STATE OF SOUTH CAROLINA **SENTENCE ORDER** **IN THE COURT OF GENERAL SESSIONS**

COUNTY OF GREENWOOD) INDICTMENT/CASE#: **2025GS24-0581**

) AW#: **2022A2420101699**

STATE vs.) Date of Offense: **12/22/2022**

Wilson Justice Xavier Smith) S.C Code§: **16-03-0010**

AKA: SSN:) CDR Code #: **0116**

RACE: **B** SEX: **M** DOB: **/1998**) Range of Offense: **Murder (Death, Life, or NLT 30 years to Life)**

In disposition of the above indictment comes now the Defendant who was CONVICTED OF ☒ or ☐ PLEADS

TO: **Murder** Range of Offense Pled: **(Death, Life, or NLT 30 years to Life)**

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ MANDATORY GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ § 17-25-45

The charge is: ☒ As indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury

The plea is: ☐ w/o Rec/Negotiations ☐ Negotiated _____ ☐ Recommendation _____

/s C. Yates Brown, Jr. **78607** **/s Elizabeth M. Thomas** **104910**

Solicitor SC Bar # Attorney for Defendant SC Bar #

The Defendant is committed to the ☒ **SCDC** ☐ **County Detention Center** ☐ **Home Incarceration Program**

for a determinate term of 40 X X X 0 X days/months/years/Time Served ☐ YOA NTE _____ years and/or shall pay a fine

of $ _____; provided that upon the service of _____ days/months/years/Time Served and or payment

of $ _____ plus costs and assessments as applicable* ; balance is suspended with **probation** for _____months/years

and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.

The sentence shall run ☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

X ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDC

1,127 days/months ☐ To include time spent on monitored house arrest prior to trial and sentencing

SPECIAL CONDITIONS:

☐ **PTUP** _____

☐ No Contact with Victim ☐ Domestic Violence Intervention Program ☐ Hold for Inpatient Treatment

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ SAC/MHC if necessary

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

☐ Other: _____

_____

		Restitution	$
☐ **RESTITUTION See Separate Order (20% per S.C. Code §24-21-490(B))**		FINE:	$
§14-1-206 (Assessments 107.5%)			$
§14-1-211 (A)(1) Conv. Surcharge)	Fine/Costs and Assessments are to be paid to the Clerk	$100	$
§14-1-211 (A)(2)(DUI Surcharge)	of Court within _____ days/months	$100	$
§56-5-1995 (DUI Assessment)		$12	$
§56-1-286 (DUI Breath Test)		$25	$
§14-1-212 (Law Enforcement Funding)		$25	$
§14-1-213 (Drug Court Surcharge)		$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		$41	$
§50-21-114 (BUI Breath Test Fee)		$50	$
§56-5-2942(J) (Vehicle Assessment)		$40/ea	$
3% to County (if paid in installments)		TBD	$
☐ Appointed PD or appointed other counsel. Provisio requires $500 to be paid to Clerk during probation and shall be collected before any other fees		$500	$
☐ §17-3-45(B) Unpaid Application Fee to be paid to the Public Defender Fund		$40	$
		TOTAL	$

RECEIVED
MAR 31 2026
SC Court of Appeals

/s Chastity Copeland
Clerk of Court/Deputy Clerk

Sharon Hardoon
Court Reporter

2167
Judge Code

January 22, 2026
Sentence Date

Presiding Judge

SCCA217B
01/27/2025

STATE OF SOUTH CAROLINA | SENTENCE ORDER | IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD) INDICTMENT/CASE#: 2025GS24-0582

) AW#: 2022A2420101700

STATE vs.) Date of Offense: 12/22/2022

Wilson Justice Xavier Smith) S.C Code§: 16-23-0490

AKA: SSN:) CDR Code #: 0549

RACE: B SEX: M DOB:) Range of Offense: Possession Of A Weapon During The Commission Of A Violent Crime ()

In disposition of the above indictment comes now the Defendant who was CONVICTED OF ☒ or ☐ PLEADS TO: Possession Of A Weapon During The Commission Of A Violent Crime Range of Offense Pled: ()

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ § 17-25-45

The charge is: ☒ As indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury

The plea is: ☐ w/o Rec/Negotiations ☐ Negotiated _____ ☐ Recommendation _____

/s C. Yates Brown, Jr.	78607	/s Elizabeth M. Thomas	104910
Solicitor	SC Bar #	Attorney for Defendant	SC Bar #

The Defendant is committed to the ☒ SCDC ☐ County Detention Center ☐ Home Incarceration Program for a determinate term of 5 (1 X 5 X) days/months/years/Time Served ☐ YOA NTE _____ years and/or shall pay a fine of $ _____; provided that upon the service of _____ days/months/years/Time Served and or payment of $ _____ plus costs and assessments as applicable* ; balance is suspended with **probation** for _____months/years and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.

The sentence shall run ☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 25-GS-24-0581

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDC 1,127 (1 X 1,127 X) days/months ☐ To include time spent on monitored house arrest prior to trial and sentencing

SPECIAL CONDITIONS:

☐ PTUP _____

☐ No Contact with Victim ☐ Domestic Violence Intervention Program ☐ Hold for Inpatient Treatment

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ SAC/MHC if necessary

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

☐ Other: _____

		Restitution	$
☐ **RESTITUTION See Separate Order (20% per S.C. Code §24-21-490(B))**		FINE:	$
§14-1-206 (Assessments 107.5%)			$
§14-1-211 (A)(1) Conv. Surcharge)	Fine/Costs and Assessments are to be paid to the Clerk	$100	$
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		TOTAL	$

RECEIVED MAR 31 2026 SC Court of Appeals

/s Chastity Copeland
Clerk of Court/Deputy Clerk

Sharon Hardman — Court Reporter

2167 — Judge Code

January 22, 2026 — Sentence Date

Presiding Judge

SCCA217B 01/27/2025

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

The State

v.

Wilson Justice Xavier Smith,
DEFENDANT.

ORDER DENYING IMMUNITY

Indictment Numbers
2025GS24-0581, 2025GS24-0582

This matter came before the Court during a hearing on July 9, 2025 in Greenwood County regarding Defendant Wilson Justice Xavier Smith's Motion seeking immunity from prosecution for Murder and Accessory After the Fact to Murder based on the provisions of the Protection of Persons and Property Act ("the Act"), S.C. Code Ann. § 16-11-410, *et. seq.* and based on the common law principles of self-defense.

