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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TELVIN QUINTAVIS JACKSON,

APPELLANT

APPELLATE CASE NO. 2024-001198

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err by denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act, when Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to the Act?

2.

Did the trial court err by failing to direct a verdict of acquittal for the offense of murder when the evidence presented established Appellant shot the decedent in self-defense or in the defense of habitation?

3.

Did the trial court err by charging the jury on the lesser included offense of voluntary manslaughter when there was no evidence Appellant shot the decedent in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense, and where Appellant was prejudiced because the jury compromised and found him guilty of voluntary manslaughter?

STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant on August 17, 2022, for the offense of murder. R. * (Indictment). A pretrial hearing was held on November 16, 2023, before the Honorable Clifton Newman on Appellant's motion to dismiss pursuant to the Protection of Persons and Property Act. Tr. 1. By order filed December 20, 2023, Judge Newman denied Appellant's motion for immunity from prosecution. R. * (Order).

Appellant's case was called to trial on June 24, 2024, before the Honorable Daniel Coble, and a jury. Tr. 1. Assistant Solicitors April Sampson, Christa Bell, and Keith Taylor represented the state. Tivis Sutherland represented Appellant. Tr. 2. On June 27, 2024, the jury acquitted Appellant of murder, but found him guilty of the lesser included offense of voluntary manslaughter. Tr. 420, ll. 17-25. Appellant was sentenced to twenty years imprisonment. Tr. 431, ll. 10-13.

On July 8, 2024, Appellant filed a motion for a new trial. R. * (Motion). The state filed a response to Appellant's motion for a new trial on July 9, 2024. R. * (Response). By order dated July 10, 2024, Judge Coble denied Appellant's motion.

This appeal follows.

ARGUMENT

1.

The trial court erred by denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act, when Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to the Act.

Relevant Facts

Appellant testified during the pretrial immunity hearing that he was unable to work during the COVID-19 pandemic because he was an independent contractor and “we couldn’t be around each other.” Consequently, Appellant had to file for unemployment. Khamori Scott¹, the decedent, had a girlfriend or aunt who worked for the “unemployment office” and was able to “expedite the unemployment for folks.” Scott told Appellant that he would pay Appellant eight hundred dollars if Appellant referred individuals to apply for unemployment. Because Appellant was desperate for money, he did so. Tr. 11, l. 10 – 13, l. 5.

At some point, for whatever reason, Scott believed Appellant owed him money. Scott began calling Appellant and threatening Appellant and his wife. Scott told Appellant, “I’m going to kill you if you don’t give me my money.” Appellant repeatedly told Scott he was going to jail if he did not stop threatening and harassing Appellant and his family. Tr. 11, l. 23 – 14, l. 15.

On May 20, 2020, Scott showed up at Appellant’s house when Appellant was not home. However, Appellant’s wife and two young children were home. Scott threatened Appellant’s wife. Appellant did not know how to handle the situation because he was a business owner and

¹ Appellant called Scott by his nickname, “Trouble.” Appellant explained that Scott was known “in the neighborhood” as Trouble because he was “constantly getting in and out of trouble.” The nickname “just stuck.” Tr. 11, ll. 13- 22.

“don’t be in the streets.” Appellant was thirty minutes away and knew the police could get to his house faster. He called 911. He told the dispatcher that Scott was at Appellant’s house uninvited while Appellant was not home, that Appellant’s wife, who was home, called Appellant to report that Scott was inside the house “raising hell.” Tr. 11, l. 10 – 21, l. 10.

While Scott was at Appellant’s house, Scott texted Appellant, “Wya [where you at] with my shit,” “I’m not finna play with you,” and “When I catch you it’s up.” Appellant responded, “You going to jail.” Scott said, “Idgaf [I don’t give a fuck].” Appellant responded, “I’m giving the police your name now.” Scott again said, “Idgaf [I don’t give a fuck].” Appellant repeated, “You going to jail.” Tr. 15, l. 3 – 19, l. 21; R. * (Defense Exhibit No. 1). Appellant explained that he was on the phone with 911 when the two exchanged these text messages, which is why Appellant told Scott he was giving the police his name. Tr. 21, ll. 5-13.

Six days later, on the night of May 26, 2020, Appellant was sitting in his car with his friends, Brandon and Dominique. The car, which Appellant had backed in, was parked in Appellant’s driveway. Another car arrived and parked in front of Appellant’s car, blocking Appellant’s car from leaving. Scott got out of this car with a gun. He approached Appellant’s window. Appellant was “terrified” and put his hands up. Scott told Appellant, “Give me my motherfucking money.” Appellant remembered “staring that gun down the barrel.” He gave Scott all the money he had in his wallet, which was around a few hundred dollars. Scott “got mad” and threw the cash back in Appellant’s face. Brandon, who was one of Scott’s best friends, eventually stepped in between Appellant and Scott to prevent Scott from shooting Appellant. Scott threatened Appellant screaming, “I’m going to kill you, bitch-ass n*****.” Appellant said Scott “looked like he was out of his mind.” Tr. 21, l. 17 – 23, l. 20.

Appellant eventually noticed that the car Scott arrived in had been moved and was no longer blocking Appellant's vehicle. Appellant quickly drove to his father's house, which was only a minute or two away. Appellant believed his father's house was the closest place he could receive help. Appellant burst into his father's house and said, "Daddy, I just got robbed by Trouble" or "Daddy, call the police. I just got robbed. Trouble just robbed me." Again, Trouble was Scott's nickname. Appellant's sister immediately began asking Appellant about his wife and children. Appellant told her they were at his house. Appellant got a gun and immediately began driving back to his house. He called 911 on the way. Appellant testified that he drove slowly because he was "scared," but he "knew [he] had to be brave for [his] family." Tr. 23, l. 21 – 25, l. 12.

When the 911 dispatcher answered, Appellant immediately asked her to send officers to his address. He told her, "This man just robbed me in my own yard. And I have a gun. I have a gun and he's on my property. I'm about to shoot him." See Court's Exhibit No. 2. Appellant identified the robber as Scott and told the dispatcher that he had called the police about Scott before. Appellant said, "He pulled a gun on me. I'm about, about to shoot him. I just went up the street and got my damn gun. Or my family member's gun and I'm about to get him out my yard." See Court's Exhibit No. 2. Appellant explained that Scott "put a gun to my face" and stole two hundred dollars from him. He told the dispatcher that Scott was still armed and repeated that he was about to shoot Scott. See Court's Exhibit No. 2.

