. R. 225, l. 14 – 226, l. 6. On cross-examination, Dr. Yelisetty confirmed that extractions were common in the world of dentistry and that she only used a local anesthetic during the extraction procedure. R. 227, l. 12 – 228, l. 25

Dr. Grant Dye was qualified as an expert in dental surgery and conscious sedation without objection. R. 233, l. 3 – 235, l. 16. During his exam of Chandler's teeth, he noted her

missing front teeth along with some cavities and a fractured tooth on the lower right side of her jaw that required extraction. He stated that a bone graft was required because bone atrophy occurs when teeth are removed from the jawbone and that Chandler had a slant in the bone where her teeth had been. R. 237, l. 1 – 238, l. 14. Chandler then saw Dr. Dye over various visits to have the implants placed, the implant buttons placed, the crown impressions made and then the crowns attached to the implants. He testified that the procedures followed the standard treatment. R. 239, l. 13 – 240, l. 13.

Dr. Dye testified that if Chandler had not received treatment, potential complications from the injury to her teeth could have included nerve damage, loss of bone, crowding teeth, rough teeth, chewing problems, and TMJ issues. However, he did not see any of the potential complications with Chandler, nor did he see any evidence of a jaw fracture. R. 242, l. 9 – 243, l. 11; R. 246, ll. 5-8; R. 249, ll. 3-6. Dr. Dye confirmed that every procedure on Chandler was performed under local anesthesia, that implants are very common procedures, and that smoking can cause damage to one's teeth. T. 248, l. 14 - 249, l. 24. Dr. Dye further conceded that his current website characterizes the procedures that Chandler underwent as "minor" or "simple" procedures. R. 249, l. 7 – 250, 1. 3.

The state rested after the testimony of Dr. Dye. Counsel Zmroczek moved for a directed verdict, arguing the state had failed to produce evidence of great bodily injury as the A&B 1st statute required protracted injury. She asserted that the state's own expert had confirmed the procedures were minor and that the teeth were not vital organs. She candidly conceded that the State had offered proof of moderate bodily injury but maintained it had failed to reach the elevated standard of great bodily injury. R. 252, l. 18 – 254, l. 3. The state argued that, in the light most favorable to the state, it had presented testimony that the teeth were members of the

body and that there was protracted loss of that bodily member while Chandler underwent surgeries for the implants. The state contended it was an issue of fact for the jury. R. 254, ll. 5-22. The trial court denied the motion for a directed verdict stating,

> I think the issue of fact is clear. They [the jury] can decide if they think it is a protracted long-term loss. But I think the evidence clearly shows that it was, there is an impairment of function. And I heard testimony about the bodily member. They can take that for what they think it is worth. They may not find on anything, we will see.

R. 255, ll. 4-12.

Discussion

For the state to secure a conviction of A&B 1st, it must present evidence of a great bodily injury. Pursuant to S.C. Code Ann. § 16-3-600(A)(1), GBI can be proven by showing the injury 1) caused a substantial risk of death, 2) caused serious, permanent disfigurement, or 3) caused protracted loss or impairment of the function of a bodily member or organ. The injury to Chandler did not cause a substantial risk of death, serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member. As Counsel Zmroczek recognized, the State only presented evidence of moderate bodily injury. Therefore, it was error for the trial court to deny the directed verdict motion as to A&B 1st.

A defendant is entitled to a directed verdict of acquittal when the State fails to present evidence on a material element of the offense charged. State v. Pittman, 373 S.C. 527, 546, 647 S.E.2d 144, 153 (2007) (citing State v. Brown, 360 S.C. 581, 586-587, 602 S.E.2d 392, 395 (2004)). A defendant is also entitled to a directed verdict when "the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt based upon facts or circumstance which do not amount to proof." State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). "Evidence must constitute positive proof of facts and circumstances which

reasonably tends to prove guilt." State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (cleaned up). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." Id. at 139, 708 S.E.2d at 776-777. If the State failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

The General Assembly took great care to define great verses moderate bodily injury for the purposes of the assault and battery statutes. GBI is defined as "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). MBI is defined as "physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation." S.C. Code Ann. § 16-3-600 (A)(2). It is clear by the definitional language used that a great bodily injury is characterized by its severe and lasting impact on the victim's health and physical abilities, while moderate injury is characterized by its less severe, temporary impact on the victim, even if the injury still requires significant medical treatment.

In the matter *sub judice*, there was no evidence that Chandler's injury caused a substantial risk of death or which causes serious, permanent disfigurement. The state argued that it had offered evidence of a protracted loss or impairment of Chandler's teeth, however the record does not support that assertion. While the dental procedures took roughly eighteen

months to completely restore Chandler's teeth, Dr. Dye testified that the course of treatment was standard for tooth extractions and implants. The treatment did not last longer than expected or longer than usual. While Chandler certainly had temporary loss and impairment of her teeth, she by no means had *protracted* loss or impairment.

Additionally, Dr. Dye testified that Chandler did not suffer any of the potential long term complications that are associated with loss of teeth. Dr. Dye also confirmed that he advertises the procedures he performed on Chandler as "minor" or "simple." Further, Chandler and both dentists testified that the procedures were performed under local anesthesia. Dr. Dye testified that Chandler suffered the loss and impairment of a bodily member, that was treated through the normal surgical process without complication, and she was restored to her normal functioning. The State's evidence did not reasonably tend to prove that Appellant was guilty of causing a great bodily injury, therefore the trial court should have directed a verdict of acquittal as to A&B 1st.

CONCLUSION

As to Issue I, Appellant respectfully requests that this Court hold he met the elements of the Act and is entitled to immunity from prosecution. As to Issue II, Appellant respectfully requests that this Court reverse his conviction and sentence and enter a directed verdict of acquittal.

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of January, 2026.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 22nd day of January, 2026.

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
Jan 22 2026
SC Court of Appeals