STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EUGENE TURNER, JR.,

APPELLANT

APPELLATE CASE NO. 2022-001287

INITIAL BRIEF OF APPELLANT

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INTRODUCTION

This appeal raises two issues, both of which arise from undisputed facts and are controlled by established law, and on both of which the trial court ruled incorrectly. Either of the issues warrants reversal.

First, the trial court abused its discretion and committed reversible error by denying Eugene Turner, Jr.'s motion for immunity from prosecution for shots he fired (without hitting anything) after he was attacked by a man with a history of violence towards him and who had threatened his life. South Carolina Supreme Court precedent dictates that this Court reverse. The trial court erred in three ways: (1) it committed an error of law by concluding that Mr. Turner failed to prove that he was under attack; (2) it failed to make specific findings on each element of self-defense which makes appellate review difficult and constitutes reversible error; and (3) it erred by finding that Mr. Turner failed to prove the elements of self-defense, which rested on factual conclusions that lack support in the record. Any of these errors provide sufficient grounds for this Court to reverse the trial court and either to conclude that Mr. Turner is entitled to immunity or, at minimum, to remand this case for a new hearing on whether Mr. Turner meets the Act's requirements and to grant a new trial.

Second, the trial court erred by denying Mr. Turner's motion for a mistrial after the State's first witness violated a stipulation and implied that Mr. Turner had been the subject of a child abuse investigation. The record shows that the parties entered the stipulation because the trial court and prosecutor agreed that even mentioning these allegations would be so prejudicial to Mr. Turner as to taint the jury beyond recovery. But that's exactly what happened. This evidence was even more harmful to Mr. Turner because the State's case depended heavily on discrediting Mr. Turner while strengthening the credibility of its own witnesses. Mr. Turner's credibility suffered irreversible

damage when the jury heard harmful testimony that implicated him as the subject of a child abuse investigation. Thus, the trial court abused its discretion by refusing to grant a mistrial, and this Court should reverse and remand for a new trial.

STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred by denying Mr. Turner's motion for immunity under South Carolina's Protection of Persons and Property Act.

2. Whether the trial court erred by denying Mr. Turner's motion for mistrial caused by a violation of SCRE 403 through the admission of testimony that was substantially more prejudicial than probative.

STATEMENT OF THE CASE

The State of South Carolina charged Mr. Turner with the attempted murder of Angela Anderson, Nachrisha Rosemond, Kimberly Pickens, Christine Wolfe-Young, and Daniel Stokes (collectively, "Alleged Victims"), and one count of possession of a weapon during the commission of a violent crime based on allegations arising from an incident which occurred on September 1, 2017. (Sept. 6–7 Tr. 10:1–9.) The trial took place in the Greenville County Court of General Sessions from September 6, 2022, to September 9, 2022.

Before the start of the trial, Mr. Turner moved for immunity from prosecution under the Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410, *et seq.* ("Act") ("Motion for Immunity"). (Sept. 6–7 Tr. 28:23–29:1.) The trial court denied the Motion for Immunity, erroneously concluding that the Act was inapplicable, and finding that Mr. Turner failed to meet the requirements of S.C. Code Ann. § 16-11-440(c) by a preponderance of the evidence. (*Id.* at 220:2–221:24.) The trial court reached this conclusion despite failing to make specific findings on each element of self-defense under the Act, as required by binding precedent.

After the ruling denying Mr. Turner's Motion for Immunity, but before trial, Mr. Turner moved to preclude the State and its witnesses from repeating unfounded accusations that he had allegedly engaged in criminal sexual conduct with a minor who was related to some of the Alleged Victims. (Sept. 6–7 Tr. 222:23–223:2.) At the trial court's direction, counsel for Mr. Turner and counsel for the State agreed that the alleged incident would be referred to only as a "family incident." (*Id.* at 223:3–224:9.) The purpose of the stipulation was to avoid any unfair prejudice against Mr. Turner, and the trial court instructed the Alleged Victims that "it's very important that y'all comply with that stipulation." (*Id.* at 223:11–12.) Yet, Mr. Stokes—the State's first witness—violated the stipulation. (*Id.* at 253:8–24.) Mr. Turner then moved for a mistrial ("Motion for Mistrial") on the grounds that Mr. Stokes's testimony implied that the allegations against Mr. Turner involved a minor and that this was unfairly prejudicial to Mr. Turner. (*Id.* at 253:25–255:12.) The trial court denied the Motion for Mistrial. (*Id.* at 255:13–18.)