When Appellant arrived back at his house, he saw Scott in his yard. Appellant got out of the car with his gun pointed at Scott. He told Scott that the "police [are] on the way" and "stay right here." Appellant's call with 911 got disconnected when Appellant got out of the car likely

“because of the Bluetooth.” Scott immediately “drew his gun.”² Appellant was “scared.” He took off running toward the back of his house. As he was running, Appellant fired his gun. He did not know he had shot Scott. Appellant said he jumped the fence into his neighbor’s backyard and hid there until the police arrived. He was “terrified” and “thought [he] was going to die.” As soon as the police arrived, Appellant walked out of his neighbor’s yard with his hands in the air still holding the gun. He told the responding officer that he was the one who called the police. Appellant put his gun on the ground as instructed and was placed in the back of a patrol car.³ He begged the police to protect his family. He was “in shock” and “terrified.” Tr. 25, l. 14 – 27, l. 23; Tr. 31, l. 22 – 32, l. 25.

Appellant was transported to the sheriff’s department where he subsequently waived his Miranda rights and told investigators what happened. Appellant’s statement, which was audio and video recorded, was admitted as Court’s Exhibit No. 3 during the pretrial hearing. When Appellant was speaking with the investigators, he did not know Scott had died. When the investigators told Appellant Scott was dead, Appellant “broke down” and the interrogation

² It is undisputed that Scott had a gun. Scott’s gun was found on the ground in Appellant’s front yard when law enforcement arrived. Scott’s gun can be seen in the photographs admitted as Court’s Exhibit Nos. 4-6 during the pretrial immunity hearing, which are on file with this Court.

³ Law enforcement read Appellant his Miranda rights while he was in the backseat of the patrol car. Appellant gave a brief statement to the responding officers about what happened. This statement was captured by then Master Deputy Andrew Gayeskie’s body camera. For whatever reason, the footage of Appellant’s statement to Gayeskie was not admitted during the pretrial hearing, even though it was highly favorable to Appellant on the issue of whether Appellant should be granted immunity. However, the statement was admitted as Defense Exhibit No. 1 during Appellant’s trial over the state’s objection. See Tr. 156, l. 9 – 166, l. 19 and Tr. 181, l. 12 – 182, l. 11. During the pretrial immunity hearing, Judge Newman questioned Investigator Keenan Johnson, who took part in interrogating Appellant at the sheriff’s department, about any prior statements Appellant had made before being formally interviewed. Johnson testified that “Generally, a responding officer would’ve spoken to him [Appellant]” and that Appellant “was driven to headquarters by an officer.” However, Johnson did not know what statements Appellant had made. Tr. 93, ll. 7-17.

subsequently ended because Appellant could not regain his composure. Appellant testified that he did not realize he was being investigated at the time. He was simply telling his “side of the story” in the hope that Scott would “go to jail” so he would stop threatening Appellant. Appellant explained that Scott was known for “shooting up” people’s houses “and shooting at people.” Tr. 29, l. 1 – 31, l. 12.

During cross-examination, Appellant agreed that he could have stayed at his father’s house after Scott robbed Appellant at gunpoint on Appellant’s own property. However, Appellant explained that he returned to his house because his wife and children were there. Appellant implied that he had a duty to protect his family. He explained, “I got a family. . . my kids was there, my wife [was] there. . . as a man, the only thing I can think about is my family.” Tr. 38, l. 11 – 39, l. 24. The solicitor also questioned Appellant about the recorded statement he gave to investigators. Appellant told the investigators that he approached Scott (who again was in Appellant’s front yard) with a gun after Appellant returned to his house because he wanted to keep Scott there until the police arrived so that Scott could be arrested. Appellant wanted Scott to go to jail so he would stop threatening Appellant and his family. Tr. 68, l. 9 – 70, l. 5.

At the conclusion of the hearing, defense counsel argued that Appellant was entitled to immunity pursuant to the Act. He maintained that it was undisputed that Appellant was robbed at gunpoint in his own yard, that once Appellant’s car was no longer blocked from leaving, Appellant drove to his father’s house, that he got a gun from his sister and returned to his home where his wife and children were located, that he called 911 and told Scott (who was standing in Appellant’s front yard) that the police were on their way, that Scott pulled his firearm again, and that Appellant shot and ran away. Counsel asserted that Appellant was not at fault for bringing on the difficulty by returning to his own property after initially leaving after he was robbed at

gunpoint. Counsel stated Appellant had a right to be on his own property. He emphasized that in codifying the Castle Doctrine, the legislature “intentionally excised the duty to retreat from self-defense law for purposes of protecting a home, car, [and] person’s family.” Given this, counsel argued that “it is unreasonable to me that they [the legislature] would impose a burden on a homeowner who was able to get away initially, that they can’t return to their property that they’re entitled to protect.” Tr. 95, l. 3 – 96, l. 22.

Defense counsel continued, “There’s no argument against him [Appellant] being robbed in his yard. They’re [the state is] saying it’s improper that he left and returned with a firearm.” However, counsel asserted that the “situation” is covered by the Protection of Persons and Property Act and that pursuant to the Act, Appellant was permitted to return to his property, where Scott was still located, to protect his family and his property itself. Counsel further argued that Appellant was entitled to the presumption of fear provided by the Act, but regardless of this presumption, Appellant’s belief that he was in imminent danger at the time he fired was reasonable given the circumstances. Tr. 97, l. 1 – 98, l. 1.

The assistant solicitor argued that Appellant did not satisfy the elements of self-defense because he was not without fault in bringing on the difficulty. She maintained Appellant brought on the difficulty by returning to his property armed with a gun, approaching Scott in Appellant’s yard, and pulling a gun on Scott. As to § 16-11-440(A), the solicitor argued that Scott was not in the process of forcefully entering Appellant’s home or occupied vehicle and, therefore, that subsection of the Act did not apply. As to § 16-11-440(C), the solicitor asserted that while Appellant was in a place where he had a right to be, he was not attacked because when Appellant returned to his property, Scott was “just sitting there” and “did not pull a gun on him [Appellant] when he [Appellant] came back.” Tr. 98, l. 3 – 99, l. 10.

