

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge
Honorable Daniel Coble, Circuit Court Judge
Appellate Case No. 2024-001198

THE STATE,

Respondent,

vs.

TELVIN QUINTAVIS JACKSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

“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?”

II.

“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?”

III.

“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 acted in self-defense, and where Appellant was prejudiced because the jury compromised and found him guilty of voluntary manslaughter?”

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the immunity hearing judge abuse his broad discretion or otherwise err by determining Appellant failed to meet his burden of establishing he was entitled to immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act when the immunity hearing judge properly weighed and considered the evidence and testimony presented during the immunity hearing before reaching a factually-supported conclusion nothing credible had been introduced to establish Appellant was without fault for the difficulty or under attack when he left the scene of a confrontation with the victim, armed himself with a pistol, returned to scene with an expressed intention to shoot the victim, and then did just that?

II.

Did the trial judge properly deny Appellant's directed verdict motion when, when viewed in a light most favorable to the State as required, the evidence and testimony presented during trial—which demonstrated Appellant safely left the scene after being accosted by the victim, armed himself, and then swiftly returned for the expressly-stated purpose of shooting the victim—supported a rational and reasonable conclusion Appellant neither acted in self-defense nor acted in defense of habitation when he fatally shot his victim?

III.

Did the trial judge somehow err by instructing the jury on the lesser-included offense of voluntary manslaughter when the evidence and testimony presented during trial supported a rational conclusion Appellant was guilty of each and every element of voluntary manslaughter, including that Appellant fatally shot the victim while acting in sudden heat of passion resulting from sufficient legal provocation?

STATEMENT OF THE CASE

In May of 2020, Appellant Telvin Quintavis Jackson was arrested following an investigation into a fatal shooting. In August of 2022, the Richland County Grand Jury indicted Appellant for murder. Prior to trial, Appellant moved for immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. On November 16, 2023, a pre-trial hearing was conducted on the motion in the Richland County Court of General Sessions with the Honorable Clifton Newman, circuit court judge, presiding. Subsequent to the one-day hearing, the immunity hearing judge denied Appellant's request for immunity from prosecution through an order filed on December 20, 2023. Thereafter, on June 24, 2024, a jury trial was commenced in the Richland County Court of General Sessions with the Honorable Daniel Coble, circuit court judge, presiding. At the conclusion of the four-day trial, the jury acquitted Appellant of murder and convicted him of the lesser-included offense of voluntary manslaughter. Following the verdict, the trial judge sentenced Appellant to a twenty-year term of imprisonment. A few days later, Appellant timely submitted a motion seeking a new trial, and the trial judge denied the motion through an order filed on July 10, 2024. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

At 10:21 p.m. on the night of May 26, 2020, Shaddashia Mayo received a text message from her boyfriend, Khamori Scott (“Victim”). (Trl. Tr. p. 296). In it, Victim reported he “just drew down” on Appellant and Appellant had apologized. (Trl. Tr. pp. 304-305; Trl. State’s Ex. # 65 (Text Messages)). Victim quickly followed that message by sending a series of laughing face emojis. (Trl. Tr. pp. 304-305; Trl. State’s Ex. # 65). In response, Mayo—after first stating “[l]mao”—asked Victim where he was at, and Victim replied he was “[s]ittin in [Appellant’s] yard[.]” (Trl. Tr. p. 305; Trl. State’s Ex. # 65). Victim further reported Appellant had apologized about a beach trip¹ and stated they could have come along on it. (Trl. Tr. p. 305; Trl. State’s Ex. # 65). Beyond that, Victim reported Appellant gave him all of his money but he had given it back to him. (Trl. Tr. p. 305; Trl. State’s Ex. # 65).

Just five minutes later, Appellant—at 10:26 p.m.—placed a call to 911. (Trl. Tr. pp. 112-113; Trl. State’s Ex. # 4 (911 Call Recording)). On that brief call, Appellant, who sounded agitated and angry, requested urgent assistance at his address, claiming he had “just” been robbed at gunpoint in his own yard by Victim. (Trl. State’s Ex. # 4). Appellant further stated he had gone up the street to get a “damn” gun after the robbery, was now armed, and was about to shoot Victim, who was still in his yard. (Trl. State’s Ex. # 4). Several more times after that, Appellant repeated he was going to shoot Victim, and, at another lone point, he stated he was going to get Victim out of his yard. (Trl. State’s Ex. # 4). Thereafter, just under three minutes after Appellant’s call first began, it was suddenly disconnected. (Trl. State’s Ex. # 4).

¹ During trial, Mayo explained Appellant and Victim were both part of a friend group that regularly hung out, including in Appellant’s yard, and vacationed together. (Trl. Tr. pp. 296-297; p. 302; pp. 305-307). However, Mayo asserted she and Victim had not been invited to a beach trip that occurred a few days earlier, which was “[u]nusual.” (Trl. Tr. p. 302). Around the same time, Mayo reported Appellant and Victim were having issues with one another. (Trl. Tr. p. 300; p. 302).

Ensuing efforts to get Appellant back on the line proved to be unsuccessful. (Trl. Tr. p. 116). Unfortunately, those efforts likely failed because Appellant was in the process of doing—and did do—*exactly* what he had ominously said he was about to do; he promptly shot Victim upon returning to his yard. (Trl. State’s Ex. # 4).

At 10:32 p.m., Victim called 911, too. (Trl. Tr. p. 113; Trl. State’s Ex. # 5 (911 Call Recording)). During that call, Victim, who seemed to be in significant pain, said he had been shot in the stomach. (Trl. Tr. p. 116; p. 143; Trl. State’s Ex. # 5). Victim also exclaimed he was about to die. (Trl. State’s Ex. # 5). Sadly, he was right. (Trl. Tr. pp. 256-257; pp. 259-260).

Around the same time Victim called 911, officers from the Richland County Sheriff’s Office began arriving at the scene in response to the initial report of a robbery. (Trl. Tr. pp. 125-127; pp. 141-143; pp. 172-174; pp. 212-214). Upon her arrival, Corporal Tammy Behney encountered Appellant, who called out to her from his apparent hiding spot. (Trl. Tr. p. 127). At the time, Appellant was speaking “really fast,” and the corporal was not sure what he said to her. (Trl. Tr. p. 138). Nonetheless, she was able to secure his .45-caliber pistol, which was still in his possession. (Trl. Tr. pp. 127-128; p. 133; p. 138; p. 180). After that, she handcuffed Appellant, moved him to her patrol car, and then attempted to render aid to Victim, who was lying across the backseat of a silver Acura² parked in the roadway nearby. (Trl. Tr. p. 103; p. 128; p. 130; p. 143; p. 149; p. 175; p. 224; p. 320). When she did, Corporal Behney found an empty holster in Victim’s possession. (Trl. Tr. p. 129).

In addition to the responding deputies, paramedics were also quickly dispatched to the scene, and, due to the nature of Victim’s gunshot injuries, they rushed him to the hospital. (Trl. Tr. pp. 101-103; pp. 107-108). However, before he was loaded into the ambulance, Victim was

² The silver Acura belonged to the girlfriend of Antoine Robinson, who was also known as “Black.” (Trl. Tr. p. 300; pp. 309-310; pp. 320-321).

able to identify Appellant as the person who shot him to Deputy Gerrel Webber. (Trl. Tr. p. 107; p. 177; Trl. State's Ex. # 59 (Body Camera Recording)). Tragically, that proved to be one of the last things Victim ever said; he died at the hospital a short time later while undergoing surgery as a result of a gunshot to the right side of his abdomen.^{3 4} (Trl. Tr. pp. 256-257; pp. 259-260).

Meanwhile, as Victim was being transported to the hospital, Master Deputy Andrew Gayeskie briefly spoke with Appellant at the scene. (Trl. Tr. p. 181; Trl. Def. Ex. # 1 (Body Camera Recording)). Significantly, at the time, Appellant seemed to the deputy to be “very hyper,” scared, and traumatized. (Trl. Tr. p. 181). During their ensuing brief conversation, Appellant—who began by identifying himself as a “noble citizen”—repeatedly asserted he had been “scared for [his] freaking life” and provided the following account of what had occurred. (Trl. Def. Ex. # 1). According to Appellant, he had been sitting in his car when the silver Acura pulled in front of him and blocked him in. (Trl. Def. Ex. # 1). Then, “out of nowhere,” Victim—whom he knew and who was “supposed to be [his] friend”—got out of the Acura with a gun, ran up to his vehicle, put the gun to his head, and made him give up \$200. (Trl. Def. Ex. # 1). After doing so, Victim went over to a white Charger, and, when he did, Appellant—who was scared and did not know what to do—drove off, headed to his father's nearby home, and retrieved a gun purportedly to “tell him to get the hell on.” (Trl. Def. Ex. # 1). Appellant then called 911, returned to the scene, got out of his car, and told Victim to “stop where [he was].” (Trl. Def. Ex. # 1). At that point, Victim “tried to pull the gun again,” so Appellant both shot and

³ The bullet entered the right of Victim's abdomen just below his ribs, travelled through his torso, exited the left side of his body, and went into his left arm. (Trl. Tr. pp. 293-294). The forensic pathologist who performed Victim's autopsy later recovered a fired projectile from Victim's arm. (Trl. Tr. p. 284).

⁴ Victim was also struck by another bullet, but that one merely grazed the top of his right arm. (Trl. Tr. p. 294).

ran in fear. (Trl. Tr. p. 181; Trl. Def. Ex. # 1). When he fired, Appellant supposedly was not trying to shoot Victim but, instead, was only telling Victim he needed to go. (Trl. Def. Ex. # 1). Following that, the two unknown⁵ guys with Victim fled in the white Charger, and Appellant hid in his neighbor's yard until law enforcement got to the scene. (Trl. Tr. p. 183; Trl. Def. Ex. # 1).