This Court heard opening statements, testimony from witnesses, and memoranda from counsel for both parties. The Defendant was present at the hearing and represented by Elizabeth Thomas, Esquire of the Eighth Circuit Public Defender's Office. Deputy Solicitor Yates Brown and Assistant Solicitor Madison Hoffman, of the Eighth Circuit Solicitor's Office, appeared on behalf of the State.

After careful consideration of the arguments and exhibits presented by counsel, as well as a review of the documents submitted by counsel, the Court hereby DENIES Defendant's motion for immunity.

STANDARD OF REVIEW

In a bench trial, the trial judge acts as the finder of fact. *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731 (Ct. App. 2017). "[T]he judge, as the finder of fact, may believe all, some, or none of the testimony, even when [the testimony] is not contradicted." *Id.* at 483, 807

S.E.2d at 731 (internal citation omitted). A trial judge will be accorded great deference where matters of credibility are involved. *Id.* (internal citations omitted).

A defendant is entitled to immunity from prosecution under the Protection of Persons and Property Act. *State v. Scott*, 424 S.C. 467, 468, 819 S.E.2d 116, 118 (2018) (*citing State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013)). According to the Supreme Court, "a trial court should first consider whether the defendant has proven 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).

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).

In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force. S.C. Code Ann. § 16-11-450 (2015). Our Supreme Court has made clear that immunity under the Act "is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by

the preponderance of the evidence. " *Curry*, 406 S.C. 364, 372, 752 S.E.2d 263. However, the final element, the duty to retreat, need not be shown when a Defendant seeks immunity under the Act. *State v. Douglas*, 411 S.C. 307, 318, 768 S.E.2d 232, 239 (Ct. App. 2014) (*citing Curry*, at 371, 752 S.E.2d at 266). Further, S.C. Code § 16–11–440 sets forth the circumstances under which the Act allows deadly force.

S.C. Code § 16-11-440(A) provides a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury when using deadly force against someone unlawfully and forcibly entering a dwelling, residence, or occupied vehicle, provided certain conditions are met. S.C. Code § 16-11-440(C) provides in pertinent part:

> 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.

Pursuant to *Glenn*, the Court must first address Defendant's self-defense claim.

CREDIBILITY

According to the S.C. Supreme Court, in pre-trial ruling regarding immunity, "the circuit court must weigh the evidence and make its own credibility and factual findings before reaching a decision as to immunity. *State v. McCarty*, 437 S.C. 355, 372, 878 S.E.2d 902, 911 (S.C. App 2022). *See e.g., State v. Andrews*, 427 SC. 178, 181, 830 S.E.2d 12, 13 (2019). Further the S.C. Court of Appeals has reasoned that, "[t]he trial court is in a superior position to determine and evaluate a witness' demeanor; we were not there and may not second guess the court's reasons for that determination now." *Sheek v. Crimestoppers Alarm Sys., Div. of Glen Curt Consultants*, 297 S.C. 375, 377-78, 377 S.E.2d 132, 133 (Ct. App. 1989) (stating those determinations "*must* be left

to the trial judge who saw and heard the witnesses and is therefore in a better position to evaluate their veracity." (emphasis added)).

ANALYSIS

In making this determination regarding immunity, this court has reviewed all relevant case law, all testimony, and all exhibits submitted into evidence for purposes of this hearing.

Element 1: the defendant must be without fault in bringing on the difficulty

I find that the Defendant is not without fault in bringing on the difficulty as the Defendant escalated the initial verbal dispute into a physical altercation when requesting that Raysor leave the premises. This Court heard testimony from another social guest in the home, Iyona Calhoun, who described the victim "running up" on the Defendant at which time the defendant pushed Raysor back. Calhoun testified that she disagreed with the physical contact by the Defendant and told him, "[d]on't put your hands on her. She's a woman." (See Immunity Hearing Transcript 48:12-18). Acknowledging that Raysor was continuing the verbal disagreement, the Defendant escalated the conflict physically. Our state Supreme Court has held, "[o]ne who provokes or initiates an assault cannot escape criminal liability by invoking self-defense..." *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (*quoting* Ferdinand S. Tinio, Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right Of Self–Defense, 55 A.L.R.3d 1000, 1003 (1974)).

After the Defendant put his hands on Raysor, the altercation ended when Raysor removed herself from the Defendant's bedroom. She then went into the hallway to make a phone call that appeared to be advising someone on the line that she was leaving and asking them for a ride. (*See* Immunity Hearing Transcript 45:20-25). She also asked Makalah Wallace about leaving. *Id.*

Our state Supreme Court has considered circumstances in which the victim may have some degree of "fault" in the altercation. In *State v. Williams*, the Court recognized in their analysis that "[t]he question, however, is not who else might have been at fault but whether Williams [the Defendant] was *without* fault. In answering that question, it does not matter who else was at fault." 427 S.C. 246, 250, 830 S.E.2d 904, 906 (2019). Here, Raysor completely removed herself from the situation by staying in Turner's bedroom, away from the Defendant, while waiting for her ride so she could leave. The Defendant asserts that because he made repeated requests for the victim to leave that made the victim a trespasser and she was no longer an invited social guest. While the Defendant may have made these requests, not only was the victim waiting for transportation to leave, the Defendant ultimately invited her back into his room with everyone else. Additionally, "[b]efore an act may cause forfeiture of the fundamental right of self-defense, it must be willingly and knowingly calculated to lead to conflict." *Douglas*, at 307, 768 S.E.2d at 232 (*citing State v. Jackson*, 94 Ariz. 117, 382 P.2d 229, 232 (1963)); *Jackson*, 382 P.2d at 232. Although the Defendant's initial verbal request for her to leave may have been proper, the increase in volatility of the situation based on physical aggression from the Defendant establishes Defendant's fault in bringing on the difficulty.