After the trial, the jury convicted Mr. Turner of one count of attempted murder, one count of possession of a weapon during the commission of a violent crime, and three counts of assault and battery in the first degree. (Sept. 8–9 Tr. 340:9–342:13.) Mr. Turner then renewed his Motion for Immunity and Motion for Mistrial, which the trial court denied. (*Id.* at 343:25–344:7.) The trial court sentenced Mr. Turner to eighteen years for attempted murder, eight years for each conviction of assault and battery in the first degree, and five years for possession of a weapon during the commission of a violent crime. (*Id.* at 348:11–18.) The trial court ruled that these sentences would run concurrently, and that Mr. Turner would receive credit for 1,829 days of time already served and home incarceration. (*Id.* at 348:13–14.) Mr. Turner timely filed his notice of appeal in this Court on September 12, 2022. (*See* Notice of Appeal.)

FACTS

I. Mr. Turner's Relationship With The Alleged Victims

Mr. Turner met the Alleged Victims through his romantic relationship with Latoya "Monique" Fletcher. (Sept. 6–7 Tr. 125:11–126:6.) Before her relationship with Mr. Turner, Ms. Fletcher had a romantic relationship with Mr. Stokes, with whom she has a child and stepchild. (*Id.* at 125:16–17.) Christine Wolfe-Young is Mr. Stokes's sister. (*Id.* at 258:17–18.) Angela Anderson is married to Mr. Stokes, and she was his fiancée at the time of the incident giving rise to this case. (*Id.* at 248:2–18.) Mr. Turner met Nachrisha Rosemond, who is Mr. Stokes and Ms. Wolfe-Young's cousin, through Ms. Fletcher. (*Id.* at 373:18–22.) Kimberly Pickens is Ms. Rosemond's fiancée. (*Id.* at 373:20.) Mr. Turner and Mr. Stokes interacted regularly at family events while Mr. Stokes and Ms. Fletcher continued to coparent their children during Mr. Turner's relationship with Ms. Fletcher. (*Id.* at 251:10–252:24.)

II. Mr. Stokes's Attack On Mr. Turner And His Vehicle

On August 14, 2013, there was an incident involving Ms. Fletcher's daughter which led to Mr. Stokes's attack on Mr. Turner and his vehicle. (*See* Sept. 6–7 Tr. 30:24–33:6.) Mr. Turner was supervising Ms. Fletcher's daughter when she wrapped a roll of 3M tape around her leg and foot. (*Id.* at 126:9–14.) Mr. Turner took a picture of this and sent it to Ms. Fletcher. (*See id.* at 126:9–15.) Ms. Fletcher told Mr. Turner that the children were to stay with Mr. Stokes that weekend. (*Id.* at 126:15–22.) After Mr. Stokes arrived at Ms. Fletcher's house, he jumped out of the car and shouted, "Shut the fuck up, bitch." (*Id.* at 129:1–6.) Mr. Stokes then approached Mr. Turner and began hitting Mr. Turner's car. (*Id.* at 129:8–9.) After Mr. Stokes and Mr. Turner came to blows, Mr. Turner ran away from Mr. Stokes, fearing that he had a gun. (*Id.* at 129:11–19.) Mr. Stokes then rammed his

own car into a fence and destroyed Mr. Turner's car with a machete. (*Id.* at 129:20–130:4.) Police arrived at the scene and arrested Mr. Stokes for maliciously damaging Mr. Turner's car with a machete. (*See* Sept. 6–7 Tr. 31:19–23, 32:12–18.) Mr. Stokes was tried and found guilty of this crime. (*Id.* at 33:2–6.)

III. Allegations Against Mr. Turner Of Criminal Sexual Conduct

On December 1, 2016, the police and the Department of Social Services ("DSS") responded to a complaint that Mr. Turner had engaged in criminal sexual conduct with a minor. (*See* Sept. 6–7 Tr. 36:15–37:11.) The alleged victim was Ms. Fletcher's daughter. (*See id.* at 37:6–23.) The investigation revealed that Ms. Fletcher's daughter accused Mr. Turner of inappropriately touching her leg while she was driving a vehicle. (*Id.* at 50:12–16.) During the investigation, Mr. Turner explained to the police and DSS that he believed that the alleged victim's father, Mr. Stokes, had persuaded her to make these accusations. (*Id.* at 47:1–5.) No charges were ever brought against Mr. Turner based on these allegations. (*Id.* at 41:21–23.)