Subsequent to that, Appellant was transported to the sheriff's department and interviewed there. (Trl. Tr. p. 147; p. 325; Im. Court's Ex. # 3 (Interview Recording)). At different points in that interview, Appellant claimed he both did and did *not* go to his father's house for the purpose of getting a gun after Victim robbed and threatened him. (Im. Court's Ex. # 3). He also insisted he did not want to shoot Victim, who was his friend, that night and did not intend to do so. (Im. Court's Ex. # 3). Instead, he claimed he simply wanted Victim to "sit there" and go to jail, and he alleged he was attempting to hold Victim, whom he knew had an "ankle monitor," for the police. (Im. Court's Ex. # 3). Appellant did, however, candidly concede he had been mad when he was speaking to the 911 dispatcher just before the shooting. (Im. Court's Ex. # 3). Appellant further insisted he did not want Victim to run but alleged Victim and the others—"all of them"—would have run if the police had arrived, which was supposedly why he acted as he did. (Im. Court's Ex. # 3). In addition to that, Appellant tried to justify his actions by claiming his house would have been "shot up" if he had not returned to the scene. (Im. Court's Ex. # 3). Beyond that, Appellant claimed he approached Victim with his gun at his side in a "clear-headed" manner and without acting mean and said the "police [we]re on the way" as soon as he got out of his car upon his return. (Im. Court's Ex. # 3). Despite that "clear-headed" approach, Appellant

⁵ As would later be revealed, that was false; Appellant did, in fact, know the identities of both the men with Victim at the time of the shooting. (Im. Tr. p. 26; Trl. Tr. p. 300). Indeed, according to Appellant's own later accounts, one of the men—"Brandon"—was his friend and was supposedly "chilling" *with him* in his vehicle when Victim first arrived at the scene while armed with a gun. (Im. Tr. pp. 21-23).

asserted Victim went for his gun when he saw Appellant's, which rendered Appellant "scared shitless" and led him to shoot as he ran. (Im. Court's Ex. # 3). Appellant further insisted he did not know Victim had been shot until he saw the ambulance arrive, and Appellant had an emotional outburst when alerted Victim had died. (Im. Court's Ex. # 3). The interview was terminated after that. (Im. Court's Ex. # 3).

As the investigation into the shooting continued, numerous footprints and tire marks were located in Appellant's front yard. (Trl. Tr. p. 146; pp. 149-150; Trl. State's Ex. # 19 (Photograph)). In close proximity to those footprints and tire marks, officers located a nine-millimeter pistol, two .45-caliber cartridge cases, and a pair of flip-flops on the ground. (Trl. Tr. p. 135; p. 139; pp. 144-145; pp. 224-225; Trl. State's Ex. # 14 (Photograph); Trl. State's Ex. # 28 (Photograph); Trl. State's Ex. # 33 (Photograph)). That evidence was all found within a span of approximately twenty feet. (Trl. Tr. pp. 232-233). Meanwhile, no relevant evidence was found near the car port or front porch of Appellant's residence. (Trl. Tr. p. 225). As could be expected, the two recovered cartridge cases were later determined to have been fired from Appellant's pistol. (Trl. Tr. p. 180; p. 206; p. 211).

Ultimately, at the conclusion of the investigation into the killing, Appellant was arrested and indicted for Victim's murder. (Trl. Tr. p. 9; Indictment). And, after a pre-trial attempt to obtain immunity from prosecution proved to be unsuccessful, he elected to proceed forward to trial.⁶ (Trl. Tr. p. 9; Im. Order, pp. 1-13). At the conclusion of that trial, a jury of Appellant's peers unanimously convicted him of the lesser-included offense of voluntary manslaughter after roughly forty-five minutes of deliberations. (Trl. Tr. p. 417; p. 420).

⁶ Apparently believing Appellant should have been granted immunity, defense counsel described the trial as "an obscenity" in his opening statement to the jury and asserted he was personally "revolted" by it. (Tr. p. 98).

ARGUMENT

I.

The immunity hearing judge did not abuse his broad discretion or otherwise err by determining Appellant failed to meet his burden of establishing he was entitled to immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act because the immunity hearing judge properly weighed and considered the evidence and testimony presented during the immunity hearing before reaching a factually-supported conclusion nothing credible had been introduced to establish Appellant was without fault for the difficulty or under attack when he left the scene of a confrontation with the victim, armed himself with a pistol, returned to scene with an expressed intention to shoot the victim, and then did just that.

Appellant contends the immunity hearing judge reversibly erred by denying his request for immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act (“the Act”). In support of that contention, Appellant maintains immunity should have been granted because he purportedly established he acted in self-defense when he shot Victim since—based on his view of the facts—he was not without fault for the difficulty, he was in actual danger of losing his life or sustaining serious bodily injury, a reasonable person would have entertained the same belief, and he had no duty to retreat since he was on his own property. Appellant further maintains he was also entitled to immunity pursuant to Section 16-11-440(C) because he was in a place where he had a right to be, he was lawfully permitted to “expel a trespasser or to hold an armed robber while waiting for the police to arrive,” and he was “threatened” by Victim, who was armed. (App. Br. pp. 18-19). Contrary to Appellant’s contentions, the immunity hearing judge thoroughly evaluated the testimony and evidence presented during the immunity hearing, which included evidence establishing Appellant returned to a scene he had been able to safely leave for the expressed purpose of shooting Victim, and only denied Appellant’s immunity claim after making a factually-supported determination Appellant had failed to credibly meet his burden of establishing entitlement to immunity by a

preponderance of the evidence. Under such circumstances, the immunity hearing judge did not abuse his discretion or otherwise err by declining to grant immunity, and his legally-correct and factually-supported ruling cannot validly be disturbed on appeal. The immunity hearing judge's order denying immunity should be affirmed.

Relevant Facts

During the hearing conducted in response to Appellant's pre-trial request for immunity from prosecution, Appellant personally testified and offered an account of the events that led to him fatally shooting Victim.⁷ (Im. Tr. p. 4). Pursuant to that account, Appellant, on the night of the incident, was "chilling" with his friends "Dominique"⁸ and "Brandon"⁹ inside his vehicle, which was parked in the driveway outside his residence. (Im. Tr. pp. 21-22). Suddenly, a car pulled up in front of his vehicle, blocking it in, and then Victim—who had supposedly threatened¹⁰ Appellant only days earlier—got out of the car armed with a gun. (Im. Tr. pp. 12-18; p. 22). After that, Victim approached Appellant and demanded money¹¹ from him at

⁷ Appellant claimed Victim's nickname in the neighborhood was "Trouble" because he supposedly constantly got into trouble. (Im. Tr. p. 11).

⁸ "Dominique" was later identified as Dominique Weston. (Trl. Tr. p. 318). Unfortunately, by the time of Appellant's trial, Weston was deceased. (Trl. Tr. p. 318).

⁹ "Brandon" was eventually identified as Brandon Jenkins. (Trl. Tr. p. 319). Although investigators were able to locate Jenkins's vehicle parked outside his listed address, Jenkins himself could not be tracked down for Appellant's trial despite efforts on the part of the State to find him. (Trl. Tr. pp. 309-310; pp. 319-320).

¹⁰ To support his claim of being threatened, Appellant offered a screenshot of some text messages in which Victim advised Appellant "it's up" when he caught him and Appellant responded by stating he was giving Victim's name to the police. (Im. Tr. pp. 16-17; Im. Def. Ex. # 1 (Text Messages)).

¹¹ According to Appellant, he and Victim were involved in a scheme to obtain unemployment payments pursuant to which Appellant—at Victim's request—would refer people to the

gunpoint. (Im. Tr. p. 22). In response, Appellant gave Victim \$200 in cash, and Victim promptly threw it right back at him and threatened to kill him. (Im. Tr. p. 23; p. 54). “Brandon” then got between the two in an effort to defuse the situation, and, when he did, Appellant “noticed” the car was no longer blocking in his vehicle. (Im. Tr. p. 23). Appellant proceeded to drive to his father’s nearby home, asked his father to call the police because he had just been robbed, and was given a gun by his sister,¹² who questioned the whereabouts of Appellant’s wife and children. (Im. Tr. p. 25). Following that, Appellant called 911 himself, told the dispatcher he was going to shoot Victim,¹³ and returned home while driving slowly to wait for the police. (Im. Tr. p. 25; pp. 43-45). When he arrived home a few minutes later, Appellant got out of his vehicle, approached Victim with his gun drawn, told Victim the police were on the way, and pointed his gun at Victim. (Im. Tr. pp. 25-26; p. 31; p. 33; p. 45). Upon seeing Appellant’s gun, Victim drew his own gun, so Appellant turned his head, ran, and “guess[ed] [he] shot[.]” (Im. Tr. p. 26; pp. 32-34). Moreover, “Brandon” and “Black,”¹⁴ who were next to Victim and—according to Appellant—gang members, *also* had guns on Appellant at that time. (Im. Tr. p. 26; p. 46; p. 78). Appellant then ran toward his dog for safety and hid in his neighbor’s backyard until police arrived at the scene, which happened quickly. (Im. Tr. p. 27; p. 32).

unemployment office in exchange for \$800 from Victim, and Victim believed Appellant owed him money at that time for some unexplained reason. (Im. Tr. pp. 12-14).

¹² During his testimony, Appellant admitted he had earlier inconsistently claimed his sister’s “baby’s daddy” was actually the one who gave him the gun. (Im. Tr. p. 46).

¹³ Initially, Appellant claimed he could not remember making such a statement, but he eventually admitted he had done so when confronted with the recording of the 911 call. (Im. Tr. pp. 40-41; p. 43).