Secondly, I find that the Defendant instigated conflict when he encouraged Raysor to pick up the shotgun. In the Defendant's initial interview with Detective Haralson, he reported that he encouraged the victim to pick up the shotgun before ultimately using his own handgun to shoot Raysor in the head. Based on testimony from Calhoun and Turner, Raysor exited Turner's bedroom and joined the group in the Defendant's bedroom. Raysor and the Defendant once again argued while in his bedroom. His own statements highlight that he was provoking her into picking up the shotgun that was nearby.

> " .... Hey, listen, we lose a draw. If you kill me, you, you grab that gun, you shoot me. I'm not afraid to die. This is something I've looked at a million times. I'm not afraid to die. So, oh, yeah... I think me saying it pushed her to a point, and I'm not afraid to die, but she, I feel like it pushed her to a point and she just wanted to push me to the point. I don't know."

Defendant's Transcript 11: 9-16.

Our State Supreme Court has recognized that "[w]hether this was language that might reasonably have been expected to bring on the difficulty is a question for the jury and Defendant did not establish self-defense as a matter of law." *State v. Strickland*, 389 S.C. 210, 697 S.E.2d 681 (App. 2010). (*See also State v. Ferguson*, 91 S.C. 235, 242–43, 74 S.E. 502, 505 (1912)). From the Defendant's recollection of this subsequent interaction with Raysor in his bedroom, I find this testimony is clear evidence that his provocation contributed to the difficulty. Therefore, I find the Defendant is at fault in bringing on the difficulty.

Element 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

The Defendant argues that his representations to Detective Haralson regarding fear for his life support that he was in actual imminent fear of losing his life and since Raysor was holding a shotgun he was in actual imminent danger of losing his life. The State asserts that while these statements may have been made, they do not support a belief when measured against the standard of a reasonable, prudent person and viewing the totality of the circumstances.

a. *Actual Danger*

The Defendant alleges he was in actual danger because the victim had been aggressive towards him, she was holding his shotgun, and fired a round while the Defendant was in the room. The State asserts that while the Defendant claimed he feared imminent harm, the credibility of that

belief is undermined by the lack of threatening gestures from Raysor while in possession of the shotgun and the provocation by the Defendant for her to hold his gun. It is also important to note that while other individuals (none of which the Defendant identifies as being in the room when the incident occurs) in the residence stated that Raysor had just recently fired a different firearm in a different bedroom, at no time does the Defendant relay this information to law enforcement as a reason for his fear or him being in actual danger. The Defendant states to Detective Haralson that he is unaware of any other shots being fired in the apartment that night (Defendant Transcript 53:24 -54:25). Therefore, this Court finds the Defendant was not in actual danger.

b. Reasonable Belief

In *State v. Douglas*, the S.C. Court of Appeals held that "the standard for evaluating whether an accused had a reasonable belief that deadly force was necessary to prevent great bodily harm to himself is objective, rather than subjective." 411 S.C. at 320 n.7, 768 S.E.2d at 239 n.7. A reasonable person would not have engaged in behavior exercised by this Defendant such as suggesting an unarmed party take control of a weapon, but even by doing so – the action was then anticipated. Defendant was preparing for Raysor to become in control of a firearm by in his own words, "pushing her to a point." (*See State v. Grantham*, 224 S.C. 41, 43–44, 77 S.E.2d 291, 292 (1953)("The doctrine is for defensive, and not offensive, purposes." (*citing* 40 C.J.S., Homicide, § 130, Subsec. c., pp. 1015–1016)). Here, the Defendant created an offensive position for himself – not defensive and exceeded what was reasonable under the circumstances.

Additionally, while the Defendant relies on conflicting witness testimony to establish his belief of imminent danger, such disputes are inherently factual and must be resolved by the jury. The discrepancies between witnesses' accounts (specifically Calhoun and Turner) and

the Defendant's version of events raise factual questions, particularly regarding the perceived threat to a third party, and should be evaluated by a trial jury.

Therefore, Defendant was not in actual, nor did he reasonably believe that he was in imminent danger of serious bodily harm or death and the second element of self-defense is not met.

Element 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

Even if Defendant was in actual or had a reasonable belief of serious bodily injury or death, Defendant must prove that his actions were such that a reasonable person would have entertained that belief and used such deadly force. The Defendant asserts that the actions he took that day were reasonable and if he had not taken those actions that day he would have been killed by Raysor. The State argues that shooting Raysor after he continuously escalated the situation is not reasonable. This Court agrees.

The Defendant used physical force against Raysor and, commanded her to grab the shotgun in his bedroom because in his own words "I'm not afraid to die." (*See* Defendant's Transcript 11:11.) By the Defendant's own admission, Raysor had not yet "grabbed" the shotgun when he began pushing her to take possession of this weapon. (*See* Defendant's Transcript 11:9). No reasonable person that feared serious bodily harm or loss of life would repeatedly increase the volatility of a situation and offer the person they are "in fear of" a deadly weapon. Therefore, the third element of self-defense fails.

Element 4: Compliance with Statutory Immunity under the Protection of Persons and Property Act, S.C. Code Ann § 16-11-440(A)

Even if the first three elements of self-defense were met, an analysis under § 16-11-440(A) and § 16-11-440(C) is appropriate. As stated previously, the duty to retreat, need not be shown when a Defendant seeks immunity under the Act. *Douglas*, at 318, 768 S.E.2d at 239 (*citing Curry*. at 371, 752 S.E.2d at 266). Instead, the court will substitute the analysis of the fourth element of self-defense for the relevant section of § 16-11-440, which in this case, is subsection (A) and (C).

I. Defendant Cannot Satisfy the Requirements for the Common Law Defense of Habitation or Defense of Others

Defendant has alternatively claimed that his actions were justified under the common law defense of habitation, defense of others or Section 16-11-440(A). These defenses require evidence of an unlawful intrusion into a dwelling, or an objectively reasonable fear that an intruder was attempting to commit a violent felony. The statute does provide that an individual is presumed to be in reasonable fear for their life when someone attempts to forcibly enter a dwelling. S.C. Code §16-11-440(A). Subsection (A), provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle. However, the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence. S.C. Code § 16–11–440(B). It is well established in the record that Raysor was a social guest at the Defendant's apartment, as such I find the Defendant cannot satisfy the requirements for subsection (A).