IV. Social Media Posts By The Alleged Victims Threatening Mr. Turner's Life

On January 13, 2017, Mr. Stokes, through his Facebook page called "Lethal Cutz," began posting threats against Mr. Turner's life. (*See* Sept. 6–7 Tr. 61:24–62:11.) Mr. Stokes posted a picture of Mr. Turner and threatened him as follows:

> His name is Eugene Turner!!!! If you see this bitch ass child malester [sic] call the police before I get to hem [sic] because on my family and life he done all my niggas *green light mash on sight!!* Its face off fuck boy not god, not my mama, not Police, not your mama can save you on the Shao *u dead bitch!!!*

(*See* Tr. Ex. D-1 (emphasis added).)

According to the testimony of Amanda Donald, an experienced investigator who formerly worked for the South Carolina Department of Probation and Parole, a "green light" is "giving anyone a go ahead, permission to either assault someone, inflict bodily harm, or kill that person." (Sept. 6–7 Tr. 62:24–63:6.)

On January 14, 2017, Ms. Wolfe-Young shared Mr. Stokes's Facebook post:

> Family & Friends Please Beware !!! Any man that does this to a child is sick !! I'm praying for this little girl, her mother and family as well. TO think this man has daughters the same age . So many of my friends , social clubs and his own family and friends (including myself) have partied ,hung out and had our kids around him never knowing his wicked thoughts and ways.
> I'm giving it to God because if the law don't get you *the streets will....*

(*See* Tr. Ex. D-5 (emphasis added).)

On January 14, 2017, Ms. Wolfe-Young posted another threat on Facebook:

> You Can Run But I Promise You Can't Hide For Long. The Truth Will Be Told And You Blocking Me And Everyone Who Knows What You Did Was Expected. I Knew He Would, But Before He Did I Retrieved All His Family And Friends Information From Georgia , Including Siblings & Kids Mother's. I Have Made Some Aware Of What Happened And Will Continue TO Alert The Others Of What He Did To My Niece (Lethal Cutz) 13 Year Old Daughter. I Advocate For The Children And I Promise To Keep Any And Everyone Informed Of What This Sick Bastard Did To This Baby & One Of Her Female Cousins.. Until This Dud Is Convicted & Behind Bars Awareness Will Not Stop !!!

(Tr. Ex. D-7.)

Ms. Anderson and Ms. Rosemond then commented on this post:

> Angela Anderson: Bitch better Go have several Seats
>
> Nikki Rose: If they know whats best they will go get a life and sit down cause we RIDE IN PACKS AND RIDE FOR OURS.....ANYTIME ANYDAY ANY HOUR FACTZ

> Nikki Rose: And Turn all talks into ACTION... MISERY LOVES COMPANY I SEE AND SOMEONE IS MISERABLE

(Tr. Ex. D-6.)

Several days later, on January 17, 2017, Mr. Stokes went live on Facebook to threaten Mr. Turner a second time as transcribed below:

> Yo, yo, yo,
> Your boy had a great day
> Just checking in to let you know that I'm about
> To clock outta this clock
> And get on another clock
> Ni**a I'm still looking for your bitch ass
> Alright
> Think you done fucked up
> Fuckin around ni**a
> I don't give a damn nobody say
> *Can't nobody save you ni**a*
> You better pray to Allah, Buddha and Shania
> Twain
> Cause bitch *I'm coming*

(*See* Tr. Exs. D-2, D-3 (emphasis added).) Ms. Wolfe-Young shared this post. (*See* Tr. Ex. D-2.)

V. Mr. Turner's Fear After Seeing The Alleged Victims' Social Media Posts

Mr. Turner saw these social media posts because he was Facebook friends with Ms. Wolfe-Young, and he believed—understandably, based on past conduct and plain language—that these posts were threats to his life. (*See* Sept. 6–7 Tr. 133:17–134:4.) Mr. Turner was "[t]errified" by these posts and "felt threatened" by them. (*See id.* at 135:18, 136:3.) Mr. Turner believed that the Alleged Victims were trying to harm him. (*See id.* at 137:17–19.) After reading those posts, Mr. Turner "tried to stay home and go back to Georgia" to avoid being harmed. (*Id.* at 138:5–6.) Mr. Turner also went to the Greenville County Sheriff's Department to try to talk to an investigator. (*Id.* at 138:20–24.)

