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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
The Honorable DeAndrea G. Benjamin, Circuit Court Judge (Immunity Hearing)
The Honorable Craig D. Brown, Circuit Court Judge (Trial)

Appellate Case No. 2019-001854

THE STATE,

Respondent,

v.

MELVIN JAMES WHITE,

Petitioner.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit

P.O. Box 192
Columbia, SC 29201
(803) 576-1800

ATTORNEYS FOR RESPONDENT

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ISSUE STATEMENT

To be entitled to immunity from prosecution under the Protection of Persons and Property Acts, a defendant must demonstrate the elements of self-defense by a preponderance of the evidence to the satisfaction of the trial court. The trial court's ruling will not be overturned unless based on an error of law or factual finding without any evidentiary support. Did the State present any evidence that White did not act lawfully and in self-defense?

STATEMENT OF THE CASE

A Richland County grand jury indicted Melvin James White for murder. White filed a motion for immunity from prosecution under South Carolina's Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410 to 450 (2015). On June 3, 2019, a pretrial hearing was convened before the Honorable DeAndrea G. Benjamin. Following the evidentiary hearing, Judge Benjamin issued a written order denying White's motion for immunity. White proceeded to jury trial before the Honorable Craig D. Brown on October 23–24, 2019. He was acquitted of murder but convicted of voluntary manslaughter and sentenced to thirty years' incarceration. In this direct appeal, White challenges Judge Benjamin's denial of his motion for immunity from prosecution.

STANDARD OF REVIEW

The appellate court reviews a denial of immunity under the deferential "abuse of discretion" standard of review. State v. Oates, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017). "An abuse of discretion 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. The appellate court will affirm a trial court's denial of immunity if the "facts support a denial of immunity." State v. Manning, 418 S.C. 38, 45, 791 S.E.2d 148, 151 (2016). Appellate review is limited to the evidence presented at the immunity hearing. State v. Cervantes-Pavon, 426 S.C. 442, 452–53, 827 S.E.2d 564, 569 (2019), reh'g denied (May 30, 2019).

ARGUMENT

Evidence supports the trial court's denial of White's motion for immunity from prosecution.

Evidence supports the trial court's ruling denying White's motion for immunity. White failed to show he acted lawfully and in self-defense, as required under the Protection of Persons and Property Act (PPPA). This Court should affirm.

A. Relevant facts.

Appellant Melvin White lived with his girlfriend, Caroline Esther, at her home in Columbia. (Tr.p.37). Esther's son, Antwan, also lived there. (Tr.p.37). Antwan was 25 years old and had recently been released from prison. (Tr.p.38). Antwan lived with Esther before his prison stint. (Tr.p.38). Antwan had his own room and kept belongings there, but Esther had not yet procured an extra house key for him. (Tr.p.29; 43). Esther explained that Antwan, being her son, lived with her and was welcome in her home. (Tr.p.38–40).

On November 29th, 2015, White shot Antwan with a shotgun, killing him. White was charged with murder. He filed a motion for immunity under the PPPA and a pretrial hearing was held. White testified first.

White testified that Antwan had a girl stay over at the home the previous night. (Tr.p.12). Esther did not allow Antwan to have girls spend the night, and White testified Esther was upset that Antwan disobeyed her. (Tr.p.12). He agreed with defense counsel's leading assertion that Esther "made it clear [Antwan] was not coming into the house that night." (Tr.p.22). White testified that after

accompanying Esther to the laundromat around 11:00 that morning, he spent most of the day sitting in the yard drinking. (Tr.p.13). White admitted, "I like my beer." (Tr.p.13).

White testified that Antwan came home late that night and began beating on the door, asking to be let in. (Tr.p.13). Esther went outside to talk to him. White claimed he heard them outside "fussing." (Tr.p.14). White put on some clothes to go outside. (Tr.p.14).

On the way out, White armed himself with a shotgun. He testified it was his "habit" to take his shotgun with him whenever he went outside. (Tr.p.15). White claimed he saw Esther crying and "beating [Antwan] in the back, like, go ahead, go back where you come from" (Tr.p.16). White testified Esther and Antwan were out in the street and he was standing by the mailbox. (Tr.p.16).

