

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

JENNIFER SPIVEY FOLEY, as Personal
Representative of the Estate of SCOTT
RYAN SPIVEY,

C/A NO. 2024-CP-26-03798

Plaintiff,

v.

**DEFENDANT KENNETH WILLIAMS’
MOTION TO RECONSIDER**

CHARLES WELDON BOYD AND
KENNETH WILLIAMS,

Defendants.

Defendant Kenneth “Bradley” Williams files this motion to reconsider the Court’s March 6, 2026 order denying Williams immunity. This motion is made pursuant to Rule 54(b), SCRCPP, and the Court’s inherent authority to reconsider an interlocutory order. Rule 54(b), SCRCPP (noting an interlocutory order “is subject to revision at any time” before entry of final judgment); *S.C. Pub. Interest Found v. Wilson*, 437 S.C. 334, 340-41, 878 S.E.2d 891, 894-95 (2022) (noting “interlocutory orders ‘may be reconsidered and corrected by the court before entering a final order on the merits.’”) (quoting *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013)). Respectfully, the Court’s order (1) fails to specify what unlawful act Williams committed that proximately caused the shooting with Scott Spivey, (2) relies on case law that is inapposite, (3) does not address that Williams was entitled to act on appearances, and (4) appears to conclude that Williams fired before Spivey despite Plaintiff’s written concession in its brief that Williams only fired after Boyd and Spivey fired their weapons. Accordingly, the Court should reconsider its order and grant Williams immunity.

The Court’s order fails to identify any wrongful or unlawful act committed by Williams.

This omission is critical because the “bringing on the difficulty” analysis requires significantly more than poor judgment — it requires misconduct. As the Court of Appeals recognized in *State v. Douglas*, “One who merely does an action [that] affords an opportunity for conflict is not thereby precluded from claiming self-defense. Fault implies misconduct, not lack of judgment.” *State v. Douglas*, 411 S.C. 307, 321 n.8, 768 S.E.2d 232, 240 n.8 (Ct. App. 2014). The *Douglas* court further emphasized that “before an act may cause forfeiture of the fundamental right of self-defense, it must be willingly and knowingly calculated to lead to conflict.” *Id.*

The evidence here fails to establish any such misconduct by Williams. At most, the evidence shows that Williams did not forcefully demand that Boyd stop the vehicle and allow him to exit — but no provision of South Carolina’s criminal law imposes an affirmative duty on a passenger to do so, and his failure to make such a demand is not an unlawful act that can serve as the basis for finding fault in bringing on the difficulty. Far from encouraging Boyd, Williams specifically cautioned him to slow down, testified that he did not want a second confrontation with Spivey — who had already brandished a gun at him — and urged Boyd to back up and retreat when both vehicles turned onto Camp Swamp Road. At most, Williams’s failure to more forcefully discourage the pursuit may reflect a lack of judgment, but it was not unlawful, willful misconduct knowingly calculated to lead to conflict — and it therefore cannot deprive him of his right to immunity under the Act.

Williams submits that *State v. Douglas* is directly on point. There, the respondent had a previous violent encounter with the deceased, and the court acknowledged that sharing nearly two full bottles of vodka with Smith was perhaps unwise. Nevertheless, the court held that this “condonation of, and participation in, this drinking binge did not rise to the level of ‘bringing on the difficulty.’” *Id.* If voluntarily drinking with a known violent individual does not constitute

bringing on the difficulty, then Williams's mere failure to more aggressively intervene in Boyd's pursuit of Spivey — while actively counseling restraint and retreat — certainly does not. Respectfully, the implicit conclusion in this Court's order that Williams did not do enough to thwart Boyd's pursuit of Spivey leaves unanswered the question of what exactly Williams *should* have done. Boyd was already on the phone with 911, so there was no point in making another call. Boyd was obviously agitated, as evidenced by his conversation with the 911 dispatcher, so Williams risked escalating that agitation by shouting at him to stop the car. Most certainly, either seizing the wheel from Boyd or attempting to exit the speeding vehicle could have been disastrous. Imploring Boyd to slow down was a reasonable choice, and it clearly falls far short of constituting action "calculated to produce a violent occasion." *Slater*, 373 S.C. at 70, 644 S.E.2d at 52.

While the Court noted that Boyd drove at excessive speeds to pursue Spivey, that conduct may not be imputed to Williams. *Pruitt v. Bowers*, 330 S.C. 483, 487, 499 S.E.2d 250, 253 (Ct. App. 1998) (holding a driver's conduct could not be imputed on the passenger where the driver — and not the passenger — "owned the vehicle, drove the vehicle, and ultimately controlled the vehicle"). The first element of self-defense requires that the defendant be "without fault in bringing on the difficulty." *State v. Rye*, 375 S.C. 119, 129, 651 S.E.2d 321, 326 (2007). South Carolina courts have defined this element to mean that "any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense." *Douglas*, 411 S.C. at 321, 768 S.E.2d at 240 (quoting *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007)). Importantly, the unlawful activity must be the proximate cause of the incident. *State v. Glenn*, 429 S.C. 108, 120, 838 S.E.2d 491, 497 (2019) ("[W]e find a proximate cause analysis must also be applied to the unlawful activity element of subsection (C)."). The Court's order does not identify a specific unlawful act by Williams nor does