A. Defendant Is Not Entitled to Immunity Under the Common Law Defense of Habitation as Raysor was Always a Social Guest, Never A Trespasser.

While the Defendant argues that Raysor was a trespasser, this Court disagrees. The record from the immunity hearing established that Vashon Turner and the Defendant were roommates living at the Burfield apartment and that Raysor was a shared social guest in town for the funeral of a mutual friend. The Defendant and Calhoun both indicated that Raysor was being instructed to leave the apartment prior to the shooting. However, the other roommate Turner never joined in this request. South Carolina law recognizes that when two or more people share lawful possession of a residence, such as roommates or co-tenants, their possessory interests are equal. (*See State v. Gordon*, 128 S.C. 422, 122 S.E. 501, 502 (1924) ("Where a house, premises, or place of business is jointly occupied, used, and possessed by two persons, as by partners, joint tenants, or tenants in common, each joint occupant, being equally entitled to possession....")). While the owner of a home has the right to expel a trespasser, even with lethal force, under the facts of this case this law does not apply. (*See State v. Bryant*, 391 S.C. 225, 234, 705 S.E.2d 465, 470 (Ct. App. 2010)("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. (citing *State v. Sparks*, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936))).

Turner testified that he had been close friends with Raysor for years, knew she was coming into town for the McCaslin funeral, and would be temporarily staying at the apartment he shared with the Defendant. This is further corroborated in Defendant's audio interview with Detective Haralson. The night of the shooting, despite Raysor's conflict with the Defendant, Turner never asked her to leave the apartment or joined in the Defendant's requests for her to be expelled from the residence. (*See Dorn v. Beasley*, 27 S.C. Eq. 408, 427 (S.C. App. Eq. 1854)("Tenants in common are always subject to the chance of unpleasant companionship")). This is further exemplified by Raysor's action when removing herself from the initial argument with

the Defendant, she relocated herself to Turner's bedroom. This is no evidence that Turner ever asked her to leave his room or the apartment in general, thus his equal possessory rights allowed Raysor to remain in the apartment and negating Defendant's right to eject her and ability to use deadly force to do so. I find Raysor was a social guest and had a right to be in the apartment. Therefore the Defendant fails under subsection (A).

II. Defendant Is Not Entitled to Immunity Under S.C. Code Ann. § 16-11-440(C) and 16- 11-450

Since the Defendant fails under subsection (A) he is therefore defaulted into subsection (C), which deals with the use of force by one who is attacked in another place where they have a right to be. The presumption of subsection (A) does not apply, "if the victim has an equal right to be in the dwelling or residence." *State v. Jones*, 416 S.C. at 292, 786 S.E.2d at 137 (citing *Curry*, 406 S.C. at 370, 752 S.E.2d at 266). As stated previously, the duty to retreat, need not be shown when a Defendant seeks immunity under the Act. *Douglas*, at 318, 768 S.E.2d at 239 (*citing Curry*. at 371, 752 S.E.2d at 266). The S.C. Supreme Court has held that "analyzing a defendant's "right to be" in a place where he is attacked under § 16-11-440(C) without considering proximate cause or a causal connection to the incident leaves an innocent person's ability to seek the Act's protection up to happenstance, which we also do not believe was the intent of the Legislature. *Id.* at 119–20, 838 S.E.2d at 497. By its plain language, this subsection requires four elements. First, a person must not be engaged in unlawful activity. Second, the person must be attacked. Third, he must be in a place he has a right to be. Fourth, and finally, he must reasonably believe deadly force is necessary to prevent the commission of a violent crime. There is no substantial dispute as to the third element. It is well established that the Defendant was living at the Burfield apartment, as confirmed by his roommate Vashon Turner. As to the fourth element, the Defendant tells law

enforcement that he genuinely believed that shooting Raysor was his only means to prevent being seriously injured or killed, the reasonable nature of such belief is still to be evaluated, along with the other two elements of the subsection which involve disputed questions of fact and law. [T]he burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide [or crime]. *Id.* at 121, 838 S.E.2d at 498.

A. The Defendant was engaged in unlawful activity

Defendant argues that the phrase "not engaged in an unlawful activity" in subsection (C) should be interpreted to mean he merely must not be violating any statutory law. In interpreting this subsection, the intent of the General Assembly must be considered. Traditionally, a person was entitled to use deadly force in self-defense only in situations where he was without fault in bringing on the difficulty. *State v. Bryant*, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999). When an individual establishes that he reasonably believes he is in imminent peril, the only significant difference between subsection (C) and common law self-defense is the elimination of the requirement that he has no other probable means of avoiding danger. However, both defenses place a requirement on the Defendant that he has not engaged in some specified type of behavior prior to using deadly force.

This Court finds the Defendant fails the first element required by Section C because he was engaged in unlawful activity. Any argument that the defendant must only not be in violation of a statutory law at the time he fired his weapon ignores the intent of the Act and the general elements of Self-Defense. The narrow interpretation of the statute would allow situations where an individual intentionally taunts a victim, causing victim to respond physically or with threats towards the individual, then be able to avoid any liability or responsibility by simply stating that

individual was not in violation of any statutory laws. Similar situations where an individual created a conflict with another that was not necessarily "illegal" but then uses the opportunity to cause harm, equating to premeditation that would ultimately absolve the instigator of all responsibility.

Even if the legislature intended for "unlawful activity" to represent a relaxation of the requirement that the defendant "not be at fault" in bringing on the difficulty, violation of a statute is not the only method by which an individual can behave unlawfully. In this case, Defendants act of elevating a verbal altercation into a physical one could be the basis of a criminal charge of assault and battery. S.C. Code Ann § 16-3-600(E) ("Unlawfully injuring another person or offering or attempting to injure another person with the present ability to do so.") Additionally, Defendant's actions leading up to the shooting in his bedroom was clearly designed to goad Raysor into taking possession of the shotgun and thus creating more confrontation between the two parties. Defendant's acts are clearly "in violation of law and reasonable to produce" a confrontation with Raysor. *State* v. *Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 (citing Am. Jur. 2d Homicide §149 (1999)). This behavior clearly amounts to bringing on the difficulty and being engaged in unlawful activity, therefore, subsection (C) does not bar Defendant's prosecution in this matter.

