STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2018-000136

THE STATE,

Appellant,

vs.

ADAM KEITH LUNSFORD,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Contrary to Lunsford's contentions, the circuit court judge committed a clear error of law by granting immunity to Lunsford pursuant to the South Carolina Protection of Persons and Property Act where, as a matter of law, Lunsford was not entitled to immunity because he acted unlawfully by threateningly brandishing a pistol at his victim during the course of the incident and because he could not validly raise a claim of self-defense since he was not without fault for the difficulty and did not reasonably need to use deadly force against his victim at the time he did so.

In his Brief of Respondent, Respondent Adam Keith Lunsford contends the circuit court judge correctly granted him immunity on all three indicted charges pursuant to the South Carolina Protection of Persons and Property Act ("the Act"). In support of that contention, Lunsford appears to maintain he was acting lawfully at the time he "showed" his firearm to his victim, Daniel Hull ("Victim"), because he purportedly only did so to in an attempt to "thwart an attack" after his victim had attempted to "run him off the road." Furthermore, while focusing exclusively on his actions after Victim stopped and exited his vehicle, Lunsford maintains he was lawfully acting in self-defense when he shot Victim multiple times.

During the pendency of the appeal in Lunsford's case and subsequent to the filing of the State's Brief of Appellant, our Supreme Court issued a decision in State v. Scott, __ S.C. __, 819 S.E.2d 116 (2018), related to immunity determinations pursuant to the Act. Through that decision, the Supreme Court concluded an individual who proves the elements of self-defense could be entitled to immunity pursuant to the Act in light of the "applicable provision of law" language in Section 16-11-450(A) of the South Carolina Code of Laws even if other portions of the Act—such as Section 16-11-440(C)—were not necessarily applicable. See Id. at __, 819 S.E.2d at __ ("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."). Therefore, based on the Supreme Court's decision in Scott, it was *not* necessary for Lunsford to have actually been under attack in order to seek and obtain immunity pursuant to the Act under a theory of self-defense *if* he could establish all the required elements of self-defense.[1] See S.C. Code Ann. § 16-11-450(A) ("A person who uses deadly force as permitted by the provisions of this article *or another applicable provision of law* is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force[.]" (emphasis added)).

Nonetheless, Lunsford was not entitled to immunity as a matter of law because he was neither acting lawfully nor acting lawfully in self-defense at the time he shot Victim. Specifically, Lunsford's act of threateningly brandishing a firearm at—or "showing" a firearm to—a motorist who, based on the circuit court judge's express findings, was "passing" his vehicle as opposed to attempting to run it off the road constituted the criminal offense of unlawfully pointing or presenting a firearm. See S.C. Code Ann. § 16-23-410 ("It is unlawful for a person to present or point at another person a loaded or unloaded firearm."). Because Lunsford unlawfully brandished a firearm in violation of South Carolina law, Lunsford was precluded from claiming immunity pursuant to the Act since he was engaged in unlawful activity. See S.C. Code Ann. § 16-11-440(C) (only authorizing a person who is expressly "not engaged in unlawful

[1] Notably, it *was* still necessary for Lunsford to have been under attack in order him to validly seek immunity pursuant to Section 16-11-440(C), which is the provision eliminating the duty to retreat that ordinarily exists in order for a person to lawfully act in self-defense. 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 State v. Scott, 420 S.C. 108, 115, n. 8, 800 S.E.2d 793, 797 (Ct. App. 2017) ("The clear language of section 16-11-440(C) . . . requires that the defendant be actually attacked."), aff'd as modified, State v. Scott, __ S.C. __, 819 S.E.2d 116 (2018).

activity" to justifiably meet force with force); see also S.C. Code Ann. § 16-11-420(B) (recognizing it is proper for "law-abiding" citizens to protect themselves without fear of prosecution). Likewise, Lunsford was not acting in self-defense at the time he shot Victim because he: (1) was not without fault for the difficulty due to the fact he threateningly brandished a firearm at Victim shortly before shooting him; and (2) had no reasonable need to shoot Victim in order to defend himself from death or great bodily harm since he, by his own admission, could have simply rolled up his vehicle's windows and locked his vehicle's door to prevent any attack from his unarmed victim. See State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (instructing the required elements of self-defense 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 was no other probable manner of avoiding the danger than to act as the defendant did in the situation); see also State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (explaining an individual who provokes or initiates an assault cannot escape criminal liability by invoking self-defense). Furthermore, in light of the decision in Scott, Lunsford was also required to establish he had no means of retreat in order to seek immunity under a theory of self-defense, which Lunsford wholly failed to do.[2] See Scott, __ S.C. at __, 819 S.E.2d at __