During the state’s argument, the trial court appeared to express disbelief that Appellant could be at fault in bringing on the difficulty when he was on his own property. See Tr. 110, ll. 14-24. The court also said it was a “problem” that the court was not presented with all of Appellant’s statements. Tr. 108, ll. 14-21. As mentioned above, for whatever reason, the court was not given the footage of Appellant’s initial statement to police, which was captured by Master Deputy Andrew Gayeskie’s body camera while Appellant was in the backseat of a patrol car immediately after he was detained. See Tr. 156, l. 9 – 166, l. 19 and Tr. 181, l. 12 – 182, l. 11.

The court ultimately denied Appellant immunity from prosecution.⁴ The court first addressed § 16-11-440(A). It found that Appellant was not entitled to immunity pursuant to this subsection because there was no evidence that the decedent was forcefully entering a dwelling, residence, or occupied vehicle. The court also found that Appellant was engaged in an unlawful activity at the time of the shooting because he was unlawfully carrying a handgun in violation of S.C. Code Ann. § 16-23-20. The court stated, “There is no dispute that the Defendant left his residence, went to his father’s house, and retrieved a gun that he carried unlawfully in his vehicle back to his home. He then got out of the car and pointed the gun at the victim, who at that time apparently was doing nothing to the Defendant.” The court further concluded Appellant was engaged in unlawful activity at the time of the shooting because Appellant stated that he intended

⁴ The court’s findings of fact do not correctly reflect the evidence presented during the pretrial hearing regarding the “scheme” Appellant and the decedent were involved in concerning filling for unemployment. Specifically, the court stated the decedent “would refer people” to Appellant, “who would have them apply for unemployment” through Appellant’s “relative, an employee at the South Carolina Department of Employment and Workforce.” The court found that Appellant would then pay the decedent a “referral fee.” See R. * (Order). However, the only evidence presented (through Appellant’s testimony) was that the decedent had a relative who worked for the “unemployment office” and the decedent would pay Appellant eight hundred dollars if he referred individuals to apply for unemployment. See Tr. 12, l. 2 – 13, l. 9. The court reversed the roles Appellant and the decedent played in this “scheme.”

to use the gun to hold Scott and his friends, Brandon and Black, at Appellant's house until the police arrived. The court determined this conduct constituted kidnapping in violation of S.C. Code Ann. § 16-3-910 since Brandon and Black had not "done anything wrong." R. * (Order).

The court then addressed § 16-11-440(C). It found that Appellant was not entitled to immunity pursuant to this subsection because Appellant was not being attacked "or met with force" when he shot Scott. The court determined that Scott was "not doing anything to [Appellant] when he was shot" and that Scott only drew his gun after Appellant approached Scott with a gun. The court concluded that there was no credible evidence that it was reasonable for Appellant to believe the use of deadly force was necessary to prevent death or great bodily injury to himself and another person or to prevent the commission of a violent crime. The court emphasized that Appellant testified that when he returned to his property, Scott "was there but not doing anything wrong" and that Scott "did not draw his weapon or say anything to [Appellant] until he saw that [Appellant] had a gun in his hand." Accordingly, the court found Appellant failed to prove Scott "was still a threat" when Appellant returned. R. * (Order).

Finally, as to subsection (C), the court again found that Appellant was engaged in an unlawful activity at the time of the shooting because he was unlawfully carrying a handgun in violation of S.C. Code Ann. § 16-23-20; was in the process of kidnapping Brandon and Black in violation of S.C. Code Ann. § 16-3-910; and was presenting and pointing a firearm at another person in violation of S.C. Code Ann. § 16-23-410. R. * (Order).

Lastly, the court addressed the elements of self-defense. It determined that Appellant was not without fault in bringing on the difficulty because Appellant "brought a gun to what he alleged to be an armed robbery, or in the alternative, to hold people captive, one of which he knew to be armed, who were doing nothing but sitting at their vehicles." The court compared the

facts of this case to the facts in State v. Williams, 427 S.C. 246, 830 S.E.2d 904 (2019), where “the defendant brought a loaded, unlawfully possessed pistol to a drug deal, and when the victim attacked the defendant, he shot him.” Our Supreme Court held the trial court in Williams did not err by refusing to instruct the jury on self-defense because Williams was at fault in bringing on the difficulty. The court found “the same could be said in this case” because Appellant brought an “unlawfully possessed gun to a just completed armed robbery.” It concluded that Appellant’s actions of returning to his property and approaching Scott with a loaded gun “were not only a violation of the law, but reasonably calculated to cause the victim to respond by trying to draw his own gun.” R. * (Order).

As to the second and third elements of self-defense, the court found “there was no credible evidence presented that the victim presented a deadly threat to [Appellant] nor that a reasonably prudent person would have believed the victim presented a deadly threat.” The court reasoned that even though Scott “allegedly robbed” Appellant, when Appellant returned to his house, Scott “was doing nothing” and “there was no threat to anyone until [Appellant] approached the victim with a loaded weapon and pointed it at the victim.” While the court noted Appellant testified that he was scared, it concluded that there was “no credible evidence [Appellant] was in actual imminent danger of losing his life or sustaining serious bodily injury at the time of the shooting or that a reasonably prudent person of ordinary firmness and courage would have believed he was and therefore shot the victim in order to save himself from serious bodily injury or death.” R. * (Order).

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).

Discussion

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 Act expresses the General Assembly’s finding “that it is 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 its 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). The phrase “another applicable provision of law” includes the common law of self-defense and defense of others. State v. Glenn, 429 S.C. 108, 118 838 S.E.2d 491, 496 (2019). “Another applicable provision of

law” would also include the analogous common law of defense of habitation. However, for whatever reason, defense of habitation was not raised to the trial court during the pretrial immunity hearing.

Section 16-11-440 sets forth the circumstances under which the Act allows the use of deadly force. Id. The statute states in relevant part:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

...

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity;

...

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has the 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.

According to our Supreme Court, “a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence.” State v.

Glenn, 429 S.C. 108, 118, 838 S.E.2d 491, 496 (2019). “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. 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 had a right to be.” Id. at 118-19, 838 S.E.2d at 496. Where section 16-11-440(C) 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.

Furthermore, when considering whether the defendant was in a place where he had a right to be as required by the Act, the trial court must consider proximate cause or a causal connection to the incident. Id. at 119-120, 838 S.E.2d at 497. “To bar a victim of crime from claiming immunity based on a hyper-technical reading of the statute would lead to absurd results when his presence in the place he was attacked had no relation to the incident itself.” Id. at 120, 838 S.E.2d at 497. Additionally, “a proximate cause analysis must also be applied to the unlawful activity element of subsection (C).” Id.