White claimed Antwan started coming toward him "at a fast pace," with Esther pleading with him to stop. (Tr.p.17). According to White, when Esther tried to hold him back Antwan "shoved her to the ground. That's when I went to jump towards her and shot." (Tr.p.17). White testified he was "really afraid." (Tr.p.17). He then claimed that Antwan "charged" at him, prompting him to "throw[] the gun up." (Tr.p.18).

On cross-examination, White admitted that Antwan was unarmed, but claimed that when Antwan "charged him" he "had his hand in his pocket, so to speak, behind his back." (Tr.p.30). He admitted Antwan never verbally threatened him, but that Antwan said "what's up?" as he approached. (Tr.p.30). White took

that to mean Antwan was physically challenging him. (Tr.p.29). White admitted he "never heard [Esther] tell [Antwan] he couldn't come in the house." (Tr.p.34).

Esther testified next and told a drastically different story. She confirmed that Antwan had a girl stay over the night before the shooting, but denied there was an argument. According to Esther, she reminded Antwan that he was not to have girls spend the night and he responded, "Yes ma'am, mama." (Tr.p.40). She testified that White started an argument with her, claiming that Antwan was disrespecting her. (Tr.p.40). Esther responded that she was capable of taking care of her son. (Tr.p.40). White told her that if Antwan "came in the house that he was going to kill him." (Tr.p.41). Esther told White that he was not going to do anything to her son. (Tr.p.41). She explained that White began "drinking heavily" and drank throughout the day. (Tr.p.41). She testified White became argumentative that night, and repeated his threat to kill Antwan. (Tr.p.42).

Esther also denied she and Antwan were fighting when he came home late that night. She admitted she scolded Antwan for coming home late, but stated they were merely "talking," rather than violently arguing as White described. (Tr.p.43). She denied Antwan ever pushed her. (Tr.p.45). She also denied they ever walked out to the road; rather, they remained in the front yard the entire time. (Tr.p.43).

In response to defense counsel's insinuations that she was trying to make Antwan leave, Esther replied: "I didn't tell him he couldn't stay there at that time. I told him if he couldn't abide by my rules, I didn't want him there." (Tr.p.58). She testified White was not a part of the conversation. Esther told Antwan, "I love you .

. . but you are not to be bringing girls in my house." (Tr.p.57). She testified she would have eventually let Antwan come inside, and that he did not try to force his way in. (Tr.p.50). She denied that Antwan seemed drunk. (Tr.p.62).

Esther explained that as she and Antwan were talking, she looked up and saw that White had approached them and was six to eight feet away pointing a gun at Antwan. She testified White "started walking towards my son from the back of the house with the gun pointed at him." (Tr.p.46). Antwan asked White, "what are you going to do, are you going to shoot me or something?" (Tr.p.44). White then shot Antwan, killing him. She denied Antwan ever charged or walked toward White. (Tr.p.64). After White shot and killed Antwan, he looked at Esther and said she didn't "have to worry about [her] son disrespecting [her] anymore." (Tr.p.69).

Lastly, the State called Investigator James Boland from the Richland County Sheriff's Office. He explained he responded to the scene and investigated the case. He spoke with Esther, who made no mention of any physical contact with her son, nor did she complain of any injuries. (Tr.p.75). Boland also took a voluntary statement from White. White made no mention of Antwan pushing Esther, or of her crying or being upset during her discussion with Antwan. (Tr.p.80-81). He also never mentioned being scared. He even told police, "I wouldn't say [Antwan] was threatening." (Tr.p.81). Finally, he testified he learned that White had been convicted of DUI third offense and failure to stop for a blue light. (Tr.p.89). He explained these convictions made it illegal under federal law for White to possess a firearm. (Tr.p.90).

B. Evidentiary standard for immunity from prosecution.

To warrant immunity under the PPPA, the accused must demonstrate the elements of self-defense, save the duty to retreat, to the satisfaction of the circuit court by a preponderance of the evidence. State v. Marshall, 428 S.C. 11, 18–19, 832 S.E.2d 618, 622 (Ct. App. 2019). The accused must show (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; and (3) if his defense was based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have held the same belief, or if he actually was in imminent danger, the circumstances “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.” Id. (quoting State v. Curry, 406 S.C. 364, 370–71, 752 S.E.2d 263, 266 (2013)).