it apply a proximate cause analysis connecting any such act to the ultimate encounter with Spivey. Additionally, Williams’s actions in this case are distinguishable from those in cases where our appellate courts have found a defendant’s conduct brought on the difficulty. *See, e.g., State v. Williams*, 427 S.C. 246, 251, 830 S.E.2d 904, 907 (2019) (“[I]ntentionally bringing a loaded, unlawfully-possessed pistol to an illegal drug transaction is [an unlawful act] ‘calculated to produce a violent occasion.’”); *Slater*, 373 S.C. at 70, 644 S.E.2d at 52.¹

The Court also relies, as the linchpin of its ruling, on case law that has no bearing on whether a person is without fault in bringing on the difficulty. The Court cited *Lynch v. Alexander*, 242 S.C. 208, 213, 130 S.E.2d 563, 566 (1963), for the proposition that Williams “owed a duty to warn Boyd to stop the pursuit or demand that Boyd permit Williams to leave the truck.” (Order, p. 16). Not only does the court’s order fail to specify how this purported duty applies to whether Williams may act in self-defense against Spivey, but the *Lynch* case is inapposite. In *Lynch*, the sole question was whether a guest passenger’s failure to leave a vehicle driven at excessive speeds constituted contributory negligence barring his civil recovery against the driver. *Id.* at 213, 130 S.E.2d at 566 (“He may not acquiesce in a continued course of negligent conduct on the part of the driver and then claim damages from him for injury proximately resulting therefrom.”). The duty recognized in *Lynch* is a civil tort duty owed by a passenger to a driver in a damages action between those two parties. In effect, the Court’s order erroneously engrafts this narrow civil duty on to the settled self-defense analysis, imposing on Williams an affirmative obligation owed to Boyd as a passenger — a duty that has no analog in the criminal law of self-defense and no

¹ The Court’s order also fails to analyze each element of self-defense and make specific findings. *See State v. McCarty*, 437 S.C. 355, 374, 878 S.E.2d 902, 912 (2022) (“We emphasize that a circuit court, as the designated fact-finder in this matter, must provide adequate findings to support its decision so an appellate court can perform its role of reviewing the ruling under an abuse of discretion standard.”).

application to whether Williams was without fault in his encounter with Spivey. *Lynch* is inapposite for the additional reason that it was decided under the gratuitous guest passenger statute, which our Supreme Court has since found **unconstitutional**. *Ramey v. Ramey*, 273 S.C. 680, 681, 258 S.E.2d 883, 883 (1979) (holding the guest passenger statute unconstitutional under the equal protection clauses of the South Carolina and United States Constitutions). **Thus, *Lynch* has no application to this case because it relies on an unconstitutional statute and concerns a duty a passenger purportedly owes to a driver (Boyd), as opposed to a third party (Spivey). This is a legal error that should be corrected by this Court.**²

Additionally, the order fails to address Williams' argument that he was entitled to act on appearances. *State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000) (holding "Appellant did not have to wait for [the assailants] to fire or aim at him before acting in self-defense," and "[o]nce the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act"). Once Williams saw Spivey outside his vehicle holding a gun — the same weapon Spivey had previously aimed at him — Williams was entitled under our jurisprudence to act on appearances.

Finally, the Court also failed to consider Plaintiff counsel's concession that Williams did not fire his weapon until after Boyd and Spivey had fired their weapons. As stated on page 3 of her pre-trial brief: "Only after Boyd fired numerous times and struck Spivey did Spivey attempt to return defensive fire. It was at that point that Williams also opened fire." The fact that Williams

² While Williams acknowledges that a court's written order controls over any oral statements from the bench, Williams submits the Court placed too much emphasis on a telephone conversation he had with Boyd after the event. At the conclusion of the immunity hearing, this Court noted that Williams was in a different position than Boyd and everything the Court stated about the Defendants "getting their stories straight" was directed at Boyd, not Williams. Further, the Court acknowledged that Williams did not want to be there, had no way of not being there, and that he tried to deescalate the situation. Respectfully, the Court's order improperly relies on *Lynch* to ostensibly overcome these critical findings.

did not fire first is an important factual distinction between Williams and Boyd that the Court did not consider in its order. *Parker v. Morin (Ex parte McMillan)*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (finding a party's concession at trial was binding); *Thomas v. Dootson*, 377 S.C. 293, 296, 659 S.E.2d 253, 254 (Ct. App. 2008) (finding a party is bound by his concessions at trial); *Shorb v. Shorb*, 372 S.C. 623, 628 n.3, 643 S.E.2d 124, 127 n.3 (Ct. App. 2007) (holding a party is bound by a concession in his brief).

CONCLUSION

This Court should reconsider its order denying Williams immunity and rule on the arguments Williams raised that were not addressed in the order. When all the evidence and arguments are considered, Williams respectfully contends that he is entitled to immunity under the Act.

Respectfully submitted,

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