“A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard.” Curry, 406 S.C. at 370, 752 S.E.2d at 266. Thus, a person who proves by a preponderance of the evidence that he satisfied (1) the elements of common law self-defense *or* (2) the elements of the Act is entitled to immunity from prosecution.

A. Appellant is Immune From Prosecution Under Common Law Self-Defense⁵

Our Supreme Court emphasized in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) “that immunity under the Act ‘is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by a preponderance of the evidence,’ save the duty to retreat.” State v. Douglas, 411 S.C. 307, 318, 768 S.E.2d 232, 238 (Ct. App. 2014) (quoting Curry, 406 S.C. at 371-372, 752 S.E.2d at 266-267). “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 318, 768 S.E.2d at 238 (quoting Curry, 406 S.C. at 371, 752 S.E.2d at 266) (alternation in original).

“There are four elements required by law to establish a case of self-defense: 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 reasonable 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 318, 768 S.E.2d at 238-239 (internal citation omitted). As mentioned, the last element, the duty to retreat, need not be shown

⁵ According to our Supreme Court, the “trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence.” State v. Glenn, 429 S.C. 108, 118, 838 S.E.2d 491, 496 (2019). Notably, the trial court in this case incorrectly began its analysis by analyzing the elements of Section 16-11-440 rather than the elements of self-defense.

when seeking immunity under the Act. Id. at 318, 768 S.E.2d at 239 (citing Curry, 406 S.C. at 371, 752 S.E.2d at 266).

An individual has a right to act on appearances. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000); State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955). Furthermore, “when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.” State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978). Moreover, the factfinder may consider prior instances of violence or unprovoked aggression by the decedent in determining whether the defendant had a reasonable belief of imminent danger. See State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000).

The evidence presented at the pretrial hearing established that Appellant acted in self-defense. First, unlike what the trial court found, Appellant was not at fault in bringing on the difficulty. The decedent robbed Appellant at gunpoint in Appellant’s own yard.⁶ When Appellant noticed he had the opportunity to flee, he drove to his father’s house, which was roughly two minutes away, to seek help. Upon bursting into his father’s house and exclaiming that the decedent had robbed him, Appellant’s sister questioned Appellant about the whereabouts of his wife and young children and gave Appellant a gun. Appellant immediately returned to his house to protect his family and property. He called 911 on the way, reported the robbery, and requested the dispatcher send the police to his house. Appellant testified that he was “scared” to return, but “knew he had to be brave for [his] family.” When Appellant arrived back at his house, he saw the decedent in his yard. He got out of the car, told the decedent that the police were on their way, and approached him with the gun in his hand. The decedent immediately

⁶ The trial court repeatedly said in its order denying immunity that Appellant was “allegedly” robbed. However, the evidence presented at the immunity hearing was uncontroverted that Scott robbed Appellant at gunpoint as Appellant sat in his car in his own driveway. Importantly, the trial court did not find that Appellant’s testimony about the robbery was not credible.

“drew his gun.” “Terrified,” Appellant fired his gun once or twice and ran to his backyard. He eventually climbed over the fence to his neighbor’s yard and waited until the police arrived. Appellant then turned himself in to the first responding officer.

The trial court found Appellant was at fault because he brought “an unlawfully possessed gun to a just completed armed robbery.” However, Appellant was entitled to arm himself in self-defense, in the defense of others, and in the defense of his property. Importantly, the trial court wholly ignored that Appellant was the victim of the armed robbery and that the robbery occurred in Appellant’s own front yard. Appellant had every right to arm himself in self-defense, in the defense of others, and in the defense of his property and return to his property where his wife and children were located with the still armed Scott. Appellant told the police during his recorded statement that if he would have merely called the police and waited in his car for the police to arrive, the decedent would “have shot up his house” (with Appellant’s family inside) in retaliation for Appellant calling the police.

Once Appellant returned, he saw the decedent standing in his (Appellant’s) yard. Appellant, now armed in self-defense and in the defense of his property, rightly approached the decedent and informed him that the police were on their way. Appellant hoped to hold the decedent there until the police arrived so the decedent would go to jail. However, the decedent immediately “drew his gun” upon seeing that Appellant was armed and Appellant fired in self-defense before fleeing to the backyard. Appellant told the police during his recorded statement that he was scared the decedent would shoot him first if he did not fire.

The trial court found Appellant was at fault because “he called 911 and stated he was going to shoot the victim, got out of his vehicle with the loaded gun at his side, went directly to the victim, and pointed the gun at him.” Again, despite being repetitive, Appellant had the right

to arm himself in self-defense and in the defense of his property. Appellant had a right to expel a trespasser even with the use of deadly force. Appellant could not be at fault in bringing on the difficulty when he was lawfully permitted to act as he did.

As to the second element, the evidence established that not only did Appellant actually believe he was in imminent danger of losing his life or sustaining serious bodily injury, but also that Appellant actually was in such danger. When Appellant approached the decedent after returning to his property (which again he was lawfully permitted to do), the decedent drew a gun. At that moment, Appellant actually was in imminent danger of losing his life or sustaining serious bodily injury. Moreover, Appellant repeatedly testified and stated during his statement to police that he was scared during the encounter with the decedent. He specifically testified that he was “terrified” and “thought [he] was going to die.” Appellant also told the police during his recorded statement that he was scared the decedent would shoot him first if he did not fire.

As to the third element, it is clear a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. A reasonable person, who had just been robbed at gunpoint by the decedent, would have likewise believed that he was in imminent danger when the decedent drew his firearm a second time.

B. Appellant is Immune From Prosecution Pursuant to § 16-11-440(C)

Although Appellant established that he was immune from prosecution by a preponderance of the evidence under common law principals of self-defense, Appellant also proved he is entitled to immunity pursuant to § 16-11-440(C). This section states:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has the 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.

This portion of the Act specifically removes any common law duty to retreat so long as an individual can prove he was attacked while acting lawfully and in a place where he had a right to be. However, even under the common law of self-defense, Appellant had no duty to retreat because his encounter with the decedent occurred on Appellant's property.

