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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County
The Honorable Martha Rivers, Circuit Court Judge
The Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

KURTINO DAMON WEATHERSBEE,

APPELLANT.

Appellate Case No. 2025-000246

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the evidence demonstrated that Appellant was at his home at the time of the incident, Appellant had no duty to retreat, the decedent was the aggressor who had been told to leave the property by Appellant prior to the incident, and Appellant's fear of great bodily injury or death was reasonable thereby satisfying the elements of common law self-defense and the Act by a preponderance of evidence?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON APPEAL

Whether the circuit court abused its discretion by finding Appellant was not entitled to immunity because he did not demonstrate that his fear of the victim was reasonable and did not show that he was entitled to the presumption of fear in Subsection (A) of the Act.

STATEMENT OF THE CASE

Respondent accepts Appellant's statement of the case for the purposes of this appeal.

STATEMENT OF FACTS

On August 7, 2023, Kurtino Weathersbee and two companions went to Orangeburg to donate plasma and shop for groceries for a “get-together” at his home in Bamberg County. (R. p. 4, ll. 15–16; p. 7, ll. 1–19).¹ One of the two men with Weathersbee was James McCreary (the victim). (R. p. 7, ll. 20–22). According to Weathersbee, the three men also stopped at a fast-food restaurant and an auto parts store before returning to Bamberg County around 3:30 p.m. (R. p. 8, l. 19–p. 9, l. 3).

Weathersbee said he fell asleep on the drive back to Bamberg County, only to wake up to the victim “cursing me out about the groceries.” (R. p. 9, ll. 12–15; p. 10, ll. 6–8). Weathersbee unloaded a case of water from the vehicle’s trunk, then walked into the house he lived in with Norma Smith. (R. p. 13, ll. 3–5; p. 55, ll. 15–16). At that point, he testified, the victim was “up on me again.” (R. p. 13, ll. 5–6). The victim talked about how “M***** F***** going to respect his name,” and that Weathersbee and the other man had been slow. (R. p. 13, ll. 18–20). Weathersbee testified that he then “shot out the door” to try to draw the victim away from the women and children in the house. R. p. 13, l. 21–p. 14, l. 3). He said the victim continued to talk “trash.” (R. p. 14, ll. 11–15).

In response, Weathersbee said, he returned to the house to tell Norma² that she “need[ed] to tell Junior he not welcome over here no more.” (R. p. 14, ll. 17–20). Weathersbee testified that at some point he also told the victim that the victim “need[ed] to get the f*** on out of here.”

¹ The facts of the incident are recounted based on the immunity hearing held by the court on October, 25, 2024. *See State v. McCarty*, 437 S.C. 355, 374, 878 S.E.2d 902, 912–13 (2022) (observing that, in the context of immunity hearings, “the ruling must be based solely on the evidence presented at the pretrial hearing”).

² Norma was also referred to as “Lisa” at the hearing.

(R. p. 14, l. 24–p. 15, ll. 2).³ Weathersbee said that the victim then got into his car. (R. p. 15, ll. 16–18).

Thinking that the victim was leaving after seeing him through a “diamond in the door,” Weathersbee picked up some truck parts and charcoal. (R. p. 16, ll. 18–23).⁴ Weathersbee testified that the victim began backing out of the yard, going as far as the mailbox at the end of the home’s driveway. (R. p. 17, ll. 1–12). Weathersbee said that as the victim continued to talk trash, Weathersbee motioned for the victim to “shoo, just go head on.” (R. p. 19, ll. 7–17). Then, Weathersbee said, as he was repairing a truck, the victim pulled back toward the front of the home. (R. p. 18, ll. 9–23; p. 19, ll. 18–23). According to Weathersbee, the victim then jumped out of his car and charged Weathersbee while saying that Weathersbee “better have [his] m***** f***** pistol.” (R. p. 20, ll. 17–18). Weathersbee said he feared for his life. (R. p. 20, ll. 11–13). He pulled out a gun, fired one shot over the open door of the truck, then—as the victim appeared “like he was grabbing and ducking”—fired twice more. (R. p. 20, ll. 17–21). Knowing he was not legally allowed to have a gun,⁵ Weathersbee then fled into a soybean field behind the property. (R. p. 21, ll. 7–17). He threw his gun away in the field. (R. p. 49, ll. 18–21).