B. There is conflicting evidence as to whether the Defendant was attacked by the Victim

This Court heard conflicting testimony about the details leading up to the fatal shooting of Raysor. According to the Defendant in his statement to Detective Haralson he was alone in his bedroom with Raysor when the "...shotgun comes out absolutely nowhere...." Transcript of Defendant, 42:9. Additional statements include:

Defendant: "You kill me, you grab that gun, you shoot me, I am not afraid to die. This is something I have looked at a million times. I am not afraid to die…And that's, I think me saying that pushed her to a point. And I am not afraid to die but I feel like that pushed her to a point.."

Transcript of Defendant, 11: 9-15.

Defendant: "So starts lifting up and falling, finger is already in the finger hole. So by the time gets right here its right through there but the finger is already in there and it goes off. And at that point I let her know I was prepared to defend myself, chill out, bla, bla, bla, bla, bla. The fucking gun goes off, the shotgun goes off and there is a hole in my fucking ceiling. And, at that point, yes, I left off one round.
Haralson: Was the gun pointed at you at that point in time?
Defendant: I would hope not because one round, I would hope there wouldn't be anything afterwards.
Haralson: What do you mean by that.
Defendant: One round, whether I hit her not.
Haralson: No, no, no. Was her gun, had she pointed it at you at this time? **Defendant**: When it came through and started following towards me?
Haralson: Yes.
Defendant: Yes, it fell towards me but it is a done deal at that point. It was already over.

Transcript of Defendant, 43: 5-25.

Iyona Calhoun provided a drastically different account. She alleged that Raysor discharged a different firearm in Turner's bedroom approximately five (5) times. She testified when this occurred the Defendant took a defensive posture with his personal firearm, crouching down towards the other bedroom where Raysor eventually came out. Then Calhoun, Raysor and the Defendant are the only individuals in the Defendant's bedroom. Calhoun testified that Raysor sat on the bed, reached over towards the nightstand and took control of the shotgun, while the Defendant was standing right there. While the physical evidence does confirm that a firearm was discharged in Turner's bedroom, there is no evidence in the record establishing that anyone saw Raysor in possession of or shooting a secondary firearm. Most importantly, the Defendant never tells law enforcement about Raysor shooting a gun before entering his bedroom. This Court finds the Defendant's entire explanation of assessing his survival, while also being able to remove a gun

holstered on his hip (Defendant's transcript 15:21-16:12), while simultaneously being able to shoot Raysor (Defendant's transcript 59:8) is hardly plausible. But even if taken by the court to be possible, his alleged fear from Raysor being in possession of the shotgun is only after he became physically aggressive with her and repeated requests that she take hold of his shotgun. As such, there is a dispute as to whether the Defendant was actually attacked by the victim.

CONCLUSION

Based upon the totality of the evidence offered at the immunity hearing, and after giving the appropriate weight and consideration of credibility, this court holds Defendant has not met its burden of proof in seeking immunity. Therefore, Defendant's motion for immunity under S.C. Code § 16-11-440 (A) is respectfully **DENIED**.

IT IS SO ORDERED.

J. Cordell E Maddox
Presiding Judge
Eighth Judicial Circuit

Greenwood, South Carolina
10/24, 2025

STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD	COURT OF GENERAL SESSIONS EIGHTH JUDICIAL CIRCUIT
The State v. Wilson Justice Xavier Smith, DEFENDANT.	AMENDED ORDER DENYING IMMUNITY Indictment Numbers 2025GS24-0581, 2025GS24-0582

This matter came before the Court during a hearing on July 9, 2025 in Greenwood County regarding Defendant Wilson Justice Xavier Smith's Motion seeking immunity from prosecution for Murder and Accessory After the Fact to Murder based on the provisions of the Protection of Persons and Property Act ("the Act"), S.C. Code Ann. § 16-11-410, *et. seq.* and based on the common law principles of self-defense.

This Court heard opening statements, testimony from witnesses, and memoranda from counsel for both parties. The Defendant was present at the hearing and represented by Elizabeth Thomas, Esquire of the Eighth Circuit Public Defender's Office. Deputy Solicitor Yates Brown and Assistant Solicitor Madison Hoffman, of the Eighth Circuit Solicitor's Office, appeared on behalf of the State. Subsequently, the court granted in part the Defense 59(e) motion only as to factual findings. The denial of immunity was unchanged.

After careful consideration of the arguments and exhibits presented by counsel, as well as a review of the documents submitted by counsel, the Court hereby DENIES Defendant's motion for immunity.

STANDARD OF REVIEW

In a bench trial, the trial judge acts as the finder of fact. *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731 (Ct. App. 2017). "[T]he judge, as the finder of fact, may believe all, some, or none of the testimony, even when [the testimony] is not contradicted." *Id.* at 483, 807

S.E.2d at 731 (internal citation omitted). A trial judge will be accorded great deference where matters of credibility are involved. *Id.* (internal citations omitted).

A defendant is entitled to immunity from prosecution under the Protection of Persons and Property Act. *State v. Scott*, 424 S.C. 467, 468, 819 S.E.2d 116, 118 (2018) (*citing State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013)). According to the Supreme Court, "a trial court should first consider whether the defendant has proven 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).

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).

In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force. S.C. Code Ann. § 16-11-450 (2015). Our Supreme Court has made clear that immunity under the Act "is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by

the preponderance of the evidence. " *Curry*, 406 S.C. 364, 372, 752 S.E.2d 263. However, the final element, the duty to retreat, need not be shown when a Defendant seeks immunity under the Act. *State v. Douglas*, 411 S.C. 307, 318, 768 S.E.2d 232, 239 (Ct. App. 2014) (*citing Curry*, at 371, 752 S.E.2d at 266). Further, S.C. Code § 16–11–440 sets forth the circumstances under which the Act allows deadly force.

S.C. Code § 16-11-440(A) provides a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury when using deadly force against someone unlawfully and forcibly entering a dwelling, residence, or occupied vehicle, provided certain conditions are met. S.C. Code § 16-11-440(C) provides in pertinent part:

> 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.

Pursuant to *Glenn*, the Court must first address Defendant's self-defense claim.