¹⁴ Again, “Black” was later identified as Antoine Robinson. (Trl. Tr. pp. 309-310; p. 320). He—like Jenkins—could not be located by the time of Appellant’s trial despite efforts on the part of the State to find him. (Trl. Tr. pp. 309-310).

In addition to offering his account of what purportedly transpired, Appellant conceded he could have stayed at his father's house or waited on the police to arrive after he called 911, and he acknowledged nothing had happened to his family by the time of the shooting. (Im. Tr. p. 38; p. 40). Appellant further admitted he had earlier told investigators he returned home that night to make sure "*they*"—meaning Victim, "Brandon," and "Black"—"didn't leave." (Im. Tr. pp. 38-39) (emphasis added). Beyond that, Appellant candidly conceded he had been mad at Victim on the date of the incident, but he also later inconsistently claimed he was actually no longer angry by the time of the shooting because he had purportedly been able to "vent" to the 911 dispatcher prior to arriving back home. (Im. Tr. p. 45; p. 63).

Along with Appellant's testimony, the recording of Appellant's call to 911 on the night of the incident was introduced into evidence and played for the immunity hearing judge. (Im. Tr. p. 41). Through that recording, the immunity hearing judge was able to hear Appellant repeatedly and angrily state he had a gun and was "about" to shoot Victim as he sped back to his residence just before he did, in fact, fatally shoot Victim. (Im. Tr. p. 43; Im. Court's Ex. # 2 (911 Call Recordings)).

The recording from Appellant's post-shooting interview at the sheriff's department was also introduced and played for the immunity hearing judge. (Im. Tr. p. 55; Im. Court's Ex. # 3). As explained by Investigator Keenan Johnson from the Richland County Sheriff's Office, Appellant's account of what transpired shifted during the course of that interview in important respects, and Appellant likewise omitted numerous details that were subsequently included in his immunity hearing testimony. (Im. Tr. pp. 84-89; Im. Court's Ex. # 3). Notably, based on what Appellant told him, Investigator Johnson indicated he was concerned by Appellant leaving the

scene to get a gun and returning to “possibly” shoot a friend who frequently visited his home. (Im. Tr. pp. 88-89).

Following the presentation of that testimony and evidence, defense counsel contended Appellant was entitled to a grant of immunity. (Im. Tr. pp. 97-98). As support for that contention, defense counsel maintained Appellant’s actions were reasonable because he was indisputably robbed¹⁵ in his own yard and, based on that, was permitted to leave and arm himself to protect his property. (Im. Tr. pp. 95-97). Defense counsel further maintained Appellant only shot Victim when Victim went for his own gun. (Im. Tr. p. 96).

Conversely, the solicitor argued Appellant was not entitled to a grant of immunity. (Im. Tr. pp. 101-102). In so arguing, the solicitor asserted none of the Act’s presumptions were applicable based on the facts involved. (Im. Tr. p. 98). Furthermore, the solicitor explained Appellant was not without fault for the difficulty since he was able to flee and, thus, could have entirely avoided what ended up happening by simply waiting for a short period of time for the police to arrive. (Im. Tr. p. 99; pp. 101; p. 104). Instead of doing so, the solicitor noted Appellant armed himself and expressly stated he was going to shoot Victim, which was inconsistent with a legitimate claim of self-defense. (Im. Tr. p. 98; p. 101). Beyond that, the solicitor pointed out Appellant’s credibility was adversely impacted by his shifting accounts of what supposedly occurred. (Im. Tr. p. 109).

¹⁵ For what it’s worth, Victim’s actions as described by Appellant—although certainly not lawful if they truly were consistent with Appellant’s description—did not legally constitute the offense of armed robbery since there was no evidence Victim intended to permanently deprive Appellant of the money he immediately threw back at Appellant. See Broom v. State, 351 S.C. 219, 221, 569 S.E.2d 336, 337 (2002) (recognizing an intent to permanently deprive the owner of the property taken in a robbery is an implicit element of both robbery and armed robbery); see also Kerrigan v. State, 304 S.C. 561, 563, 406 S.E.2d 160, 161 (1991) (“Implicit in the definition [of larceny] is an intent by the offender to permanently deprive the owner of possession by converting the property to the taker’s own use.”).

Ultimately, upon considering the matter, the immunity hearing judge denied Appellant's request for immunity. (Im. Order, p. 13). In so ruling, the immunity hearing judge expressly found Appellant's "testimony [wa]s not credible" because Appellant gave "inconsistent and different statements as to what occurred[.]" (Im. Order, p. 5). After finding Appellant not to be credible, the immunity hearing judge looked to whether Appellant had established all the elements of self-defense aside from the duty to retreat by a preponderance of the evidence and concluded he had not. (Im. Order, p. 10). Most significantly, the immunity hearing judge determined Appellant did not meet his burden of establishing he was not without fault for the difficulty because: (1) after the alleged robbery, he armed himself and stated he was going to shoot Victim; and (2) when he arrived back at the scene, he approached Victim—who was not doing anything at the time—with his gun visibly displayed and pointed it at Victim, which was an act "reasonably calculated to cause the victim to respond by trying to draw his own gun." (Im. Order, pp. 10-11). Additionally, the immunity hearing judge found no "credible" evidence was presented to establish Victim posed or reasonably appeared to pose a deadly threat to Appellant at the time of the shooting because Victim was not doing anything at the time of Appellant's return and Appellant's actions were driven only based on his fear of what Victim *might* theoretically do. (Im. Order, p. 12). Furthermore, the immunity hearing judge concluded the Act's statutory presumptions were also not applicable because: (1) no credible evidence was presented establishing either Victim was in the process of removing anyone from a dwelling, residence, or occupied vehicle at the time of the shooting or Victim "was still a threat" when Appellant returned to the scene; (2) Appellant was acting unlawfully at the time of the shooting because his claimed intention to hold "Brandon" and "Black" at the scene, too, constituted the offense of kidnapping and he unlawfully pointed his firearm at someone who was doing nothing

threatening at the time; and (3) Appellant was not being attacked when he approached Victim with the stated intention of shooting him and with his gun pointed at him. (Im. Order, pp. 5-7). Beyond that, the immunity hearing judge rejected Appellant’s attempt to have him “disregard what happened between the alleged armed robbery and the shooting” and “ignore the fact” Appellant left the scene, armed himself, and returned with the stated intention to shoot Victim, which he then did. (Im. Order, p. 7).

Standard of Review

In an appeal from a circuit court judge’s pre-trial determination regarding a claim of statutory immunity, an appellate court reviews the circuit court judge’s ruling for an abuse of discretion. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2015); see State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (“[T]his court reviews [a claim of immunity under the Act] under an abuse of discretion standard of review.”). Pursuant to the abuse of discretion standard, the appellate court must affirm the circuit court judge’s immunity determination if it is supported by any evidence and not controlled by an error of law. Curry, 406 S.C. at 372, 752 S.E.2d at 267; see State v. Dennis, 447 S.C. 323, 334, 926 S.E.2d 250, 256 (2026) (“A circuit court abuses its discretion when its ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” (citations and internal quotations omitted)); Douglas, 411 S.C. at 316, 768 S.E.2d at 237 (“[T]he abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court’s assessment of witness credibility.”).

Analysis

Under the mandates of the Act, any law-abiding person who uses deadly force in a manner permitted by the provisions of the Act is immune from criminal prosecution for the use

of deadly force. S.C. Code Ann. § 16-11-450(A); see S.C. Code Ann. § 16-11-420(B) (“[I]t 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.”). The intent of the legislature in implementing the Act was to “codify the common law Castle Doctrine” 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). In carrying out that intention, the legislature instructed:

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 or 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.

S.C. Code Ann. § 16-11-440(A). Additionally, the legislature further instructed:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C).

Pursuant to the Act, the burden is on the defendant to establish his entitlement to immunity. State v. Andrews, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019). In analyzing whether

that burden has been met, the appropriate analysis involves the court first determining whether the defendant has proved *all* the required 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 so, the defendant would be entitled to a grant of immunity. Id. at 117-118, 838 S.E.2d at 496; see State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120-121 (2018) (“Self-defense is the classic provision of law that justifies the use of deadly force. It was clearly the Legislature’s intent that if a person seeking immunity under subsection 16-11-450(A) could prove the elements of self-defense in an immunity proceeding, immunity must be granted.”). If not and the failure is based on the defendant’s inability to establish the elements of reasonable fear or duty to retreat, the court should then determine whether either Section 16-11-440(A) or Section 16-11-440(C) of the Act is applicable. Glenn, 429 S.C. at 118, 838 S.E.2d at 496.

Regarding self-defense, the following four elements must be typically present in order for that particular defense to be established in South Carolina:

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 reasonably prudent 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.

Curry, 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4 (quoting State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984)). As should be obvious from its elements, self-defense is “based upon *necessity*[.]” State v. Osborne, 202 S.C. 473, ___, 25 S.E.2d 561, 563 (1943) (emphasis added).

Resultantly, a person may not employ deadly force unless there is a reasonable necessity to kill. State v. Harvey, 110 S.C. 274, ___, 96 S.E. 399, 400 (1918). Likewise, due to the “without fault in bringing on the difficulty” requirement, a person can deprive himself or herself of the right of self-defense through either actions or words. State v. Council, 129 S.C. 116, ___, 123 S.E. 788, 789 (1924). And, significantly, if even one of the requisite element is lacking, “[i]t is an axiomatic principle of law that the defense has not been established[.]” State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010).