[2] Significantly, during the immunity hearing, Lunsford testified he had been taught he had no

(recognizing a person could seek immunity pursuant to the Act under a theory of self-defense if that person established *all* the required elements of self-defense); see also State v. Washington, 424 S.C. 374, 412, 818 S.E.2d 459, 479 (Ct. App. 2018) ("The law says if one can give back or step aside, or retreat without increasing his danger, and thus avoid taking human life, it is his duty to do so, and unless he has done so, it will not permit his plea of self-defense." (citations and internal quotations omitted)). Critically, despite that requirement, the circuit court judge expressly found Lunsford *had no duty to retreat* and, based on that legally-erroneous conclusion, made no factual findings Lunsford had no available means of retreat when he shot Victim.[3] Cf. Scott, __ S.C. at __, 819 S.E.2d at __ ("The circuit court correctly found Scott satisfied the fourth element. Therefore, the circuit court *made the necessary factual findings* to support the existence of self-defense." (emphasis added)). Therefore, the circuit court judge's conclusion Lunsford was entitled to immunity was plainly controlled by an error of law if it was based on a theory of self-defense since the circuit court judge did *not* find the existence of all the requirements elements, including the requirement Lunsford had no other means to avoid the danger than to act as he did. See State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) (recognizing it is "an axiomatic principle of law" self-defense has not been established if even a single element is not present).

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duty to retreat and was not required by law to only use his firearm as a last resort. (Im. Tr. pp. 77-78). He also appeared to acknowledge he could have tried to flee in his vehicle before shooting Victim. (Im. Tr. p. 80). Beyond that testimony, both Victim and Investigator Louis Nelson of the Spartanburg Police Department testified Lunsford had ample room to simply drive around Victim's vehicle at the time of the shooting. (Im. Tr. p. 20; p. 47; p. 52). In fact, Investigator Nelson stated Lunsford "easily" could have driven around Victim's vehicle based on the vehicles' respective positioning. (Im. Tr. p. 52).

[3] Specifically, the circuit court judge ruled: "[U]nder the law, the legislature intended that [Lunsford] was not required to retreat before using deadly force." (Sept. Order Granting Immunity, p. 3; Jan. Order Granting Immunity, p. 3).

For all the foregoing reasons coupled with the reasons previously articulated in the State's Brief of Respondent, the circuit court judge abused his discretion and committed a clear error of law by finding Lunsford was entitled to immunity, and Lunsford has failed to identify any valid reasons why the circuit court judge's ruling was legally correct. See State v. Oates, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017) (recognizing an abuse of discretion occurs when a circuit court judge's immunity ruling is based on an error of law). Accordingly, as previously stated, the circuit court judge's legally-erroneous ruling must be reversed, and Lunsford's case should be remanded for trial.

CONCLUSION

For all the foregoing reasons coupled with the reasons identified in the Initial Brief of Appellant, it is respectfully submitted the ruling of the circuit court judge should be reversed and the case should be remanded for trial.

Respectfully submitted,

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November 5, 2018

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PROOF OF SERVICE

I, Destiny Blue, certify I have served the within Initial Reply Brief of Appellant on Respondent by sending two copies of the same to:

N. Douglas Brannon & Christopher David Kennedy, Esquires
Kennedy & Brannon, P.A.
Post Office Box 3254
Spartanburg, SC 29304

I further certify that all parties required by Rule to be served have been served.
This 5th day of November, 2018.

Destiny Blue

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ALAN WILSON
ATTORNEY GENERAL

November 5, 2018

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RE: State v. Adam Keith Lunsford – Appellate Case No. 2018-000136

Dear Mr. Brannon and Mr. Kennedy:

I am enclosing two copies of the Initial Reply Brief of Appellant, along with proof of service, in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Advocacy Division