C. Discussion

Evidence supports the trial court's denial of immunity because White failed to meet his burden of proving he acted in self-defense. The testimony, viewed in its totality, failed to establish any of the elements of self-defense. Under the deferential "abuse of discretion" standard of review, this Court should not overturn the trial court's factual findings, particularly when the testimony was contradictory about the central facts. Finally, White's claim fails as a matter of law because he acted unlawfully. This Court should affirm.

a. **Evidence supports the trial court's factual findings that White failed to prove he acted in self-defense.**

The trial court's factual findings underlying its denial of immunity are supported by the evidence. Accordingly, this Court should affirm.

i. **The trial court applied the correct evidentiary standard.**

As a preliminary matter, the trial court employed the correct evidentiary standard in disposing of White's claim of immunity. The trial court recognized it was required to weigh the evidence and reach a factual conclusion as to whether White proved he acted in self-defense by a preponderance of the evidence. After discussing the testimony, the court concluded that White "has not proven by a preponderance of the evidence that it was reasonable for him to believe the use of deadly force was necessary" (Order at p. 6). The trial court did not deny immunity simply because there was conflicting testimony, and it did not abdicate its responsibility to make factual findings. Rather, it fulfilled its duty to "sit as the fact-finder at [the] hearing, weigh the evidence presented, and reach a conclusion under the Act." See State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019), reh'g denied (May 30, 2019).

ii. **White did not have a reasonable fear of death or great bodily injury.**

Evidence supports the trial court's ruling that White failed to prove he acted pursuant to a reasonable fear of death or great bodily injury. In finding White failed to prove he acted in self-defense, the court cited the following facts, which can be found in the record at the corresponding citations:

- Antwan was unarmed, and White admitted he never saw him with a weapon. (Tr.p.29–30). See State v. Manning, 418 S.C. 38, 45, 791 S.E.2d 148, 151 (2016) (explaining "the victim was unarmed at the time she was shot, meaning we cannot say that the trial judge abused his discretion in denying Respondent immunity").
- According to Esther, Antwan never "charged" or went "near" White. (Tr.p.45).
- White admitted to police that Antwan never threatened him. (Tr.p.81).
- White never testified that he feared death or great bodily injury, only that he was "scared." (Tr.p.21).
- White was safely inside the home before arming himself and inserting himself into the conflict. (Tr.p.15).

This evidence supports the trial court's finding that White had no reasonable fear of death or great bodily injury, meaning the use of deadly force was not necessary. The trial court did not abuse its discretion by finding White failed to meet this element of self-defense. This Court should affirm.

iii. White was at fault in bringing on the difficulty.

The trial court correctly found White was not entitled to immunity because he was not without fault in bringing on the difficulty. The trial court specifically found that "[n]o difficulty existed for the Defendant until he approached the conversation with a loaded gun. . . . There was absolutely no difficulty or even words exchanged between the victim and the Defendant until he pointed a loaded

shotgun at the victim and his mother. It is clear that the Defendant brought on the difficulty by bringing a loaded gun to a conversation between a mother and her son." (Order at p.10).

This finding is supported by the record. Esther testified White was not a part of the conversation she was having with her son. White approached them unprovoked, brandishing a shotgun. (Tr.p.44). She testified Antwan did not put his hands on her, and their conversation was not violent. (Tr.p.45). Even under White's version of events, his assertion that Antwan pushed Esther—a claim Esther denied—did not occur until after White presented a firearm. (Tr.p.17). Esther further testified Antwan did not provoke, attack, or "go near" White. (Tr.p.45). By contrast, White—who had been "drinking heavily" all day—had made previous threats against Antwan's life and inserted himself into a conversation between mother and son, despite Esther's prior admonishments for White to stay out of their relationship. (Tr.p.42–43). See State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (explaining defendant was at fault in bringing on the difficulty because he "approached an altercation that was already underway with a loaded weapon by his side").

The foregoing evidence strongly supports the trial court's finding that White was at fault in bringing about the difficulty. The trial court did not abuse its discretion in finding White failed to meet this element of self-defense. This Court should affirm.

iv. Assessing witness credibility is the exclusive province of the trial court.