Mr. Turner even hired a private attorney to investigate these threats to his life. (*Id.* at 138:25–139:5.) He feared for his life from the time he saw the social media posts until he encountered the Alleged Victims on September 1, 2017, which was the first time he had seen them since the posts were made. (*Id.* at 139:7–13.)

VI. Mr. Turner's Medical Condition And His Impaired Mobility

In November 2015, Mr. Turner suffered a back injury while working for BMW. (*See* Sept. 6–7 Tr. 120:14–121:3.) Mr. Turner had surgery on his back in 2016, which resulted in nerve damage and numbness to his right leg. (*See id.* at 121:20–21, 122:3–13.) Mr. Turner was suffering from this medical condition on September 1, 2017, which caused numbness in his toes and made it difficult for him to move. (*See id.* at 122:14–15, 124:21–125:10; 137:25–138:1.)

VII. The Incident At The Dugout On September 1, 2017

On the night of September 1, 2017, Mr. Turner went to meet some friends at a club in Greenville County called the Dugout. (*See* Sept. 6–7 Tr. 140:2–9.) Someone at the Dugout told Mr. Turner that Ms. Fletcher was also there, so he ordered her a drink, which he delivered to her without speaking. (*Id.* at 140:9–19.) Soon after that, Mr. Turner received a phone call, and he walked outside to answer it. (*Id.* at 141:4–7.) Mr. Turner told his friend on the phone that he intended to leave the Dugout soon because Ms. Fletcher was there. (*Id.* at 141:7–10.) Mr. Turner went back inside the Dugout before soon leaving again to return to the parking lot. (*Id.* at 141:21–142:8.)

While Mr. Turner was in the parking lot, he saw the lights of a vehicle approaching rapidly. (*See* Sept. 6–7 Tr. 141:25–142:3.) He heard Ms. Wolfe-Young, who was also standing outside the Dugout, say, "[Mr. Turner is] right here." (*Id.* at 141:21–142:4.) At that point, Mr. Turner could not

tell who was approaching him because his back was turned. (*Id.* at 142:5–7.) Then Mr. Turner heard Mr. Stokes yell obscenities while he was walking towards Mr. Turner. (*Id.* at 142:9–14.)

When Mr. Turner turned around to face Mr. Stokes, he saw that Mr. Stokes was only about ten steps away from him. (*See* Sept. 6–7 Tr. 142:14–15.) As Mr. Stokes continued towards him, Mr. Turner reached into his car and grabbed a pistol. (*See id.* at 142:19–21.) Mr. Stokes came closer to Mr. Turner, so Mr. Turner cocked the pistol to show Mr. Stokes that he was armed. (*Id.* at 142:21–23.) Rather than stopping or retreating, Mr. Stokes continued to approach Mr. Turner and appeared to reach into his pocket for a gun. (*See id.* at 142:24, 165:8–12.)

At that time, Mr. Turner feared for his life and believed that he would be seriously injured or killed. (*See* Sept. 6–7 Tr. 146:12–147:3; *see also id.* at 153:9–23.) As a result of this fear, Mr. Turner fired the pistol several times in Mr. Stokes's direction, and Mr. Stokes then ran to his vehicle. (*Id.* at 167:7–14; *id.* at 187:6–9.) No shot hit Mr. Stokes, his vehicle, or anyone else. (*Id.* at 167:17–20.) Mr. Stokes then pulled away in his vehicle with Ms. Rosemond, Ms. Anderson, and Ms. Pickens, who remained unharmed. (*Id.* at 168:3–4.)

VIII. Mr. Turner's Retreat To Georgia, Return To Greenville, 9-1-1 Call, And Arrest

A couple of days after this incident, Mr. Turner returned to his home state of Georgia, where most of his family and friends lived, because he felt safer there than he did in Greenville. (*See* Sept. 6–7 Tr. 148:17–149:3.) Mr. Turner stayed in Georgia for a day before coming back to Greenville. (*Id.* at 149:4–8.) A few days later, Mr. Turner heard banging on his door, and he thought that Mr. Stokes had come to retaliate. (*Id.* at 149:17–23.)