In the case sub judice, the immunity hearing judge was presented with an account of the events leading up to the shooting from Appellant himself and was asked by Appellant to grant immunity from prosecution based on that self-serving account. According to Appellant, it supported a conclusion he was acting lawfully—and, thus, was entitled to a grant of immunity—when he shot Victim because he had been robbed only minutes before he arrived back at the scene with the gun he retrieved, he was legally permitted to confront Victim with the gun in his own yard to either hold Victim at the scene *or* expel Victim from his property, and he only shot Victim when Victim reached for his own gun.

However, as the ultimate fact-finder, the immunity hearing judge had no duty to accept Appellant’s account, and he indeed did not do so. See Curry, 406 S.C. at 371, 752 S.E.2d at 266 (recognizing the legislature did *not* intend for a circuit court judge considering an immunity issue to be limited to accepting the accused’s version of the facts). Instead, the immunity hearing judge found Appellant’s account not to be credible and, after making such a finding, elected to focus his analysis on the following facts that could not be disputed: (1) after the initial confrontation with Victim, Appellant was able to safely leave the scene; (2) Appellant quickly armed himself with a pistol after that; (3) Appellant rushed back to the scene while angrily

stating multiple times along with way he was about to shoot Victim when he got there; and (4) Appellant did, in fact, shoot Victim upon returning just as he had stated he was going to do. The immunity hearing judge also focused on the fact Appellant admitted Victim was not doing anything at the time he approached him with his gun drawn upon returning to the scene and Victim only reached for his own gun in response to that threatening approach. Critically, based on the facts the immunity hearing judge found to be credible, Appellant was not—just as the immunity hearing judge correctly concluded—entitled to immunity pursuant to the Act.

First, to the extent he was seeking immunity pursuant to a theory of self-defense, Appellant—just as the immunity hearing judge correctly found—was not lawfully acting in self-defense at the time of the shooting because, at a minimum, he had not established by a preponderance of the evidence he was without fault for the difficulty. In reaching such a conclusion, the immunity hearing judge properly found Appellant’s act of leaving the scene, arming himself, and then returning and promptly pointing his pistol at Victim constituted actions reasonably calculated to produce the violence that inevitably resulted. Significantly, that finding was a valid one because such actions on Appellant’s part constituted evidence upon which a reasonable fact-finder could conclude Appellant was the aggressor in the *fatal* confrontation, which meant Appellant was not without fault for the difficulty as necessary for self-defense to validly be established. See State v. Salary, 343 P.3d 1165, 1175 (Kan. 2015) (recognizing “leaving a confrontation with an individual and then returning with a loaded firearm and shooting that same person” typically renders an individual ineligible to validly claim self-defense); Gilbert v. State, 934 So. 2d 330, 342 (Miss. Ct. App. 2006) (“The law in this state has been for years that a defendant who has been in an altercation or dispute with the victim can not temporarily leave the scene of the dispute, arm himself, return to the scene, shoot or kill the

victim and thereafter claim necessary self-defense.”); State v. Bray, 818 S.W.2d 291, 293 (Mo. Ct. App. 1991) (“If a defendant continues or renews an altercation when he had an opportunity to abandon or decline further, he becomes the aggressor, although he was not at fault in the original struggle. Under these circumstances, self-defense is unjustified.” (citations omitted)); cf. Davis v. State, 130 So. 3d 1141, 1147 (Miss. Ct. App. 2013) (“Though Yolanda was the only witness to the entire exchange and testified [the victim]’s insults and initial fight with Davis were unprovoked, our law is clear that one who leaves an altercation, arms himself, and returns with the intent to and does use his weapon on the other party cannot claim self-defense.” (citations and internal quotations omitted)); Walters v. State, 772 So. 2d 1072, 1075 (Miss. Ct. App. 2000) (“In the instant case, Walters’s right to ‘stand his ground’ was in fact lost based on the fact that he left the scene, secured a weapon, and returned to confront Rollin. Our supreme court has stated that where a defendant is not in any danger when he leaves the scene and arms himself for the purpose of shooting the victim, as was the case here, that defendant may not claim self-defense.”). Moreover, Appellant’s repeated angry expressions of an already-formed intention to shoot Victim before he even arrived back at the scene supported a conclusion Appellant was acting out of revenge instead of legitimate defensive necessity, which further supported a conclusion he was not without fault for the difficulty and undercut the credibility of any claim he was merely attempting to hold Appellant for law enforcement or expel him from the property. See People v. Everette, 565 N.E.2d 1295, 1301 (Ill. 1990) (“The right of self-defense does not justify an act of retaliation or of revenge; it is a right intended to protect an individual and not an individual’s pride.”); State v. Love, 173 N.W.2d 423, 427 (Minn. 1970) (acknowledging “[t]he rule of self-defense does not authorize one to seek revenge or take into his own hands the punishment of an offender”); Council, 129 S.C. at ___, 123 S.E. at 790 (“Self-defense protects

from imminent future bodily harm, but not to revenge the former injury.”); cf. State v. Jones, Op. No. 6147 (S.C. Ct. App. filed June 10, 2026) (Howard Adv. Sh. No. 22 at 35, 44-45) (“[Jones] texted Mims, ‘I’m gonna kill that BBoy.’ Although Jones asserted he was merely venting and denied this text meant he intended to kill anyone, the fact remains that he returned to the Pool Room—heavily armed—a mere seventeen minutes after sending this text. Thus, in our view, Jones failed to establish by a preponderance of the evidence that he was without fault in ‘bringing on the difficulty.’ ”).

Second, to the extent he was seeking immunity pursuant to Section 16-11-440(C), Appellant—just as the immunity hearing judge correctly found—was neither acting lawfully at the time he approached Victim and the others with his gun drawn nor under attack when he returned to the scene as necessary for that provision of law to be applicable. Instead, since Victim was merely standing with “Brandon” and “Black” and, thus, not attacking Appellant, Appellant engaged in unlawful actions reasonably calculated to bring about violence by admittedly approaching an individual *he had just angrily stated he was about to shoot*, pointing a gun at him, and then shooting the victim when he reacted. See S.C. Code Ann. § 16-11-440(C) (“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.” (emphasis added)); see also Curry, 406 S.C. at 372, 752 S.E.2d at 267 (instructing the Castle Doctrine is for defensive purposes and *not* offensive purposes); State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (finding the act of approaching an altercation with a visible loaded weapon was an act

that “could be reasonably calculated to bring the difficulty that arose” and precluded Slater from asserting self-defense as a matter of law); State v. Burton, 356 S.C. 259, 264, 589 S.E.2d 6, 8 (2003) (recognizing it is unlawful in South Carolina to point a loaded firearm at another person); cf. Jones v. State, 70 So. 2d 543, 544 (Ala. Ct. App. 1954) (“Where . . . an accused, after an altercation, leaves the scene of the encounter and goes to his home and arms himself, then returns to the scene of the difficulty and seeks a renewal of difficulties with his adversary, such an accused is in no position to claim self-defense. Even if he encounters peril upon his return he is the architect of such peril, and being so, is estopped from setting it up.”). Beyond that, to the extent he was attempting to detain “Brandon” and “Black” at gunpoint, Appellant’s actions in that regard were likewise unlawful because he had no legal right to detain either of them under the circumstances involved. See State v. Owens, 291 S.C. 116, 118, 352 S.E.2d 474, 475 (1987) (explaining kidnapping occurs when “the defendant: (1) unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away; (2) any other person; (3) by any means whatsoever; (4) without authority of law”); cf. State v. Williams, 427 S.C. 246, 252, 830 S.E.2d 904, 907 (2019) (concluding Williams was not entitled to a self-defense instruction because he “was doing something ‘in violation of law’ in addition to merely unlawfully possessing a pistol”).

Therefore, since the evidence and testimony presented in Appellant’s case supported a valid conclusion Appellant was neither lawfully acting in self-defense nor validly acting in a manner permitted by Section 16-11-440(C), the immunity hearing judge—in his role as the fact-finder—did not abuse his broad discretion by finding Appellant failed to meet his burden of establishing he was entitled to immunity by a preponderance of the evidence. See Bixby, 388 S.C. at 554, 698 S.E.2d at 586 (recognizing the absence of even a single element of self-defense

is fatal to a self-defense claim); cf. State v. Marshall, 428 S.C. 11, 20, 832 S.E.2d 618, 623 (Ct. App. 2019) (affirming the denial of immunity where the circuit court judge found Marshall’s testimony was “unreliable and prevented the court from finding he established the relevant elements of self-defense by a preponderance of the evidence” in light of numerous inconsistencies that called Marshall’s credibility into question). Accordingly, in light of the deferential standard of review and the credibility-based nature of the immunity hearing judge’s dispositive¹⁶ fact-findings, there are no valid grounds upon which the immunity hearing judge’s ruling could now be disturbed on appeal. See State v. Jones, 416 S.C. 283, 301, 786 S.E.2d 132, 142 (2016) (explaining the standard of review for immunity rulings is a “deferential” one); State v. Oates, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017) (recognizing the applicable standard of review for reviewing immunity rulings does not permit the appellate court to reweigh the evidence or second-guess the circuit court judge’s credibility assessments); see also State v. Suber, 82 S.C. 159, ___, 63 S.E. 684, 685 (1909) (explaining the existence of contradictory statements by a witness can constitute important evidence tending to discredit the witness’s testimony); cf. State v. Pickrell, 435 S.C. 417, 440, 867 S.E.2d 465, 478 (Ct. App. 2021) (“Our deferential standard of review requires us to uphold Judge Lee’s factual findings if there is evidence to support the same.”), aff’d as modified, 443 S.C. 497, 905 S.E.2d 374 (2024). The immunity hearing judge’s order denying immunity should be affirmed.

¹⁶ Although it had no impact on his factual determinations regarding the shooting itself, the immunity hearing judge did mistakenly in his order reverse Appellant’s and Victim’s roles in the unemployment scheme in which the two had been involved. (Im. Tr. pp. 12-13; Im. Order, p. 2).