The evidence established Appellant was robbed at gunpoint by the decedent minutes before the shooting. After Appellant was robbed, he drove down the street to his father's house, obtained a gun from his sister, thereby lawfully arming himself in self-defense, in the defense of others, and in the defense of his property, called 911, and returned to his property where the still armed Scott was located. When Appellant approached Scott in Appellant's yard, which he was lawfully permitted to do in order to expel a trespasser or to hold an armed robber while waiting for the police to arrive, Scott drew his gun a second time. This evidence established that Appellant was in a place where he had a right to be (his own front yard), was acting lawfully (armed in self-defense and in the defense of his property), and was threatened by an armed Scott. Accordingly, Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to § 16-11-440(C) of the Act.

Respectfully, this Court should hold the trial court abused its discretion by denying Appellant immunity from prosecution and dismiss Appellant's charge.

The trial court erred by failing to direct a verdict of acquittal for the offense of murder when the evidence presented established Appellant shot the decedent in self-defense or in the defense of habitation.

Relevant Facts

The evidence presented at trial differed from the evidence presented during the pretrial immunity hearing because Appellant did not testify at trial and the state refused to admit Appellant's recorded statement to law enforcement at the sheriff's department arguing it was "self-serving hearsay." However, the trial court admitted the statement Appellant made while in the backseat of a patrol car immediately after he was detained, which was captured by then Master Deputy Andrew Gayeskie's body camera, over the state's objection.

In this statement, which lasted roughly four minutes, Appellant said "I was scared for fricking my life and I didn't know what to do." See Defense Exhibit No. 1. He explained that the decedent robbed him at gunpoint while Appellant was sitting in his car in his driveway, that after Appellant gave the decedent two hundred dollars, the decedent walked up to another car that was in Appellant's yard. See Defense Exhibit No. 1. Appellant left and went to his father's house "up the street." He got a gun to tell the decedent to "get the hell on." Appellant repeated, "He put a gun to my head" and "I was scared." See Defense Exhibit No. 1. Appellant explained that at the time, his family was in his house. He called 911. Appellant said that when he returned to his house, the decedent was still in Appellant's yard. Appellant got out of the car and told the decedent to "stop where you are." See Defense Exhibit No. 1. However, the decedent pulled a gun again so Appellant "shot and ran." Appellant said he did not intend to shoot the decedent, but he was scared. He merely wanted to tell the decedent, "hey you need to go." After

the shooting, Appellant waited in his neighbor's yard until the police arrived and then he identified himself to the first responding officer. See Defense Exhibit No. 1. Appellant exclaimed, "I was scared for my freaking life. I didn't know what to do. My kids was here. It happened out of nowhere. I was just sitting in my car." Appellant repeatedly stated he was scared. He asked Master Deputy Gayeskie to "stay with my family. Please don't leave my family." See Defense Exhibit No. 1.

The jury also heard the recording of Appellant's call to 911 on May 20, 2020, after the decedent entered Appellant's house uninvited when Appellant was not home, but his wife and children were present, as well as Appellant's call to 911 the night of the shooting. See State's Exhibit Nos. 3-4 (911 Calls). During his call on the night of the shooting, Appellant immediately asked the dispatcher to send officers to his address. He told her, "This man just robbed me in my own yard. And I have a gun. I have a gun and he's on my property. I'm about to shoot him." See State's Exhibit No. 4 (911 Call). Appellant identified the robber as Scott and told the dispatcher that he had called the police about Scott before. Appellant said, "He pulled a gun on me. I'm about, about to shoot him. I just went up the street and got my damn gun. Or my family member's gun and I'm about to get him out my yard." See State's Exhibit No. 4 (911 Call). Appellant explained that Scott "put a gun to my face" and stole two hundred dollars from him. He told the dispatcher that Scott was still armed and repeated that he was about to shoot him. See State's Exhibit No. 4 (911 Call).

Deputy Tammy Behney confirmed that when she arrived on scene, Appellant immediately approached her, identified himself, and turned over his weapon. Behney detained Appellant and placed him in the backseat of her patrol car. She then went to assist another officer who was rendering aid to the decedent. The decedent was in the backseat of another

vehicle. While a gun was not found on the decedent's person, Behney testified that he had an empty holster. Tr. 125, l. 10 – 129, l. 14. The decedent's firearm was later located on the ground in Appellant's front yard. Tr. 224, ll. 12-17. Investigators also located two cartridge casings in the front yard that were later determined to have been fired by Appellant's gun. Tr. 210, l. 12 – 211, l. 9. An investigator testified that the decedent's firearm and the two cartridge casings were "in close proximity" to each other. Tr. 233, ll. 17-21. The decedent ultimately died from a gunshot wound to his abdomen. Tr. 287, ll. 9-11.

Shaddashia Mayo,⁷ who was dating the decedent in May 2020, testified that she received a text message from the decedent at 10:21 p.m. on the night of the shooting that stated, "I just drew down on Telvin [Appellant] he apologized." The decedent also texted her that he was sitting in Appellant's yard at the time. The last text message Mayo received from the decedent, which was at 10:29 p.m., stated, "I ain't take his money he gave me all of it but I gave it back tho." Tr. 303, l. 14 – 305, l. 24; R. * (State's Exhibit No. 65 – Text Messages).

After the state rested, Appellant moved for a directed verdict. Defense counsel argued Appellant was entitled to a directed verdict because the state did not disprove the elements of self-defense or the defense of habitation. Tr. 335, l. 25 – 336, l. 17.

The assistant solicitor argued the state presented evidence of expressed malice. She maintained Appellant told the 911 dispatcher minutes before shooting the decedent that "he is going to kill Khamori Scott." She further argued that Appellant was at fault in bringing on the difficulty because he approached the decedent with a loaded gun. She also emphasized that there was a time period between when the decedent robbed Appellant at gunpoint and when Appellant returned with a gun. Tr. 336, l. 19 – 338, l. 10.

⁷ Mayo was the only witness who testified who was not associated with law enforcement or medical personnel.

Defense counsel countered that the evidence established Appellant was protecting himself and his property. He emphasized that Appellant was legally permitted to possess a firearm on his own property and to use the firearm to protect himself and his property. Counsel also stated that Appellant did not tell the 911 dispatcher that he was going to kill the decedent. He clarified that Appellant stated he was going to shoot the decedent, which was not unlawful under the circumstances. Counsel repeated that the state did not disprove self-defense or the defense of habitation. Tr. 338, l. 12 – 339, l. 24.