CREDIBILITY

According to the S.C. Supreme Court, in pre-trial ruling regarding immunity, "the circuit court must weigh the evidence and make its own credibility and factual findings before reaching a decision as to immunity. *State v. McCarty*, 437 S.C. 355, 372, 878 S.E.2d 902, 911 (S.C. App 2022). *See e.g., State v. Andrews*, 427 SC. 178, 181, 830 S.E.2d 12, 13 (2019). Further the S.C. Court of Appeals has reasoned that, "[t]he trial court is in a superior position to determine and evaluate a witness' demeanor; we were not there and may not second guess the court's reasons for that determination now." *Sheek v. Crimestoppers Alarm Sys., Div. of Glen Curt Consultants*, 297 S.C. 375, 377-78, 377 S.E.2d 132, 133 (Ct. App. 1989) (stating those determinations "*must* be left

to the trial judge who saw and heard the witnesses and is therefore in a better position to evaluate their veracity." (emphasis added)).

ANALYSIS

In making this determination regarding immunity, this court has reviewed all relevant case law, all testimony, and all exhibits submitted into evidence for purposes of this hearing.

Element 1: the defendant must be without fault in bringing on the difficulty

I find that the Defendant is not without fault in bringing on the difficulty. This Court heard testimony from another social guest in the home, Iyona Calhoun, who described the victim "running up" on the Defendant at which time the defendant pushed Raysor back. Calhoun testified that she disagreed with the physical contact by the Defendant and told him, "[d]on't put your hands on her. She's a woman." (See Immunity Hearing Transcript 48:12-18). Acknowledging that Raysor was continuing the verbal disagreement, the Defendant continued the conflict. Our state Supreme Court has held, "[o]ne who provokes or initiates an assault cannot escape criminal liability by invoking self-defense..." *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (*quoting* Ferdinand S. Tinio, Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right Of Self–Defense, 55 A.L.R.3d 1000, 1003 (1974)).

After the Defendant put his hands on Raysor, the altercation ended when Raysor removed herself from the Defendant's bedroom. She then went into the hallway to make a phone call that appeared to be advising someone on the line that she was leaving and asking them for a ride. (*See* Immunity Hearing Transcript 45:20-25). She also asked Makalah Wallace about leaving. *Id.*

Our state Supreme Court has considered circumstances in which the victim may have some degree of "fault" in the altercation. In *State v. Williams*, the Court recognized in their analysis that "[t]he question, however, is not who else might have been at fault but whether Williams [the

Defendant] was *without* fault. In answering that question, it does not matter who else was at fault." 427 S.C. 246, 250, 830 S.E.2d 904, 906 (2019). Here, Raysor completely removed herself from the situation by staying in Turner's bedroom, away from the Defendant, while waiting for her ride so she could leave. The Defendant asserts that because he made repeated requests for the victim to leave that made the victim a trespasser and she was no longer an invited social guest. While the Defendant may have made these requests, not only was the victim waiting for transportation to leave, the Defendant ultimately invited her back into his room with everyone else. Additionally, "[b]efore an act may cause forfeiture of the fundamental right of self-defense, it must be willingly and knowingly calculated to lead to conflict." *Douglas*, at 307, 768 S.E.2d at 232 (*citing State v. Jackson*, 94 Ariz. 117, 382 P.2d 229, 232 (1963)); *Jackson*, 382 P.2d at 232. Although the Defendant's initial verbal request for her to leave may have been proper, the increase in volatility of the situation based on physical aggression from the Defendant establishes Defendant's fault in bringing on the difficulty.

Our State Supreme Court has recognized that "[w]hether this was language that might reasonably have been expected to bring on the difficulty is a question for the jury and Defendant did not establish self-defense as a matter of law." *State v. Strickland*, 389 S.C. 210, 697 S.E.2d 681 (App. 2010). (*See also State v. Ferguson*, 91 S.C. 235, 242–43, 74 S.E. 502, 505 (1912)). From the Defendant's recollection of this subsequent interaction with Raysor in his bedroom, I find this testimony is clear evidence that his actions contributed to the difficulty. Therefore, I find the Defendant is at fault in bringing on the difficulty.

Element 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

The Defendant argues that his representations to Detective Haralson regarding fear for his life support that he was in actual imminent fear of losing his life and since Raysor was holding a shotgun he was in actual imminent danger of losing his life. The State asserts that while these statements may have been made, they do not support a belief when measured against the standard of a reasonable, prudent person and viewing the totality of the circumstances.

a. Actual Danger

The Defendant alleges he was in actual danger because the victim had been aggressive towards him, she was holding his shotgun, and fired a round while the Defendant was in the room. It is also important to note that while other individuals (none of which the Defendant identifies as being in the room when the incident occurs) in the residence stated that Raysor had just recently fired a different firearm in a different bedroom, at no time does the Defendant relay this information to law enforcement as a reason for his fear or him being in actual danger. The Defendant states to Detective Haralson that he is unaware of any other shots being fired in the apartment that night (Defendant Transcript 53:24 -54:25). Therefore, this Court finds the Defendant was not in actual danger.

b. Reasonable Belief

In *State v. Douglas*, the S.C. Court of Appeals held that "the standard for evaluating whether an accused had a reasonable belief that deadly force was necessary to prevent great bodily harm to himself is objective, rather than subjective." 411 S.C. at 320 n.7, 768 S.E.2d at 239 n.7. A reasonable person would not have engaged in behavior exercised by this Defendant such as suggesting an unarmed party take control of a weapon, but even by doing so – the action was then anticipated. Defendant was preparing for Raysor to become in control of a firearm by in his own words, "pushing her to a point." (*See State v. Grantham*, 224 S.C. 41, 43–44, 77 S.E.2d 291, 292

(1953)("The doctrine is for defensive, and not offensive, purposes." (*citing* 40 C.J.S., Homicide, § 130, Subsec. c., pp. 1015–1016)). Here, the Defendant created an offensive position for himself – not defensive and exceeded what was reasonable under the circumstances.

Additionally, while the Defendant relies on conflicting witness testimony to establish his belief of imminent danger, such disputes are inherently factual and must be resolved by the jury. The discrepancies between witnesses' accounts (specifically Calhoun and Turner) and the Defendant's version of events raise factual questions, particularly regarding the perceived threat to a third party, and should be evaluated by a trial jury.