II.

The trial judge properly denied Appellant’s directed verdict motion because, when viewed in a light most favorable to the State as required, the evidence and testimony presented during trial—which demonstrated Appellant safely left the scene after being accosted by the victim, armed himself, and then swiftly returned for the expressly-stated purpose of shooting the victim—supported a rational and reasonable conclusion Appellant neither acted in self-defense nor acted in defense of habitation when he fatally shot his victim.

Appellant contends the trial judge reversibly erred by failing to direct a verdict in his favor. As support for that contention, Appellant first maintains the State failed to disprove he lawfully acted in defense of habitation because Victim was a trespasser, Appellant employed reasonable means to eject Victim from his property, and Victim drew a gun “before¹⁷ Appellant could order [him] to leave his property.” (App. Br. p. 27). Appellant further maintains the State failed to disprove he lawfully acted in self-defense because: (1) he was not at fault for the difficulty because he knew an armed and dangerous trespasser was on his property; (2) he was actually in imminent danger of death or great bodily harm because Victim responded to Appellant approaching him with a drawn gun by drawing his own gun; (3) Appellant’s belief was one a reasonable person would have entertained since he had allegedly just been robbed; and (4) he had no duty to retreat on his own property and had no other means to avoid the danger since Victim drew his gun. To the contrary, the evidence and testimony presented during trial—which demonstrated Appellant safely left the scene after being accosted by Victim, armed himself, and then swiftly returned *for the self-expressed purpose of shooting Victim*—supported

¹⁷ Particularly in light of the standard by which the evidence must be viewed when conducting a directed verdict analysis, Appellant’s claim in that regard is puzzling because: (1) on the pre-shooting 911 call recording, Appellant stated three separate times he was “about” to shoot Victim before Appellant had even arrived back at his property; and (2) in his post-shooting account of what supposedly occurred, Appellant alleged he did, in fact, expressly tell Appellant *to stop where he was*, which—if true—meant Appellant both had time to order Victim to leave before Victim attempted to draw his own weapon and did the exact opposite of that by commanding Victim at gunpoint to stay. (Trl. State’s Ex. # 4; Trl. Def. Ex. # 1).

a rational and reasonable conclusion Appellant neither acted in self-defense nor acted in defense of habitation when he fatally shot Victim. Therefore, the trial judge was required to deny the directed verdict motion and allow the jury to resolve the factual questions raised by the evidence and testimony presented. Appellant's conviction should be affirmed.

Relevant Facts

From the evidence and testimony presented during trial, the jury could have reasonably concluded Appellant was accosted at gunpoint by Victim—a friend and regular guest at Appellant's home who had recently been having “issues” with Appellant—while Appellant was sitting in his vehicle parked in his residence's driveway, Appellant was able to and did drive away from the scene after that, Appellant went to his nearby father's house, and Appellant intentionally armed himself with a .45-caliber pistol at that location. (Trl. Tr. p. 180; pp. 296-307; Trl. State's Ex. # 4). Likewise, based on what was presented, Appellant then rapidly headed back to his home and, along the way, called 911 and *angrily* stated over and over and over again he was about to shoot Victim when he got there. (Trl. Tr. p. pp. 112-115; Trl. State's Ex. # 4). Furthermore, what was presented supported a conclusion Appellant, upon returning home, approached Victim with his gun drawn and then shot Victim just as he had repeatedly and angrily said he was going to do only moments earlier. (Trl. Tr. p. 116; pp. 176-177; p. 181; p. 211; p. 214; p. 260; p. 279; Trl. Def. Ex. # 1).

Despite the presentation of evidence and testimony establishing those facts, defense counsel moved for a directed verdict at the conclusion of the evidentiary phase of trial. (Trl. Tr. pp. 335-336; p. 344). As support for that motion, defense counsel asserted he believed Appellant had acted in defense of habitation when he shot Victim and further maintained self-defense had not been disproven since—in defense counsel's view—it would not “necessarily” have been

unlawful for Appellant to shoot someone who had recently robbed him. (Trl. Tr. pp. 335-336; pp. 338-339). Conversely, the solicitor argued Appellant's statement he was returning to shoot Victim constituted evidence of malice on Appellant's part, which was inconsistent with a valid claim of self-defense or defense of habitation. (Trl. Tr. p. 336). The solicitor further argued Appellant was not without fault for the difficulty that resulted in Victim's death because Appellant had been able to leave the scene but nevertheless returned, approached Victim with a loaded gun, and then shot him. (Trl. Tr. p. 337). Ultimately, after considering the arguments of counsel, the trial judge denied the directed verdict motion, noting Appellant's statements evincing an intention to shoot Victim before he was even back at the scene could—when viewed in a light most favorable to the State as required—reasonably be construed as evidence of malice on Appellant's part and, thus, required the case to be submitted to the jury. (Trl. Tr. pp. 339-340; p. 344).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see Cavazos v. Smith, 565 U.S. 1, 2 (2011) (“[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury.”). In other

words, “unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge’s ruling upon a motion for a directed verdict must stand absent an error of law.” State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see United States v. Ashley, 606 F.3d 135, 138 (4th Cir. 2010) (“Reversal for insufficient evidence is reserved for the rare case where the prosecution’s failure is clear.” (citation and internal quotations omitted)).

Analysis

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) (“[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is not permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Franklin, 80 S.C. 332, ___, 60 S.E. 953, 955 (1908) (“The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.”).

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced,

the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) (“[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.”). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury’s exclusive role to find the facts, weigh the evidence, evaluate witness credibility, determine what inferences should be drawn from the facts, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 (“[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) (“It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.”).

When a defendant raises a claim of self-defense during trial, the State is required to disprove self-defense beyond a reasonable doubt. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011); see State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2d 489, 492-493 (1998) (“[C]urrent law requires the State to disprove self-defense, once raised by the defendant, beyond a reasonable doubt.”). The State’s burden of disproving self-defense is satisfied when the State disproves any *one* of the elements of self-defense by proof beyond a reasonable doubt. Bixby, 388 S.C. at 554, 698 S.E.2d at 586. Significantly, in making a determination as to whether the

State met its burden of disproving self-defense, the trial judge should conduct the same analysis applicable to any other directed verdict motion and deny the motion if there is *any* direct or substantial circumstantial evidence viewed in a light most favorable to the State reasonably tending to prove the guilt of the accused or from which guilt could be fairly or logically deduced. See State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (applying the traditional directed verdict standard of review when considering whether Butler was entitled to the grant of a directed verdict based on a claim of self-defense); State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) (applying the traditional directed verdict standard of review when considering whether Long was entitled to the grant of a directed verdict based on a claim of self-defense).

As previously discussed, four elements must typically be present to establish the defense of self-defense—which, again, is a defense based on *necessity*—in South Carolina. State v. Bryant, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999); see Osborne, 202 S.C. at ___, 25 S.E.2d at 563 (“The defense of self-defense is based upon necessity[.]”). Those required elements are: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must either have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or have actually been in imminent danger; (3) if the defense is based on the belief of imminent danger, the belief must have been the same as one that would have been entertained by a reasonably prudent person of ordinary firmness and courage in the same situation; if the defendant was in actual imminent danger, the circumstances must have been such that would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to prevent serious bodily injury or loss of life; and (4) there were no other probable means of avoiding the danger than to act as the defendant did in the situation. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994).

Relatedly, much like self-defense, defense of habitation may justify the use of force—including potentially deadly force—when applicable. Osborne, 202 S.C. at ___, 25 S.E.2d at 563-564; see State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001) (“The defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was defending himself from imminent attack on his own premises.” (citation and internal quotations omitted)). That distinct defense involves “ending an unwarranted intrusion [of one’s home or premises] through the use of *reasonably necessary* means of ejection.” State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (emphasis added). Thus, for it to be applicable, “a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances.” Id. at 124, 651 S.E.2d at 323. Pursuant to the law of defense of habitation, “[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 obtrusion or to accomplish the expulsion*.” State v. Bradley, 126 S.C. 528, ___, 120 S.E.2d 240, 242 (1923) (emphasis added). Meanwhile, when a person is actually attacked on the person’s premises, self-defense would be applicable, but there would be no duty to retreat. Id. at ___, 120 S.E.2d at 243. Critically, “a person on his premises, outside his home, if assaulted by another with a deadly weapon is not bound to retreat, but may stand his ground, and meet such attack even to the killing of his assailant, *if in other respects he brings himself within the ordinary rules of self-defense[.]*” Id. (emphasis added and citations omitted).

With those guiding principles in mind, the evidence and testimony presented during Appellant’s trial—when viewed in a light most favorable to the State as required—supported a

rational and logical conclusion Appellant was not acting in self-defense or defense of habitation when he shot and killed Victim. Critically, that is true for several key reasons.

First, through the introduction of Appellant's statements on the 911 call he placed just a few minutes before the shooting, the jury heard Appellant—who sounded angry and agitated—*repeatedly* express an intention to shoot Victim when he arrived back at the scene. From that, the jury could reasonably and rationally conclude Appellant did not shoot Victim out of necessity and only as a last resort while expelling him from his property but, instead, did so out of anger, malice, or both as revenge for Victim having accosted him at gunpoint earlier that night. See Everett, 565 N.E.2d at 1301 (recognizing self-defense cannot justify acts of retaliation or revenge). Critically, as a matter of law, such retaliatory conduct could not have constituted an act of self-defense or defense of habitation since such defenses are based on *necessity*. Osborne, 202 S.C. at ___, 25 S.E.2d at 563; cf. Love v. State, 391 S.E.2d 447, 448 (Ga. Ct. App. 1990) (concluding a jury instruction on self-defense was not warranted because the “evidence showed only that [the appellants] had struck the victim in *retaliation* and not that they had done so in the reasonable belief that striking him was a necessary defensive response to any *continuing* use of force on his part”).