The trial court denied Appellant’s motion for a directed verdict. He found there was evidence of malice based on Appellant’s statement during the 911 call that he was going to shoot the decedent. Tr. 339, l. 25 – 340, l. 10.

Standard of Review

“In criminal cases, the appellate court only reviews errors of law and is clearly bound by the trial court’s factual findings unless the findings are clearly erroneous.” State v. Dickey, 394 S.C. 491, 498–99, 716 S.E.2d 97, 100–01 (2011) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)).

Discussion

The trial court erred by failing to direct a verdict of acquittal for the offense of murder when the evidence presented established Appellant shot the decedent in self-defense or in the defense of habitation.

A. Defense of Habitation

The state did not meet its burden of disproving Appellant acted in the defense of habitation. Accordingly, Appellant was entitled to a directed verdict. “For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his

chosen means of ejection were reasonable under the circumstances.” State v. Rye, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007) (citing Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)); See State v. Bryant, 391 S.C. 225, 233, 705 S.E.2d 465, 470 (Ct. App. 2010). “Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger of sustaining serious injury or damage.” Id. “Instead, the defense of habitation provides that where one attempts to force himself into another’s dwelling, the law permits an owner to use reasonable force to expel the trespasser.” Id. Although South Carolina precedent properly recognizes that self-defense and habitation are analogous, the defenses are not identical. Id. (citing State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001)).

“When one becomes a trespasser, the law permits the owner of the home to employ such force, even to the taking of the life of the trespasser, as may be reasonably necessary to accomplish the expulsion.” Bryant, 391 S.C. at 234, 705 S.E.2d at 470 (citing State v. Sparks, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936)). “A man who attempts to force himself into another’s dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obstruction or to accomplish the expulsion. Id. (citing State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)).

In State v. Rye, our Supreme Court reversed the appellant’s murder conviction holding the trial court incorrectly instructed the jury on the defense of habitation since the instruction given erroneously implied the defense of habitation required the defendant to establish that his person or property was in some danger of injury or harm. 375 S.C. at 121, 651 S.E.2d at 322.

Rye owned a piece of property on which he stored tools and equipment he used for his business. Id. Although the property was not Rye’s primary residence, he occasionally slept in a house located on the property and visited the property at least once a day to feed several pet cats he kept there. Id. For several months, Rye experienced a continuous problem with trespassers who not only damaged the premises and stole Rye’s equipment, they also “made a sport of shooting (and killing) [his] pet cats.” Id.

On the day of the shooting, Rye went onto his property, saw a dead cat by the front steps of his house, and observed footprints around the house. Id. at 122, 651 S.E.2d at 322. Rye called the police, reported the trespassing, and went back to his driveway to await the police’s arrival. Id. While waiting, Rye said he heard a gunshot on his property, grabbed his rifle, and ran toward his house. Id. As Rye approached the house, he heard additional gunshots, and then saw the decedent “charging at him in a slouching position with his rifle.” Id. The men immediately exchanged gunfire and Rye shot and killed the trespasser. Id. Rye’s neighbor, on the other hand, who was with the decedent that day, claimed that upon being confronted by Rye, the decedent held his gun by the handle and, as he knelt to put the gun down, Rye shot him multiple times. Id.

Rye argued on appeal that the trial court erred by incorrectly instructing the jury on the defense of habitation. Id. at 123, 651 S.E.2d at 323. Our Supreme Court agreed. The Court noted, “While charging the jury on the law of habitation, the trial court properly stated that the law recognizes the right of every person to defend his or her premises, but differentiated habitation from self-defense with the sole caveat that a ‘person defending his or her home or premises . . . has no duty to retreat.’” Id. The Court emphasized that the trial court failed to instruct the jury on exactly what “defending one’s home or premises meant.” Id. Defending

one's home or premises "means ending an unwarranted intrusion through the use of reasonably necessary means of ejection." Id. The Supreme Court also held that by instructing the jury that the same elements required by law to establish self-defense apply to the defense of habitation, with the exception of the duty to retreat, the charge "incorrectly implied that habitation requires a defendant to establish that his person or property was in some danger of injury or harm." Id. at 123-24, 651 S.E.2d at 323. Consequently, the Court reversed Rye's conviction. Id. at 125, 651 S.E.2d at 324.

In State v. Bryant, this Court held Bryant was entitled to a defense of habitation charge in addition to a self-defense charge where the evidence showed Bryant was confined to a wheelchair, he argued with and was assaulted by the decedent before entering his (Bryant's) hotel room, that he tried to prevent the decedent from entering his room, that the decedent managed to enter his room after Bryant entered but before Bryant was able to close the door, and that Bryant shot the decedent in the hotel room as the decedent advanced toward him. 391 S.C. at 234-235, 705 S.E.2d at 470. This Court concluded the trial court's instruction on self-defense "was clearly insufficient to cover the law on the defense of habitation." Id. at 236, 705 S.E.2d at 471. The Court further determined the error in failing to charge defense of habitation could not be harmless as the trial court "effectively deprived Bryant of an entire defense." Id. at 237, 705 S.E.2d at 471-72.

While Rye and Bryant concerned the failure to correctly instruct the jury on the defense of habitation, both are helpful in showing the trial court erred by denying Appellant's motion for a directed verdict since the state failed to carry its burden of disproving Appellant acted in the defense of habitation. The evidence presented established that the decedent robbed Appellant at gunpoint in Appellant's front yard. Appellant, who was scared, then drove "up the street" to his

father's house and got a gun. Appellant called 911, reported the robbery, and requested the police come to his house. Appellant then returned to his property where he found the decedent standing in his front yard. Appellant approached the decedent with a gun in his hand. However, before Appellant could order the decedent to leave his property, the decedent drew a gun. Appellant shot the decedent and ran.

The evidence established that Appellant's means of ejection were reasonable. Appellant knew the decedent was armed. The decedent was clearly a trespasser. While the decedent may have been welcomed at Appellant's house in the past, he was not welcomed that night based on the prior difficulties between Appellant and the decedent, particularly the event that occurred on May 20, 2020, when the decedent entered Appellant's home uninvited when Appellant was not home, but his wife and children were. The decedent was also clearly a trespasser after he robbed Appellant at gunpoint in Appellant's front yard. Again, Appellant, *with the knowledge that the decedent was armed*, retrieved a gun from his father's house "up the street" and returned to eject the decedent from his property. Appellant had a right to defend his property with deadly force and his use of force was reasonable under the circumstances. See Bryant, 391 S.C. at 234, 705 S.E.2d at 470 ("When one becomes a trespasser, the law permits the owner of the home to employ such force, even to the taking of the life of the trespasser, as may be reasonably necessary to accomplish the expulsion.").