Therefore, Defendant was unable to prove to the court, that he was not in actual, nor did he reasonably believe that he was in imminent danger of serious bodily harm or death and the second element of self-defense is not met.

Element 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

Even if Defendant was in actual or had a reasonable belief of serious bodily injury or death, Defendant must prove that his actions were such that a reasonable person would have entertained that belief and used such deadly force. The Defendant asserts that the actions he took that day were reasonable and if he had not taken those actions that day he would have been killed by Raysor. The State argues that shooting Raysor after he continued the situation is not reasonable. This Court agrees.

The Defendant used physical force against Raysor and, commanded her to grab the shotgun in his bedroom because in his own words "I'm not afraid to die." (*See* Defendant's Transcript 11:11.) By the Defendant's own admission, Raysor had not yet "grabbed" the shotgun when he began pushing her to take possession of this weapon. (*See* Defendant's Transcript 11:9). No reasonable person that feared serious bodily harm or loss of life would repeatedly reengage in a situation and offer the person they are "in fear of" a deadly weapon. Therefore, the third element of self-defense fails.

Element 4: Compliance with Statutory Immunity under the Protection of Persons and Property Act, S.C. Code Ann § 16-11-440(A)

Even if the first three elements of self-defense were met, an analysis under § 16-11-440(A) and § 16-11-440(C) is appropriate. As stated previously, the duty to retreat, need not be shown when a Defendant seeks immunity under the Act. *Douglas*, at 318, 768 S.E.2d at 239 (*citing Curry*. at 371, 752 S.E.2d at 266). Instead, the court will substitute the analysis of the fourth element of self-defense for the relevant section of § 16-11-440, which in this case, is subsection (A) and (C).

I. Defendant Cannot Satisfy the Requirements for the Common Law Defense of Habitation or Defense of Others

Defendant has alternatively claimed that his actions were justified under the common law defense of habitation, defense of others or Section 16-11-440(A). These defenses require evidence of an unlawful intrusion into a dwelling, or an objectively reasonable fear that an intruder was attempting to commit a violent felony. The statute does provide that an individual is presumed to be in reasonable fear for their life when someone attempts to forcibly enter a dwelling. S.C. Code §16-11-440(A). Subsection (A), provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting

to remove another from a dwelling, residence, or occupied vehicle. However, the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence. S.C. Code § 16–11–440(B). It is well established in the record that Raysor was a social guest at the Defendant's apartment, as such I find the Defendant cannot satisfy the requirements for subsection (A).

A. Defendant Is Not Entitled to Immunity Under the Common Law Defense of Habitation as Raysor was Always a Social Guest, Never A Trespasser.

While the Defendant argues that Raysor was a trespasser, this Court disagrees. The record from the immunity hearing established that Vashon Turner and the Defendant were roommates living at the Burfield apartment and that Raysor was a shared social guest in town for the funeral of a mutual friend. The Defendant and Calhoun both indicated that Raysor was being instructed to leave the apartment prior to the shooting. However, the other roommate Turner never joined in this request. South Carolina law recognizes that when two or more people share lawful possession of a residence, such as roommates or co-tenants, their possessory interests are equal. (*See State v. Gordon*, 128 S.C. 422, 122 S.E. 501, 502 (1924) ("Where a house, premises, or place of business is jointly occupied, used, and possessed by two persons, as by partners, joint tenants, or tenants in common, each joint occupant, being equally entitled to possession....")). While the owner of a home has the right to expel a trespasser, even with lethal force, under the facts of this case this law does not apply. (*See State v. Bryant*, 391 S.C. 225, 234, 705 S.E.2d 465, 470 (Ct. App. 2010)("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. (citing *State v. Sparks*, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936))).

Turner testified that he had been close friends with Raysor for years, knew she was coming into town for the McCaslin funeral, and would be temporarily staying at the apartment he shared with the Defendant. This is further corroborated in Defendant's audio interview with Detective Haralson. The night of the shooting, despite Raysor's conflict with the Defendant, Turner never asked her to leave the apartment or joined in the Defendant's requests for her to be expelled from the residence. (*See Dorn v. Beasley*, 27 S.C. Eq. 408, 427 (S.C. App. Eq. 1854)("Tenants in common are always subject to the chance of unpleasant companionship")). This is further exemplified by Raysor's action when removing herself from the initial argument with the Defendant, she relocated herself to Turner's bedroom. This is no evidence that Turner ever asked her to leave his room or the apartment in general, thus his equal possessory rights allowed Raysor to remain in the apartment and negating Defendant's right to eject her and ability to use deadly force to do so. I find Raysor was a social guest and had a right to be in the apartment. Therefore the Defendant fails under subsection (A).

II. Defendant Is Not Entitled to Immunity Under S.C. Code Ann. § 16-11-440(C) and 16- 11-450

Since the Defendant fails under subsection (A) he is therefore defaulted into subsection (C), which deals with the use of force by one who is attacked in another place where they have a right to be. The presumption of subsection (A) does not apply, "if the victim has an equal right to be in the dwelling or residence." *State v. Jones*, 416 S.C. at 292, 786 S.E.2d at 137 (citing *Curry*, 406 S.C. at 370, 752 S.E.2d at 266). As stated previously, the duty to retreat, need not be shown when a Defendant seeks immunity under the Act. *Douglas*, at 318, 768 S.E.2d at 239 (*citing Curry*. at 371, 752 S.E.2d at 266). The S.C. Supreme Court has held that "analyzing a defendant's "right to be" in a place where he is attacked under § 16-11-440(C) without considering proximate cause

or a causal connection to the incident leaves an innocent person's ability to seek the Act's protection up to happenstance, which we also do not believe was the intent of the Legislature. *Id.* at 119–20, 838 S.E.2d at 497. By its plain language, this subsection requires four elements. First, a person must not be engaged in unlawful activity. Second, the person must be attacked. Third, he must be in a place he has a right to be. Fourth, and finally, he must reasonably believe deadly force is necessary to prevent the commission of a violent crime. There is no substantial dispute as to the third element. It is well established that the Defendant was living at the Burfield apartment, as confirmed by his roommate Vashon Turner. As to the fourth element, the Defendant tells law enforcement that he genuinely believed that shooting Raysor was his only means to prevent being seriously injured or killed, the reasonable nature of such belief is still to be evaluated, along with the other two elements of the subsection which involve disputed questions of fact and law. [T]he burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide [or crime]. *Id.* at 121, 838 S.E.2d at 498.