Weathersbee said he feared the victim because the victim was “a certified smacker,” which meant the victim was known for “taking somebody’s life or murder,” and was speaking

³ Norma Smith also testified to hearing Weathersbee tell the victim to leave during the argument with the victim, and to hearing the victim say “you better have something.” (R. p. 56, l. 16–p. 57, l. 5; p. 57, l. 23–p. 58, l. 2).

⁴ On cross-examination, Weathersbee said that he returned to the house after the victim got in his car. (R. p. 38, ll. 13–24).

⁵ Weathersbee had been convicted at 17 of, he testified, “kidnapping, armed robbery and burglary first.” (R. p. 27, ll. 1–7).

threateningly. (R., p. 25, ll. 11–18). He also said that he “thought” the victim had a gun. (R. p. 26, ll. 2–3; p. 35, ll. 22–25). Further, Weathersbee testified that he tried to avoid escalating the situation. (R. p. 28, ll. 20–24).

Melissa Smith, who had been married to McCreary and helped take care of Norma, testified that during the incident she stuck her head out of the door to be “nosy.” (Hrg. Tr. p. 67, ll. 6–20; p. 70, ll. 18–22). She recounted what happened next:

Well, when I looked, I said, James, come here. He didn’t say nothing. I said James, come here. And then I heard a gunshot and I saw him falling, so I duck. So I went down and he was struggling to say something, so I got down on my knees and put his head. He was trying to tell me something, but the blood was coming through his shirt and his nose.

(Hrg. Tr., p. 71, ll. 9–18). Melissa testified that the victim had been walking toward Weathersbee’s truck. (Hrg. Tr. p. 72, ll. 16–19). She further testified that she never saw the victim’s car move. (Hrg. Tr. p. 77, ll. 9–11). Melissa testified that she did not see anything in the victim’s hand when he was walking toward the truck, and that she did not see a gun around the victim after he had been shot. (Hrg. Tr. p. 77, ll. 23–24; p. 78, ll. 20–21).

An autopsy found that the victim had been shot twice, with one bullet entering the left back and once entering the left flank. (State’s Ex. 1).

In an order filed December 31, 2024, the hearing court denied Weathersbee’s motion to dismiss the indictment under the Protect of Persons and Property Act. *See* S.C. Code Ann. §§ 16-11-410 to -450 (West). The court found that the Act’s presumption that Weathersbee was in reasonable fear of his life did not apply because “[t]he presumption of reasonable fear does not apply when the victim also has a right to be at the residence.” (Order Denying Immunity, p. 4). Shortly after finding that, the court ruled:

The court finds that the victim was an invitee in the house. It is not clear that he had been “uninvited,” and it is not corroborated that he had backed out and returned into the yard as testified to be defendant. Defendant testified that he said something akin to get on out of here and waved his arm away from the house. He saw the victim back up to the mailbox at the street and then suddenly reverse course to enter the yard again.

(Order Denying Immunity, p. 4). The court also noted Melissa’s testimony about calling for the victim to come toward the house, finding that “[t]here is no evidence she did not have authority to make the invitation.” (Order Denying Immunity, pp. 4–5). As a result, the court said, “[t]he victim could not have been forcefully entering if he was being invited to enter.” (Order Denying Immunity, p. 5). The court the noted that “[i]f defendant recalls correctly that the victim started to leave and then pulled across the yard,” it would undermine Weathersbee’s attempt to invoke the presumption because of Section 16-11-440(B)(1) (providing that the presumption does not apply when the victim “has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder”).

The hearing court then turned to analyzing Weathersbee’s claim of immunity under Section 16-11-440(C).⁶ The court found that “the preponderance of the evidence is the men existed at the same time and the victim stopped his vehicle at the end of the ramp as he was exiting the yard.” (Order Denying Immunity, pp. 6–7). The court also found:

Defendant at that time is behind the door of the inoperable truck. He had the opportunity to retreat to the back yard. These facts undercut defendant’s belief that he was in imminent peril. Defendant’s witness did not feel endangered as she invited victim back into the home. Under these circumstance[s], the court does not find

⁶ “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.”

defendant's belief of imminent danger to be reasonable and denies his grant of immunity pursuant to subsection (C).