Respectfully, because the state failed to disprove Appellant acted in defense of habitation when he shot the decedent, this Court should hold the trial court erred and direct a verdict.

B. Self-Defense

The state also did not carry its burden of disproving the elements of self-defense. Accordingly, the trial court erred by denying Appellant's motion for a directed verdict. "A

person is justified in using deadly force in self-defense when: (1) The defendant was without fault in bringing on the difficulty; (2) The defendant . . . actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief . . . ; 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 this particular instance.” State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (citing State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998); See State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

As the state recognized at trial, Appellant had no duty to retreat because his encounter with the decedent occurred on Appellant's property. See Tr. 347, ll. 7-21; See State v. Rye, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007) (a person defending his or her home or premises has no duty to retreat).

As to the first element, Appellant was not at fault in bringing on the difficulty. The state argued Appellant was at fault because he went to his father's house, got a gun, and returned to his property. However, Appellant was entitled to arm himself in self-defense, in the defense of others, and in the defense of habitation. Appellant with the knowledge that an armed and dangerous trespasser was on his property while his wife and young children were in his home was lawfully permitted to retrieve a gun from his father's house and return to protect his property and his family and expel the unwanted trespasser. The state's argument that Appellant was at fault in bringing on the difficulty, while creative, is absurd.

As to the second element, the evidence established that not only did Appellant actually believe he was in imminent danger of losing his life or sustaining serious bodily injury, but also that Appellant actually was in such danger. When Appellant approached the decedent after returning to his property (which again he was lawfully permitted to do), the decedent drew a gun. At that moment, Appellant actually was in imminent danger of losing his life or sustaining serious bodily injury. Moreover, as seen in the footage from Master Deputy Gayeskie's body camera, Appellant repeatedly stated he was scared during the encounter with the decedent. Appellant appeared traumatized in the footage.

As to the third element, it is clear a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. A reasonable person, who had just been robbed at gunpoint by the decedent, would have likewise believed that he was in imminent danger when the decedent drew his firearm a second time.

Finally, while Appellant had no duty to retreat because the encounter occurred on Appellant's property, once the decedent drew a gun, Appellant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to shoot and run as he did.

Respectfully, because the state failed to disprove Appellant acted in self-defense when he shot the decedent, this Court should hold the trial court erred and direct a verdict of acquittal.

The trial court erred by charging the jury on the lesser included offense of voluntary manslaughter when there was no evidence Appellant shot the decedent in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense, and where Appellant was prejudiced because the jury compromised and found him guilty of voluntary manslaughter.

Relevant Facts

During the charge conference, the state requested the trial judge instruct the jury on the lesser included offense of voluntary manslaughter. Appellant objected to the charge. The trial judge took the matter under advisement. Tr. 353, l. 22 – 355, l. 17. The following morning, the judge ruled that he would instruct the jury on voluntary manslaughter. Appellant again objected. Tr. 359, ll. 11-14.

In his motion for a new trial, Appellant argued the judge erred by instructing the jury on voluntary manslaughter because there was no evidence to support the charge. R. * (Motion for New Trial).

Standard of Review

“In criminal cases, the appellate court sits to review errors of law only.” State v. Niles, 412 S.C. 515, 521, 772 S.E.2d 877, 880 (2015) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). “Thus, this Court is bound by the trial court’s factual findings unless the appellant can demonstrate that the trial court’s conclusions either lack evidentiary support or are controlled by an error of law.” Id. (citing State v. Laney, 367 S.C. 639, 644, 627 S.E.2d 726, 729 (2006)).

“The trial court must determine the law to be charged based on the evidence at trial.” State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005) (citing State v. Crosby, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003)). “When the record contains no evidence to support it, a voluntary manslaughter jury charge should not be given.” Id. (citing State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-669 (2000)).

“In determining whether the evidence requires a charge on a lesser-included offense, we view the facts in the light most favorable to the defendant.” State v. Payne, 434 S.C. 121, 135, 862 S.E.2d 81, 88 (Ct. App. 2021) (quoting State v. Williams, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019)) (internal quotation marks omitted).

Discussion

The trial judge erred by charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence Appellant shot the decedent in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense. Appellant was prejudiced because the jury ultimately compromised and found him guilty of this lesser included offense.

“Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.” State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) (citing State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d. 786, 788 (2009)). “Both heat of passion and sufficient legal provocation must be present at the time of the killing.” State v. Sims, 426 S.C. 115, 131, 825 S.E.2d 731, 739 (Ct. App. 2019) (quoting State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014)). “A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion.” Starnes, 388 S.C. at 596-597,

698 S.E.2d at 608. “Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked.” Id.

In Starnes, our Supreme Court clarified the law regarding how a defendant’s fear following an attack or threatening act relates to voluntary manslaughter. 388 S.C. at 597-99, 698 S.E.2d at 608-09; See Sims, 426 S.C. at 132, 825 S.E.2d at 740. The Court stated:

We also have held that fear resulting from an attack can constitute a basis for voluntary manslaughter. See State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (“Fear can constitute a basis for voluntary manslaughter.”). Yet the presence of fear does not end the inquiry regarding the propriety of a voluntary manslaughter instruction. We have consistently held that **sudden heat of passion upon sufficient legal provocation is defined as an act or event that “must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.”** Pittman, 373 S.C. at 572, 647 S.E.2d at 167.⁸ While the act or event “need not dethrone the reason entirely, or shut out knowledge and volition,” **it must cause a person to lose control.** Id.

We reaffirm the principle that a person’s fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. However, **the mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. Consistent with our law on voluntary manslaughter, in order to constitute “sudden heat of passion upon sufficient legal provocation,” the fear must be the result of sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence.** Succinctly stated, to warrant a voluntary manslaughter charge, the defendant’s fear must manifest itself in an uncontrollable impulse to do violence.

A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear. Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not. Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter—it will not justify it. This is the distinction between voluntary manslaughter and self-defense.

Id. (emphasis added).

⁸ State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

“In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing.” State v. Smith, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011) (citing State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969)).