A. The Defendant was engaged in unlawful activity

Defendant argues that the phrase "not engaged in an unlawful activity" in subsection (C) should be interpreted to mean he merely must not be violating any statutory law. In interpreting this subsection, the intent of the General Assembly must be considered. Traditionally, a person was entitled to use deadly force in self-defense only in situations where he was without fault in bringing on the difficulty. *State v. Bryant*, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999). When an individual establishes that he reasonably believes he is in imminent peril, the only significant difference between subsection (C) and common law self-defense is the elimination of the requirement that he has no other probable means of avoiding danger. However, both defenses

place a requirement on the Defendant that he has not engaged in some specified type of behavior prior to using deadly force.

This Court finds the Defendant fails the first element required by Section C because he was engaged in unlawful activity. Any argument that the defendant must only not be in violation of a statutory law at the time he fired his weapon ignores the intent of the Act and the general elements of Self-Defense. The narrow interpretation of the statute would allow situations where an individual intentionally taunts a victim, causing victim to respond physically or with threats towards the individual, then be able to avoid any liability or responsibility by simply stating that individual was not in violation of any statutory laws. Similar situations where an individual created a conflict with another that was not necessarily "illegal" but then uses the opportunity to cause harm, equating to premeditation that would ultimately absolve the instigator of all responsibility.

Even if the legislature intended for "unlawful activity" to represent a relaxation of the requirement that the defendant "not be at fault" in bringing on the difficulty, violation of a statute is not the only method by which an individual can behave unlawfully. In this case, Defendants act of elevating a verbal altercation into a physical one could be the basis of a criminal charge of assault and battery. S.C. Code Ann § 16-3-600(E) ("Unlawfully injuring another person or offering or attempting to injure another person with the present ability to do so.") Additionally, Defendant's actions leading up to the shooting in his bedroom was clearly designed to goad Raysor into taking possession of the shotgun and thus creating more confrontation between the two parties. Defendant's acts are clearly "in violation of law and reasonable to produce" a confrontation with Raysor. *State* v. *Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 (citing Am. Jur. 2d Homicide §149 (1999)). This behavior clearly amounts to bringing on the difficulty and being

engaged in unlawful activity, therefore, subsection (C) does not bar Defendant's prosecution in this matter.

B. There is conflicting evidence as to whether the Defendant was attacked by the Victim

This Court heard conflicting testimony about the details leading up to the fatal shooting of Raysor. According to the Defendant in his statement to Detective Haralson he was alone in his bedroom with Raysor when the "...shotgun comes out absolutely nowhere...." Transcript of Defendant, 42:9. Additional statements include:

> **Defendant**: "You kill me, you grab that gun, you shoot me, I am not afraid to die. This is something I have looked at a million times. I am not afraid to die...And that's, I think me saying that pushed her to a point. And I am not afraid to die but I feel like that pushed her to a point.."

Transcript of Defendant, 11: 9-15.

> **Defendant**: "So starts lifting up and falling, finger is already in the finger hole. So by the time gets right here its right through there but the finger is already in there and it goes off. And at that point I let her know I was prepared to defend myself, chill out, bla, bla, bla, bla, bla. The fucking gun goes off, the shotgun goes off and there is a hole in my fucking ceiling. And, at that point, yes, I left off one round.
> **Haralson**: Was the gun pointed at you at that point in time?
> **Defendant**: I would hope not because one round, I would hope there wouldn't be anything afterwards.
> **Haralson**: What do you mean by that.
> **Defendant**: One round, whether I hit her not.
> **Haralson**: No, no, no. Was her gun, had she pointed it at you at this time? **Defendant**: When it came through and started following towards me?
> **Haralson**: Yes.
> **Defendant**: Yes, it fell towards me but it is a done deal at that point. It was already over.

Transcript of Defendant, 43: 5-25.

Iyona Calhoun provided a drastically different account. She alleged that Raysor discharged a different firearm in Turner's bedroom approximately five (5) times. She testified when this

occurred the Defendant took a defensive posture with his personal firearm, crouching down towards the other bedroom where Raysor eventually came out. Then Calhoun, Raysor and the Defendant are the only individuals in the Defendant's bedroom. Calhoun testified that Raysor sat on the bed, reached over towards the nightstand and took control of the shotgun, while the Defendant was standing right there. While the physical evidence does confirm that a firearm was discharged in Turner's bedroom, there is no evidence in the record establishing that anyone saw Raysor in possession of or shooting a secondary firearm. Most importantly, the Defendant never tells law enforcement about Raysor shooting a gun before entering his bedroom. This Court finds the Defendant's entire explanation of assessing his survival, while also being able to remove a gun holstered on his hip (Defendant's transcript 15:21-16:12), while simultaneously being able to shoot Raysor (Defendant's transcript 59:8) is hardly plausible. But even if taken by the court to be possible, his alleged fear from Raysor being in possession of the shotgun is only after he reengaged with her and made repeated requests that she take hold of his shotgun. As such, there is a dispute as to whether the Defendant was actually attacked by the victim.

CONCLUSION

Based upon the totality of the evidence offered at the immunity hearing, and after giving the appropriate weight and consideration of credibility, this court holds Defendant has not met its burden of proof in seeking immunity. Therefore, Defendant's motion for immunity under S.C. Code § 16-11-440 (A) is respectfully **DENIED**.

IT IS SO ORDERED.

Cordell J. Maddox
Presiding Judge
Eighth Judicial Circuit

Greenwood, South Carolina

_____, 2025

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
vs.) ORDER
) 2025-GS-24-0581 and 0582
WILSON JUSTICE SMITH)
)
Defendant)
_____)

After a thorough review of the Defendant's timely filed Motion for New Trial, it is the decision of the Court to deny the same on all grounds raised. This Court incorporates herein by reference the entire record in this case and the rulings made by the Court.

SO ORDERED.

DONALD B. HOCKER
CIRCUIT COURT JUDGE

Laurens, S.C.
Date: 3-17-26