(Order Denying Immunity, p. 7). A motion to reconsider based on an argument that Melissa did not have the authority to invite the victim back to the home and that Weathersbee had no duty to retreat was denied. (Order Denying Defendant's Motion to Reconsider, pp. 1–2).

At a trial held January 28–30, 2025, a jury convicted Weathersbee of murder, possession of a weapon during the commission of a violent crime, and possession of a firearm by a person convicted of a violent felony. (Trial Tr. p. 217, ll. 11–24). The trial court sentenced Weathersbee to thirty years' imprisonment on murder and five years concurrent on the weapons charges. (Trial Tr. p. 225, ll. 15–19). This appeal follows.

STANDARD OF REVIEW

The responsibility of the circuit court after a claim for immunity under the Act is made is “to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard.” *State v. McCarty*, 437 S.C. 355, 365, 878 S.E.2d 902, 908 (2022) (quoting *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019)). “This Court, in turn, reviews an immunity determination for an abuse of discretion[.]” *id.*, which “occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support,” *id.* (quoting *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016)) (alterations in original).

ARGUMENT

This Court should affirm the denial of immunity because the hearing court found that Weathersbee did not show either the reasonable fear needed for self-defense or that Subsection (A) of the Act applied, and that determination should stand under the standard of review.

This case is guided by our supreme court’s instructions on the standard of review. *See McCarty, supra*. The hearing court found that Weathersbee had not proven that he was reasonably in fear of the victim and that Weathersbee was not entitled to immunity under either Subsection (A) or Subsection (C) of the Act. Weathersbee must show that those findings amount to an abuse of discretion—that the hearing court made an error of law or that the hearing court’s factual findings had no evidentiary support in the record. *See id.* Because Weathersbee has not done that, this Court should affirm.

Weathersbee argues that the hearing court was incorrect in denying him immunity under the Act. As to Subsection (A), Weathersbee argues that the victim was a trespasser when Weathersbee asked him to leave; that Weathersbee “knew and/or had reason to believe that an unlawful and forcible act was occurring,” (Init. Br. App. 17); and that Melissa could not invite the victim back onto the property. As to Subsection (C), Weathersbee argues that the hearing court improperly found that Weathersbee’s ability to retreat was irrelevant, and that he “was not engaged in any unlawful act that was the proximate cause of the shooting.” (Init. Br. App. 19). Furthermore, Weathersbee contends that his fear was reasonable.

Under the standard of review, this Court should affirm the hearing court’s decision. *See State v. Chithh-Berry*, 437 S.C. 527, 542, 878 S.E.2d 352, 360 (Ct. App. 2022) (“[T]he abuse of discretion standard of review does not allow [an appellate] court to reweigh the evidence or second-guess the [trial] court’s assessment of witness credibility.” (quoting *State v. Oates*, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017)) (second, third alterations in original)). Simply put, the

hearing court found that Weathersbee fell short on one of the grounds necessary for every theory of self-defense he asserts here—that he had a reasonable fear of imminent harm or qualifies for the presumption in the Act.⁷

Start with Subsection (A) of the Act, which provides immunity under certain circumstances when a person is defending his or her home.

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

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

⁷

As our supreme court has held:

The basic definition of when a person is justified in using deadly force in self-defense is comprised of four elements:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) 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;
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. 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; and
- (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998) (quoting *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)).

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 (West). *See State v. Jones*, 416 S.C. 283, 301, 786 S.E.2d 132, 141 (2016) (“[I]f section 16–11–440(A) applies, there is no requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A).”).

This right is not limitless; there are exceptions. One of those is found in Subsection (B) of the statute, which unwinds the presumption where, among other things, “the person . . . against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle.” *See State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (“[T]he presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence.”).