Second, the evidence and testimony establishing Appellant safely left the scene after the earlier provocative incident involving Victim, armed himself with a firearm, returned with a *stated intention to shoot Victim*, approached Victim with the gun drawn, and then quickly shot Victim constituted evidence from which the jury could reasonably and rationally conclude Appellant was not without fault for the difficulty. See Griffin v. State, 495 So. 2d 1352, 1354 (Miss. 1986) (“[O]ne who leaves an altercation, arms himself, and returns with the intent to and does use his weapon on the other party cannot claim self-defense.” (citing Cooley v. State, 391

So. 2d 614 (Miss.1980)); cf. Commonwealth v. Mercado, 922 N.E.2d 140, 150 (Mass. 2010) (“The defendant was not detained at the scene against his will, and he was not compelled to return to the scene, much less to return with a loaded gun. The judge properly did not instruct the jury on self-defense.”); State v. Santiago, 370 S.C. 153, 160, 634 S.E.2d 23, 27 (Ct. App. 2006) (“Even assuming, as Santiago testified, that [the victim] reached for the gun while in Santiago’s hands, he did so after Santiago brought about the difficulty by removing the shotgun from the trunk and aiming it at [him].”). Indeed, based on what was presented, Appellant could have avoided the difficulty *entirely* without placing his or anyone else’s safety in any immediate jeopardy simply by waiting only a few moments for the responding law enforcement officers he had already summoned to arrive at the scene, but he elected to take matters into his own hands. See Brown v. United States, 619 A.2d 1180, 1182 (D.C. 1992) (“A defendant cannot successfully claim self-defense when he left an apparently safe haven to arm himself and return to the scene.” (citation and internal quotations omitted)); cf. State v. Meyers, 781 P.2d 700, 705 (Kan. 1989) (concluding Meyers—who left the scene of the confrontation, went to another location, armed himself with a rifle, and then returned to the scene—was not acting in self-defense and not entitled to a self-defense jury instruction because he “could have avoided the fatal confrontation by remaining in Deerfield”). Therefore, the issue of whether Appellant was without fault for the difficulty that ensued when he returned to the scene with a visibly-displayed pistol was one that could only properly be resolved by the jury. See Bryant, 336 S.C. at 345, 520 S.E.2d at 322 (explaining an individual who provokes or initiates an assault cannot escape criminal liability by invoking self-defense); cf. State v. Patterson, 63 So. 3d 140, 149 (La. Ct. App. 2011) (“At trial, defendant testified that, after the victim arm-robbed him of his money and drugs, the victim walked toward his vehicle. Defendant admitted that, after the victim walked

away, he retrieved his gun, ran toward the victim's car, opened the passenger-side door, and shot the victim. . . . 'The law does not permit an individual to track down his enemy, shoot him with a pistol, and then claim justification for the homicide because of prior threats.' Furthermore, the State presented evidence that victim was shot in the back of his head, which indicates that the defendant became the aggressor and his claim of self-defense was not supported by the facts." (footnote and citations omitted)).

Third, based on what was presented, there were significant inconsistencies in Appellant's various statements that further justified the denial of his directed verdict motion. Specifically, on the pre-shooting 911 call recording, Appellant repeatedly and angrily expressed an intention to shoot Victim as he rushed back to the scene, while Appellant's excited utterances¹⁸ after the shooting included conflicting claims he told Victim to stay where he was just before shooting him *and* was telling Victim to go at that time. Significantly, those inconsistencies in Appellant's own accounts of the shooting raised credibility issues that could only appropriately be resolved by the jury, which required the directed verdict motion to be denied. See State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("[Richburg] contends . . . that the trial judge should have directed a verdict, as a matter of law, of not guilty in favor of the defendant on the plea of self-defense. When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. . . . Among other considerations is the credibility of the witnesses, including that of the appellant himself. When there is reason to discredit a witness because of interest or otherwise the judge is not required to take the case from the jury as a matter of law but may and should submit the issues, including credibility of the witnesses, to the

¹⁸ As part of those post-shooting remarks, Appellant also falsely told law enforcement he did not know the identities of Victim's companions at the time of the shooting, and the false nature of that particular claim was clearly exposed during trial. (Trl. Tr. p. 18; p. 300; p. 307; p. 319; Trl. Def. Ex. # 1).

jury.”); see also State v. Jenkins, 222 S.C. 359, 360-361, 72 S.E.2d 829, 829 (1952) (“It is not the function of [the appellate] court to pass upon the weight of the evidence, but only to determine its sufficiency to support the verdict[.]”); Town of Hartsville v. Munger, 93 S.C. 527, 529, 77 S.E. 219, 219 (1913) (“False and conflicting statements . . . have always been regarded as some evidence of guilty knowledge and intent.”); cf. Butler, 407 S.C. at 382, 755 S.E.2d at 460 (“[T]he evidence in the present case created a jury issue on the issue of self-defense. For example, as the trial court recognized when ruling on the directed verdict motion, [Butler]’s various, inconsistent accounts of how the stabbing occurred created credibility issues and questions of fact to be resolved by the jury.”); State v. Starnes, 213 S.C. 304, 313, 49 S.E.2d 209, 212 (1948) (rejecting Starnes’s claim he was entitled to a directed verdict because he was lawfully ejecting a trespasser “in the light of the conflict of testimony as to the facts”). Moreover, since Appellant was not consistent on whether he was attempting to eject Victim from the property, was trying to detain Victim, *or* was planning before he even got back home to simply shoot Victim, Appellant’s own words could have constituted direct evidence from which the jurors could have reasonably and rationally concluded Appellant was not acting in defense of habitation when he killed Victim depending on which ones they decided to credit as truthful. See State v. Curtis, 356 S.C. 622, 633-634, 591 S.E.2d 600, 605 (2004) (“If there is *any direct evidence* or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.” (emphasis added)); State v. Nesmith, 213 S.C. 60, 67, 48 S.E.2d 595, 598 (1948) (explaining direct evidence is testimony tending to directly to prove a fact in issue if believed).

Accordingly, since the evidence and testimony presented during trial supported a rational conclusion Appellant was not acting in self-defense or defense of habitation when he shot Victim

and neither of those defenses were conclusively established as a matter of law, the trial judge correctly denied the defense's directed verdict motion and submitted the case to the jury so it could carry out its role of resolving the factual disputes raised by the evidence. See State v. Hall, 259 S.C. 529, 532, 193 S.E.2d 269, 270 (1972) ("[I]f the testimony presented a factual issue as to whether appellant killed her husband in self-defense, the motions for a directed verdict were properly denied."); cf. Dickey, 394 S.C. at 503, 716 S.E.2d at 103 (finding a directed verdict on self-defense was warranted only where the evidence of self-defense was "uncontroverted"); Wiggins, 330 S.C. at 548, 500 S.E.2d at 495 ("We find the State presented sufficient evidence to create a jury issue regarding whether [Wiggins] was acting in self-defense or was guilty of voluntary manslaughter."); Long, 325 S.C. at 63, 480 S.E.2d at 63-64 ("While self-defense can be inferred even from the State's version of the evidence, the evidence of self-defense is not conclusive. . . . Accordingly, the trial judge properly refused to direct a verdict in appellant's favor based on self-defense."). Appellant's convictions should be affirmed.

III.

The trial judge correctly instructed the jury on the lesser-included offense of voluntary manslaughter because the evidence and testimony presented during trial supported a rational conclusion Appellant was guilty of each and every element of voluntary manslaughter, including that Appellant fatally shot the victim while acting in sudden heat of passion resulting from sufficient legal provocation.

Appellant contends the trial judge reversibly erred by instructing the jury on the lesser-included offense of voluntary manslaughter. In support of that contention, Appellant maintains there was purportedly no evidence he killed Victim in sudden heat of passion since he never personally stated he lost control or was overcome with an uncontrollable impulse to do violence. In Appellant's view, the *only* conclusion supported by the evidence was he shot Victim in self-defense. To the contrary, the jury could have rationally and logically concluded from the evidence and testimony presented during trial Appellant was guilty of each and every element of voluntary manslaughter, including that Appellant fatally shot the victim while acting in sudden heat of passion resulting from sufficient legal provocation. Under such circumstances, the trial judge was required to instruct the jury on the lesser-included offense of voluntary manslaughter and allow the jurors to carry out their exclusive fact-finding role. Appellant's conviction should be affirmed.

Relevant Facts

Amongst the evidence introduced during Appellant's trial, Mayo, Victim's girlfriend at the time of his death, testified about Victim's and Appellant's friendly relationship and about how the two both regularly hung out together at various locations, including Appellant's home and yard, and went on vacations with one another. (Trl. Tr. pp. 296-299; pp. 306-307). However, Mayo also revealed Victim and Appellant had been having issues with one another for several days leading up to the incident, which resulted in Appellant atypically excluding her and

Victim from a recent beach trip. (Trl. Tr. pp. 300-302). Along with that testimony, Victim's text messages to Mayo just before the shooting were introduced. (Trl. Tr. pp. 304-305). Notably, those messages suggested Victim admittedly "drew down" on Appellant on the date of the incident, Appellant apologized about the beach trip in response and gave Victim all his money, and Victim then gave that money back. (Trl. Tr. pp. 304-305; Trl. State's Ex. # 65).