In the discussion section of his brief, White speaks of his testimony as if it was the only evidence presented. Brief of Appellant at 12–13. He completely ignores Esther's testimony, which directly contradicted his own. See State v. Oates, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017) (explaining that the General Assembly did not intend to require the circuit court “to accept the accused's version of the underlying facts” in determining a motion for immunity under the Act) (quoting State v. Curry, 406 S.C. at 371, 752 S.E.2d at 266). Esther flatly denied that Antwan ever "charged" White, or did anything that could have caused White to fear for his life. Rather, she testified White intruded on her conversation with her son, brandishing a shotgun despite no aggression from Antwan. (Tr.p.41–45).

This conflict in the evidence was rightly resolved by the trial court. The trial court specifically found there was no "credible" evidence supporting White's self-defense claim. (Order at p.5). This should come as no surprise, as White unbelievably claimed Antwan "charged him with his hand in his pocket and slightly behind his back" while White was holding a shotgun. (Tr.p.94). Regardless, witness credibility is the exclusive province of the trial court. The abuse of discretion standard does not allow this Court to second-guess its judgment. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237–38 (Ct. App. 2014) (explaining "the abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the [circuit] court's assessment of witness credibility"); State v. Oates, 421 S.C. 1, 17, 803 S.E.2d 911, 920 (Ct. App. 2017) (explaining "our deferential standard of review requires us to affirm the circuit court's denial of Appellant's

motion for immunity"). Rather, the appellate court should affirm if there is any evidence to support the trial court's ruling. Because such evidence exists, this Court should affirm.

b. White was not entitled to immunity because he acted unlawfully.

Finally, White was not entitled to immunity as a matter of law because he acted unlawfully by possessing and brandishing a shotgun. Because White had previously been convicted of crimes carrying more than one year in prison, he was not legally allowed to possess a firearm under federal law. See 18 U.S.C. 922 (g)(1). While anyone is entitled to defend himself with deadly force when necessary to preserve his own life against an aggressor, the trial court rightly pointed out that White armed himself before he ever left the home. (Order at p. 8). White then brandished the gun at Antwan while he was in a verbal dispute with his mother that did not involve White. See S.C. Code Ann. § 16-23-410 (providing it is "unlawful for a person to present or point at another person a loaded or unloaded firearm"). Even under White's version of events, his possession and brandishing of the shotgun was unlawful. White's testimony that it was his "habit" to arm himself whenever he went outside belies his assertion that he only armed himself for self-defense purposes. (Tr.p.15). His possession of the firearm was the proximate cause of Antwan's death. See State v. Goodson, 312 S.C. 278, 281, 440 S.E.2d 370, 372 (1994) (explaining unlawful possession of a weapon may preclude a self-defense claim if "the unlawful act in which the accused was engaged was at least the proximate cause of the homicide"); State v. Slater, 373 S.C. 66, 71, 644 S.E.2d 50, 53

(2007) (explaining "Slater's unlawful possession of the weapon was the proximate cause of the homicide. Slater was not merely in unlawful possession of a weapon; he carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement. Slater's actions, including the unlawful possession of the weapon, proximately caused the exchange of gunfire, and ultimately the death of the victim."). White acted unlawfully by possessing a firearm and pointing it at Antwan in a threatening manner. Accordingly, his claim of self-defense fails as a matter of law. This Court should affirm.

CONCLUSION


For all the foregoing reasons, the State respectfully asks that this Court affirm White's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit

BY: 
Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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THE STATE,

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the Initial Brief of Respondent and Designation of Matter on Sarah E. Shipe, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 3rd day of March, 2021.



Anne A. Mueller
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

From: [Anne Mueller](#)
To: "sshipe@sccid.sc.gov"; [Kellner, Haley \(hkellner@sccid.sc.gov\)](mailto:hkellner@sccid.sc.gov)
Cc: [Victim Services](#); [Josh Edwards](#); [William Blitch \(wblitch@scag.gov\)](mailto:wblitch@scag.gov); [Anne Mueller \(amueller@scag.gov\)](mailto:amueller@scag.gov)
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Good afternoon, Ms. Shipe.

Attached to this email is the State's Initial Brief of Respondent and Designation of Matter in the above criminal appeal. The brief and designation will be electronically filed today through AIS One Drive.

As a courtesy, please confirm your receipt of this email and the attachment by return email.

I thank you in advance for your cooperation.

Sincerely,

Anne Mueller, Legal Assistant for Joshua A. Edwards, Assistant Attorney General



Anne A. Mueller
Legal Assistant, Criminal Appeals Division
Office of the Attorney General
State of South Carolina
(803) 734-3922