The essence of the hearing court’s findings regarding Subsection (A) is that Weathersbee did not prove by a preponderance of the evidence that he was entitled to the presumption. *See State v. Glenn*, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019) (“A defendant's entitlement to immunity from prosecution under the Protection of Persons and Property Act must be decided pretrial using a preponderance of the evidence standard.”); *State v. Gray*, 438 S.C. 130, 141, 882 S.E.2d 469, 475 (Ct. App. 2022) (“[T]he relevant inquiry is . . . whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence.” (alterations in original) (quoting *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019))). That’s the significance of the court’s finding that “[i]t is not clear that [the victim] had been ‘uninvited,’ and it is not corroborated

that he had backed out and returned into the yard as testified to by defendant.” (Order Denying Immunity, p. 4). Our supreme court has been clear that a court should review a defendant’s story, not simply take it at face value. *See Curry*, 406 S.C. at 371, 752 S.E.2d at 266 (“Appellant appears to argue the Act should be construed to require a trial court to accept the accused’s version of the underlying facts We find that the General Assembly did not intend such an application.”). The hearing court in this case did not find that the preponderance of the evidence supported Weathersbee’s version of events. Nor has Weathersbee shown that the court’s findings are “based on an error of law or [are] without evidentiary support.” *McCarty*, 437 S.C. at 365, 878 S.E.2d at 908.

Weathersbee’s main line of attack on the court’s determination here is to dispute whether the victim was still an invitee, or whether his status as an invitee had been revoked. The clarity of that revocation is key. *Compare State v. Bradley*, 126 S.C. 528, —, 120 S.E. 240, 242 (1923) (“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.”) *with id.* (“The occupant may, however, waive the protection of the castle and allow one to enter therein by express or implied license or invitation. Such a person cannot lawfully be ejected by the use of violence until he has been requested to depart, and if he refuse to heed the request the hands must be laid on gently and thereafter only so much force be used as is necessary to accomplish the ejection.” (apparently quoting from “Bish. New Cr. Law, 8th Ed. 895”)). *See also McCarty*, 437 S.C. 355, 367, 878 S.E.2d 902, 908 (2022) (holding that where the victim “was initially an invited guest before he

reportedly attacked” someone at the house, the defendant’s case had to be considered under Subsection (C)).

Weathersbee argues that Melissa was a guest, and that only Weathersbee or Norma could authorize the victim to remain on the property. But that ignores that Melissa was also a home healthcare provider for Norma. (Hrg. Tr. p. 67, ll. 11–16). Her instructions regarding the house, in other words, could have been taken by the victim to be the instructions of an agent of Norma. *See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 565, 813 S.E.2d 292, 303 (Ct. App. 2018) (“[T]he relationship of agency need not depend upon express appointment and acceptance thereof. Rather, the agency relationship may be, and frequently is, implied or inferred from the words and conduct of the parties and the circumstances of the particular case.” (quoting *Stiltner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 189, 717 S.E.2d 74, 77 (Ct. App. 2011))).⁸

Under the law, it was Weathersbee’s job to present sufficient proof for the hearing court to find by a preponderance of the evidence that the victim was no longer lawfully on the premises. The hearing court, after considering the evidence, found that he had not done so.

Given that, Weathersbee had to establish his reason to have a reasonable fear at the hearing—even under Subsection (C). *See Glenn*, 429 S.C. at 119, 838 S.E.2d at 497 (“Where the section is applicable, it replaces the duty to retreat element required to establish self-defense.”). Here, also, the hearing court found he hadn’t done so. The court’s considerations under Subsection (C) of the Act must be read through that lens. The court did not find that Weathersbee was not

⁸ Weathersbee also highlights his testimony at trial that the victim was pulling out of Weathersbee’s driveway, then reversed course and came running out of his car. The hearing court noted that it interpreted the testimony of at least one and perhaps both of Weathersbee’s corroborating witnesses as, at the least, not confirming that. (Order Denying Immunity, pp. 6–7). The court demonstrated some doubt about this testimony earlier in the order. (See Order Denying Immunity, p. 5) (“*If defendant recalls correctly* that the victim started to leave and then pulled back across the yard”) (emphasis added).

entitled to immunity *because* he didn't retreat; the court found that his lack of retreat raised doubts *about his fear* of "imminent danger." The court also noted that Melissa's testimony that she tried to get the victim to come back toward the house indicated that she also didn't perceive the victim to be an inherent threat.

CONCLUSION

Based on the evidence presented to the hearing court and the legal principles guiding its decision, the hearing court found that Weathersbee was not immune from prosecution under the Act. Because there is evidentiary support for that conclusion, and it was not controlled by an error of law, this Court should affirm.

Respectfully Submitted,

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