In addition to that, multiple 911 call recordings were introduced into evidence and played for the jury. (Trl. Tr. pp. 109-116; p. 317). In one from May 20, 2020, Appellant reported Victim, whom he identified as "supposedly a friend," was on private property refusing to leave and—although not personally home at the time—Appellant told his girlfriend to tell Victim to leave.¹⁹ (Trl. Tr. p. 317; Trl. State's Ex. # 3 (911 Call Recording)). In another from May 26, 2020, Appellant—while seemingly agitated and angry—claimed he had "just" been robbed at gunpoint by Victim, was armed, and was about to shoot Victim. (Trl. State's Ex. # 4). Along with that, additional testimony and evidence was presented establishing Victim did exactly that and fatally shot Victim a short time later by firing several bullets at him with a .45-caliber pistol. (Trl. Tr. p. 176; p. 181; p. 206; p. 214; p. 260).

Finally, testimony and evidence was presented about how Appellant was talking rapidly and seemed "very hyper," scared, traumatized, and difficult to understand in the immediate aftermath of the shooting. (Trl. Tr. p. 138; p. 181). Along with that, the body camera recording of the frantic statements Appellant made to law enforcement at the scene shortly after the shooting was admitted into evidence and played for the jury. (Trl. Tr. p. 182). On that recording, Appellant asserted he had been "scared for [his] freaking life" and "didn't know what to do" after being robbed at gunpoint by Victim "out of nowhere," retrieved a gun in response,

¹⁹ Notably, testimony was also presented establishing no law enforcement report was made in connection to the May 20, 2020, 911 call. (Trl. Tr. pp. 317-318).

quickly returned to the scene, approached Victim with his gun, and both shot and ran when Victim “tried to pull the gun again.” (Trl. Def. Ex. # 1).

After all that evidence and testimony was presented, the trial judge conducted a charge conference with the parties. (Tr. p. 350). During that discussion, the solicitor requested a jury instruction on the lesser-included offense of voluntary manslaughter, arguing the ongoing nature of the difficulties between Appellant and Victim leading up to the shooting could have supported a conclusion Appellant killed Victim in sudden heat of passion following sufficient legal provocation. (Trl. Tr. pp. 353-355). Meanwhile, when asked for his position on the matter, defense counsel—without presenting any arguments or explanations of any kind—simply indicated he did not want such a charge to be given.²⁰ (Trl. Tr. p. 355). Upon considering the matter overnight, the trial judge decided to instruct the jury on voluntary manslaughter over the defense’s objection.²¹ (Trl. Tr. p. 355; p. 359).

Thereafter, the parties presented their closing arguments²² to the jury, and the trial judge instructed the jury on the applicable law. (Trl. Tr. pp. 361-416). In doing so, the trial judge included jury instructions on murder, self-defense, defense of habitation, and—consistent with

²⁰ In total, defense counsel’s full stated position on the matter was: “No, sir.” (Trl. Tr. p. 354).

²¹ Although defense counsel did—in a completely conclusory manner—inform the trial judge he did not want a voluntary manslaughter jury instruction to be presented, he articulated his reason why he did not believe such an instruction was warranted for the first time in his post-trial motion for a new trial. (New Trial Motion, pp. 3-4). More specifically, defense counsel argued “[t]he State was not entitled to a Voluntary Manslaughter charge where it made no such case.” (New Trial Motion, p. 4). Aside from those brief remarks, the rest of defense counsel’s substantive arguments on the matter seemed to be centered on his belief Appellant’s self-serving custodial statements to law enforcement should have been admitted into evidence since those statements were found to have been voluntarily made. (New Trial Motion, pp. 3-4).

²² As part of her closing argument, the solicitor advised the jurors one option they would have would be to convict Appellant of voluntary manslaughter, and she suggested Appellant’s claim Victim put a gun to a head may have resulted in Appellant becoming enraged, temporarily losing control, and shooting Victim in sudden heat of passion. (Trl. Tr. pp. 377-378).

his earlier ruling—voluntary manslaughter. (Trl. Tr. pp. 408-413). At the conclusion of the jury charge, both the solicitor and defense counsel expressly confirmed they had no objections to it. (Trl. Tr. pp. 416-417). Following that, the case was submitted to the jury, and the jury ultimately convicted Appellant of the lesser-included offense of voluntary manslaughter after just forty-five minutes of deliberations. (Trl. Tr. p. 417; p. 420).

Standard of Review

On appeal, an appellate court reviewing a trial judge’s jury charge must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). So long as the trial judge properly instructed the jury on the applicable law, a trial judge’s decision to give or refuse an instruction on a lesser-included offense will not be reversed on appeal. Rye, 375 S.C. at 123, 651 S.E.2d at 323; see State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) (“A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence. If any evidence exists to support a charge, it should be given.”). Moreover, an appellate court will only reverse a trial judge’s decision regarding jury instructions when that decision constitutes an abuse of discretion resulting in actual prejudice. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

Analysis

The purpose of a trial judge’s jury instructions is “to enlighten the jury and to aid it in arriving at a correct verdict.” State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). Significantly, the law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009); see State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003) (“In general, the trial judge is required to charge only the

current and correct law of South Carolina, . . . and the law to be charged to the jury is determined by the evidence at trial.” (citations omitted)). Ordinarily, a trial court has a duty to give a requested instruction when it correctly states the law applicable to the issues and is supported by the evidence, but a trial judge should decline to give a requested instruction when it tenders an issue that is not presented or supported by the evidence. State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996); see State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975) (“No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence.”).

When instructing the jury on the law, “[a] trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). Significantly, if *any* evidence warrants the giving of a charge on a lesser-included offense and the charge is requested, the trial judge *must* instruct the jury on the lesser-included offense and should only refuse to instruct the jury on such an offense when there is *no evidence whatsoever* from which the jury could conclude the defendant committed the lesser rather than the greater offense.²³ State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009); see

²³ Relying on this Court’s decision in State v. Payne, 434 S.C. 121, 862 S.E.2d 81 (Ct. App. 2021), Appellant maintains the facts must be viewed in a light most favorable *to the defendant* when determining whether the evidence supports a charge on a lesser-included offense. (App. Br. p. 31). Significantly, such review made sense in Payne because Payne was the one who requested the voluntary manslaughter jury instruction but did not receive it. State v. Payne, 434 S.C. 121, 134, 862 S.E.2d 81, 87 (Ct. App. 2021). However, in a case like Appellant’s in which *the State* was the one that requested the voluntary manslaughter jury instruction, the evidence necessarily would have to be viewed in a light most favorable to the State as the requesting party since the applicable analysis involves determining whether *any* evidence supported the charge. See State v. Penland, 275 S.C. 537, 540-541, 273 S.E.2d 765, 767 (1981) (“In considering whether the evidence was sufficient to support a conviction in a criminal case, the evidence must be viewed in the light most favorable to the State We conclude the facts of this case support a charge of voluntary manslaughter and the trial court correctly charged the jury. We affirm

State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951) (“[T]o warrant the Court in eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.”).

In the case at bar, the trial judge properly instructed the jury on the lesser-included offense of voluntary manslaughter because evidence and testimony was presented during trial from which the jury could have concluded Appellant was guilty of that offense instead of the indicted offense of murder. And, by doing so, the trial judge did nothing more than wisely allow the jury to carry out its *exclusive* fact-finding role in deciding whether the facts presented supported a conclusion Appellant unlawfully acted with malice, unlawfully acted in sudden heat of passion after sufficient legal provocation, or lawfully acted in self-defense. See Cheeks, 401 S.C. at 328, 737 S.E.2d at 484 (explaining it is up to the jury alone to determine the facts and decide what inferences to draw from those facts); State v. Pruitt, 187 S.C. 58, ___, 196 S.E. 371, 373 (1938) (explaining the jury is the *sole* judge of the facts); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) (“The task of determining the weight of the evidence lies within the exclusive province of the jury.”).

Voluntary manslaughter is unquestionably a lesser-included offense of murder. State v. Sims, 426 S.C. 115, 131, 825 S.E.2d 731, 739 (Ct. App. 2019). At its core, voluntary manslaughter is the “unlawful killing of another without malice, express or implied,” and it has been defined pursuant to the common law as “the unlawful killing of a human being in sudden

appellant’s conviction for voluntary manslaughter.” (citation omitted)). Beyond that, reviewing the evidence in such a matter would be fully consistent with the well-settled fact that—no matter who requested the charge—a voluntary manslaughter jury instruction is only not warranted in South Carolina when it *very clearly* appears there is *no evidence whatsoever* tending to reduce the defendant’s offense from murder to voluntary manslaughter. See State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 565 (1969) (recognizing more than five decades ago it is “well settled that to warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatever tending to reduce the crime from murder to manslaughter”).

heat of passion upon a sufficient legal provocation.” Gardner, 219 S.C. at 104, 64 S.E.2d at 134; see S.C. Code Ann. § 16-3-50 (“A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years.”). For a killing to constitute voluntary manslaughter, both heat of passion *and* sufficient legal provocation must exist at the time of the killing, and the heat of passion must result from the legal provocation. State v. Starnes, 388 S.C. 590, 596-597, 698 S.E.2d 604, 608 (2010).

Importantly, sudden heat of passion resulting from sufficient legal provocation in the context of voluntary manslaughter “need not dethrone reason entirely, or shut out knowledge and volition[.]” State v. Smith, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011). However, it “must be such as would naturally disturb the sway of reason, 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.” Id. “In determining whether the act which caused death was impelled by heat of passion . . . , 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.” Norris, 253 S.C. at 35, 168 S.E.2d at 566.