In Cook v. State, 415 S.C. 551, 555, 784 S.E.2d 665, 667 (2015), Cook objected to the state’s request for a voluntary manslaughter instruction. The trial judge relied on the following facts in determining that a charge on voluntary manslaughter was supported by the evidence: (1) the defendant was in fear, (2) he shot the decedent twice, and (3) he stated “before I knew it, I fired a shot.” Id. at 557, 784 S.E.2d at 668. However, our Supreme Court held Cook’s actions did not suggest he was acting in the sudden heat of passion. Id. at 559, 784 S.E.2d at 669. The Court explained, “We do not believe the fact that Cook shot Victim twice or his statement ‘before I knew it, I fired a shot’ is evidence that Cook’s fear manifested in an uncontrollable impulse to do violence.” Id. at 558, 784 S.E.2d at 668. The Court further stated:

Here, Cook stated he tried to walk away from Victim, but Victim kept cutting him off. The fact that Cook was trying to walk away from the conflict does not suggest Cook was incapable of cooling off. In addition, Bridges testified that Cook and Victim were talking softly and that he could hardly tell they were arguing. This too does not suggest that Cook was acting under an uncontrollable impulse to do violence as surely if one was so enraged to kill, one would not be talking softly with the victim right before the act. Further, at no point during Cook’s statement does he indicate he lacked control over his actions. Accordingly, we believe the facts of this case suggest Cook shot Victim either with malice or in self-defense.

Id. at 557, 784 S.E.2d at 668.

Likewise, the Supreme Court concluded there was no evidence of sudden heat of passion in Starnes and upheld the trial court’s refusal to charge the jury on voluntary manslaughter. Starnes, 388 S.C. at 599-600, 698 S.E.2d at 609. Starnes and the two decedents, Bill and Jared,

were engaged in a drug purchase with a fourth individual, Jody, at Starnes' home when Jared "pulled a gun on" Jody. Id. at 595, 698 S.E.2d at 607. Starnes testified Jared's action "scared" him, and he went into his bedroom to retrieve his gun. Id. at 595, 698 S.E.2d at 607. As Starnes exited his bedroom, "Bill said 'whoa' and was pointing a gun at him." Id. at 595, 698 S.E.2d at 607. Starnes then shot Bill and Jared. Id. On appeal, the Court acknowledged the evidence of Starnes' fear, but concluded there was no evidence Starnes was "out of control as a result of his fear or was acting under an uncontrollable impulse to do violence." Id. at 599, 698 S.E.2d at 609. The Court also held the evidence showed Starnes "deliberately and intentionally shot Jared and Bill and that he either shot the men with malice aforethought or in self-defense." Id.

Similarly, in State v. Sims, this Court held there was no evidence Sims shot her husband, David, in the sudden heat of passion, and, therefore, agreed with Sims that the trial court erred by charging the jury on voluntary manslaughter. 426 S.C. at 137, 825 S.E.2d at 742. Sims testified that "she was in the bathroom alone when David entered with pliers and a knife and began calling her a liar." Id. Sims said David then "got physical with her over control of her phone." Id. David then began threatening her and taunting her with the knife. Out of fear, Sims grabbed a gun she had placed in the bathroom vanity. Id. "Even though she was afraid, Sims said she held the gun by her side and asked David to stop what he was doing, indicating she did not want to use the gun." Id. "Sims also told police she grabbed the gun hoping to 'scare' David so he would stop his threatening behavior, adding that she had never meant to shoot him." Id. at 138, 825 S.E.2d at 743. "According to Sims, David became even angrier, continuing to threaten her as she tried to back out of the bathroom." Id. "As she tried to back out, Sims testified that David lunged at her and 'my hand went up and I shot, and I shot out of reaction. I didn't think, nor did I

ever want to do that, but it was a reaction because I was scared.” Id. “After shooting David, Sims immediately began administering CPR and called 911.” Id.

Like the defendants in Starnes and Cook, this Court held “the only evidence in the record [was] that Sims deliberately and intentionally shot David and that she either shot him with malice aforethought or in self-defense.” Id. Accordingly, the Court held the trial court erred by charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence to support the charge.

Likewise, there was no evidence in this case that Appellant killed the decedent in the sudden heat of passion. While acknowledging that he shot the decedent out of fear, Appellant never indicated that he lost control or was overcome with an uncontrollable impulse to do violence. See Starnes, 388 S.C. at 599, 698 S.E.2d at 609 (“A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear.”); Id. at 598, 698 S.E.2d at 609 (“The fear must . . . cause the defendant to lose control and create an uncontrollable impulse to do violence.”); Cook, 415 S.C. at 557, 784 S.E.2d at 668 (“At no point during Cook’s statement does he indicate he lacked control over his actions. Accordingly, we believe the facts of this case suggest Cook shot Victim either with malice or in self-defense.”).

After shooting the decedent, Appellant ran and hid in his neighbor’s yard while he waited for law enforcement to arrive. As soon as the first officer arrived, Appellant immediately approached the officer, identified himself as the shooter, and handed over his firearm. Appellant then gave a statement while in the backseat of a patrol car where he explained that he was scared for his life after the decedent robbed him at gunpoint in his driveway, that his family was inside his house, that he drove to his father’s house, got a gun, and returned to protect his family and property, and only fired after the decedent drew his gun again. See State v. Oates, 421 S.C. 1,


28, 803 S.E.2d 911, 926 (Ct. App. 2017) (finding “Appellant’s behavior and words immediately after the shooting were relevant to his state of mind immediately before and during the shooting”). Accordingly, the only evidence in the record is that Appellant deliberately and intentionally shot the decedent and that he either shot him with malice or in self-defense. Charging voluntary manslaughter was error as there was no evidence Appellant was overcome with an uncontrollable impulse to do violence.

Respectfully, because there was no evidence Appellant shot the decedent in the sudden heat of passion, this Court should hold the trial court erred by charging the jury on voluntary manslaughter, reverse Appellant’s conviction, and remand for a new trial.

CONCLUSION

Appellant respectfully requests this Court grant him immunity from prosecution pursuant to the Protection of Persons and Property Act. In the alternative, Appellant respectfully requests this Court direct a verdict of acquittal. In the second alternative, Appellant respectfully requests this Court reverse his conviction and remand for a new trial.

Respectfully submitted,



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Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of February, 2026.