Moreover, “[e]ven when a person’s passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter.” State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001). Critically though, no definitive or always-applicable time period for cooling off can properly be set as a matter of law. State v. Goodson, 140 S.C. 357, ___, 138 S.E. 816, 817-818 (1927). Instead, a proper determination of whether a reasonable time had

elapsed for passions to have cooled and reason to have returned after a provocation rests on the particular circumstances involved in each individual case, including the nature of the provocation, the traits and condition of the perpetrator, and the perpetrator's conduct and statements around the time of the incident. Id. And, although it *can* in some circumstances be appropriate for a court to make the determination as to whether a sufficient cooling-off period had elapsed, such determinations have historically fallen within the province of the jury since jurors were and are the exclusive judges of the facts in criminal trials. State v. Hernandez, 386 S.C. 655, 662, 690 S.E.2d 582, 662 (Ct. App. 2010); see William Shepard McAninch et al., The Criminal Law of South Carolina 215 (6th ed. 2013) (“In a system relying upon lay persons for factual determinations it seems inappropriate to remove the issue from the fact-finder by determining it as a matter of law. It would seem more appropriate that the issue be submitted to the jury with appropriate instructions and for that body to determine whether the defendant cooled.”).

With that in mind, the testimony and evidence presented during trial established Victim and Appellant—although friends—had been having significant “issues” with one another for several days leading up to the incident. Indeed, the issues were substantial enough that Appellant called 911 and reported Victim to law enforcement only six days before the shooting. Additionally, the testimony and evidence presented established Victim—as a result of the ongoing issues between the two—suddenly “drew down” on Appellant, pointed a firearm at him, and, depending on whether Appellant's post-shooting excited utterances or Victim's pre-shooting messages were accepted as truthful, either robbed Appellant at gunpoint, humiliatingly forced him to apologize in front of others for not including Victim and his girlfriend in the recent beach trip, or perhaps did both. Furthermore, according to the evidence and testimony presented,

when Appellant returned to the scene armed with a gun and pointed it at Victim just a few minutes after Victim had suddenly accosted him at gunpoint, Victim responded by again provocatively grabbing his own gun. Based on those threatening and provocative acts directed by Victim toward Appellant, the jury could have found there was evidence of sufficient legal provocation on Victim's part. See State v. Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (recognizing "an overt, threatening act or physical encounter may constitute sufficient legal provocation"); cf. State v. Locklair, 341 S.C. 352, 362, 535 S.E.2d 420, 425 (2000) ("[S]ince [the victim] *did not* take any overt physical actions against Locklair, even the most liberal construction of her words do not reduce the crime to manslaughter." (emphasis added)).

Likewise, while some evidence and testimony presented during trial certainly could have supported a rational conclusion Appellant killed Victim with malice, testimony and evidence was also presented from which the jury could have reasonably concluded Appellant killed Victim while acting in a sudden heat of passion. See State v. Cottrell, 376 S.C. 260, 265, 657 S.E.2d 451, 454 (2008) (holding the trial judge erred by refusing to instruct the jury on voluntary manslaughter where the evidence was susceptible to more than one inference regarding what occurred). Specifically, the testimony and evidence from trial demonstrated Appellant shot and killed Victim only a few minutes after Victim committed his first provocative act toward Appellant and wronged him in front of other friends in the midst of an ongoing highly-contentious dispute between the two that had been going on for at least several days by that point. See Locklair, 341 S.C. at 360, 535 S.E.2d at 424 ("[I]t is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the [killing]."); Wiggins, 330 S.C. at 549, 500 S.E.2d at 495 (finding sufficient evidence existed to support a voluntary manslaughter conviction where the evidence established Wiggins was

engaged in a heated argument with the victim and the victim's sister prior to the killing); State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (holding the trial judge committed reversible error by *not* instructing the jury on voluntary manslaughter where the testimony tended to show Lowry was engaged in a heated argument with the decedent and the decedent was about to initiate a physical encounter when the fatal shooting occurred); cf. Leggette v. State, 440 S.C. 590, 604, 892 S.E.2d 153, 161 (Ct. App. 2023) (“In light of the prior troubles between Petitioner and the westside group and the menacing actions of the various westside men on the night of the shooting, we find evidence exists to support the PCR court’s finding that trial counsel was not deficient in failing to object to the voluntary manslaughter instruction as a lesser-included offense.”). Additionally, the testimony and evidence suggested Appellant’s immediate response to Victim’s provocative act was to become both terrified and angry to the point he “didn’t know what to do,” rush to arm himself with a pistol, and then—*while still fearful, agitated, and mad with anger*—rush back to the scene, stating multiple times along the way he was going to shoot a supposed friend when he got there. See Black’s Law Dictionary 868-869 (11th ed. 2019) (defining “heat of passion” as “[r]age, terror, or furious hatred suddenly aroused by some immediate provocation, usu. another person’s words or actions”). Likewise, the evidence and testimony established Appellant—despite having been friends with Victim—pointed his gun at Victim upon returning to the scene and promptly fired two shots at him when Victim committed yet another provocative act by moving like he was going to draw his firearm in response to Appellant’s approach. Cf. Hernandez, 383 S.C. at 662, 690 S.E.2d at 586 (concluding a voluntary manslaughter instruction was not warranted when Hernandez was attacked at a party, left, went home, armed himself with a gun, returned to the party, and resumed drinking and enjoying himself until he was insulted by the victim because “Hernandez’s

intervening actions and *demeanor upon returning to the party* support[ed] a finding that he cooled off after being ejected” (emphasis added)). Significantly, in light of Appellant’s angry, rapid, fear-driven, and violent response to Victim’s provocative acts even though the two had been close enough friends to go on vacations together,²⁴ the jury could have reasonably concluded Appellant’s actions were the product of heat of passion and an uncontrollable impulse to do violence as opposed to the product of cool, deliberative thought. See Knoten, 347 S.C. at 305, 555 S.E.2d at 396 (finding the trial judge reversibly erred in refusing to instruct the jury on voluntary manslaughter when the evidence and testimony presented during trial established Knoten retrieved a weapon and killed the victim with it after she twice cut him with a knife, which constituted evidence of sufficient legal provocation and heat of passion such that a voluntary manslaughter jury instruction was warranted under the circumstances); see also Starnes, 388 S.C. at 599, 698 S.E.2d at 609 (“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.”); Wiggins, 330 S.C. at 549, 500 S.E.2d at 495 (“[F]ear can constitute a basis for voluntary manslaughter.”); State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) (“The question of criminal intent with which an act is done is one of fact and is ordinarily for jury determination except in extreme cases where there is no evidence thereon. The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.” (citation omitted)). And, significantly, further supporting the reasonableness of a conclusion Appellant’s actions in shooting Victim had

²⁴ During the sentencing proceedings, Appellant even affirmed he “loved” Victim. (Trl. Tr. p. 429).

been driven by passion instead of reason, Appellant's behavior just after the shooting was frantic and "very hyper," the first responding officer who interacted with Appellant had difficulty even understanding him, and Appellant seemed traumatized in the view of another officer at the scene. See State v. Martin, 94 S.C. 92, ___, 77 S.E. 721, 721 (1913) ("The language and behavior of the defendant at the time of the shooting, *or immediately afterwards*, showing his attitude of aggression or of regret, clearly tended to enlighten the jury on the issue as to whether the shooting was done with malice, or in heat and passion, or in self-defense." (emphasis added)).

In light of that testimony and evidence, sufficient evidence existed from which the jury could have rationally and logically concluded Victim was fatally shot by Appellant while Appellant was acting in a sudden heat of passion that resulted from sufficient legal provocation on Victim's part. See Knoten, 347 S.C. at 307, 555 S.E.2d at 397 (holding there was "simply no evidence that, **as a matter of law**, [Knoten] had sufficient time to cool" even though the evidence and testimony demonstrated Knoten went to retrieve a weapon in response to an attack before he returned and killed his victim); State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983) ("Here, a witness testified that appellant and the victim had been 'fighting.' From this circumstance of 'provocation' and 'heat of passion,' guilt of voluntary manslaughter could be fairly and logically deduced and was thus a proper matter for jury determination."); Goodson, 140 S.C. at ___, 138 S.E. at 817-818 (reversing Goodson's conviction for assault and battery with intent to kill because the trial judge's jury instruction indicating a person could not as a matter of law be acting in heat of passion in response to a provocation that occurred *on the preceding day* improperly "took from the jury altogether the question of cooling time and attempted to fix such time as a matter of law"); Oates, 421 S.C. at 27, 803 S.E.2d at 925 ("The jury could have reasonably inferred from all of this evidence that [Oates] was acting in a deliberate, controlled

manner. However, unlike the lack of *any* evidence of sudden heat of passion in Cook and Starnes, there is some evidence in the present case from which the jury could have reasonably inferred that [Oates] was incapable of cool reflection and was acting under an uncontrollable impulse to do violence.” (citation and internal quotations omitted)). Under such circumstances, the record was not totally devoid—“very clearly” or otherwise—of any evidence upon which the jury could have found the elements of voluntary manslaughter had been established. See Gardner, 219 S.C. at 104, 64 S.E.2d at 134 (“[T]o warrant the Court in eliminating the offense of manslaughter, it should *very clearly appear that there is no evidence whatsoever* tending to reduce the crime from murder to manslaughter.” (emphasis added)). Accordingly, the trial judge properly instructed the jury on voluntary manslaughter and correctly left it to the jurors—who needed less than an hour to arrive at a unanimous guilty verdict on the voluntary manslaughter charge—to resolve the factual disputes raised by the evidence as to whether Appellant’s actions were unlawful, justified, malicious, or the sudden product of an uncontrollable impulse to do violence that resulted from sufficient legal provocation. See State v. Bryant, 391 S.C. 225, 233, 705 S.E.2d 465, 469-470 (Ct. App. 2010) (“If there is any evidence to support a jury charge, the trial judge should give a requested charge on the matter.”); State v. Tillman, 433 S.C. 58, 64-65, 856 S.E.2d 168, 172 (Ct. App. 2021) (instructing “it was within the *jury’s* purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict”). Appellant’s conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

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