Mr. Turner then called 9-1-1, thinking that Mr. Stokes might be at his door because "the green light [was] already out on my head." (Sept. 6–7 Tr. 150:11–12.) Only four people knew where he lived, so Mr. Turner believed that Ms. Fletcher must have told Mr. Stokes, which was "the only thing [he] could think about" when he called 9-1-1. (*Id.* at 150:14–18.) Thus, Mr. Turner was in fear for his life when he heard these bangs on his door, believing that Mr. Stokes was there to fulfill the threats that he had made on Facebook. (*See id.* at 150:19–151:4.) Mr. Turner later learned when law enforcement came to arrest him that the police had been outside his door when he called 9-1-1. (*See id.* at 151:7–10.)

ARGUMENT

I. The Trial Court Erred By Denying Mr. Turner's Motion For Immunity Under South Carolina's Protection Of Persons And Property Act.

Prior to trial, Mr. Turner sought to invoke the immunity of the Act. The Act codifies the common law Castle Doctrine because "no person ... should be required to surrender his personal safety to a criminal, nor should a person ... be required to needlessly retreat in the face of intrusion or attack." S.C. Code Ann. § 16-11-420(E). Under the Act, a person has no duty to retreat and may stand his ground and meet force with force, including deadly force, if (a) he is attacked in a place where he has a right to be, and (b) he reasonably believes it is necessary to respond with force to prevent death or great bodily injury to himself. *See* S.C. Code Ann. § 16-11-440(C). "[W]ords accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense." *State v. Dickey*, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011) (quoting *State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989)). "Once the right to fire [a weapon] 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." *State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000) (citing *State v. Hendrix*, 270 S.C. 653, 244 S.E.2d 503 (1978)).

A. Standard Of Review

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) (quoting *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (internal quotation marks omitted)); *see State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (recognizing that the proper standard for the trial court to use in determining immunity under the Act is a preponderance of the evidence). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Jones*, 416 S.C. at 290, 786 S.E.2d at 136 (citing *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007)).

B. The Trial Court Abused Its Discretion By Concluding That S.C. Code Ann. § 16-11-440(C) Was Inapplicable Because There Was Supposedly Insufficient Evidence That Mr. Turner Was Under Attack.

The trial court erroneously concluded that S.C. Code Ann. § 16-11-440(C) was inapplicable because (in the trial court's view) there was insufficient evidence presented during the immunity hearing to show by a preponderance of the evidence an actual or imminent attack on Mr. Turner as required to invoke the Act. (Sept. 6–7 Tr. 221:17–24.) Contrary to the trial court's conclusion, however, the evidence from the immunity hearing shows (1) that Mr. Turner was attacked, (2) that he was in a place where he had a lawful right to be, and (3) that he reasonably believed that his use of force (which, in his case, was merely a display of force that caused no harm to anyone) was necessary to prevent bodily harm. Accordingly, S.C. Code Ann. § 16-11-440(C) applies.

The facts here are functionally indistinguishable from *State v. Dickey*, in which our Supreme Court reversed the lower court and held the Act was properly invoked. In *Dickey*, the South Carolina Supreme Court held as a matter of law that the doctrine of self-defense applied when a defendant fatally shot a victim after the victim (1) yelled obscenities at the defendant, (2) approached the defendant rapidly, and (3) appeared to the defendant to be reaching for a weapon. 394 S.C. at 496–97, 501, 716 S.E.2d at 99–100, 102. The court in *Dickey* considered it relevant that there was "disparity in the physical stature and capabilities" of the victim and the defendant, including that the defendant was classified by the Veteran's Affairs Administration as thirty percent disabled and testified that he could not run due to his disability. *Id.* at 497, 99 n.3. Likewise, the prosecution failed to rebut the defendant's testimony that he saw the victim reach under his shirt for a weapon as he advanced toward the defendant. *Id.* at 501, 102.

So too here, where each of these factors is present. Just as in *Dickey*, Mr. Turner was under attack when Mr. Stokes (1) approached him from behind while screaming profanities, (2) proceeded to come closer to Mr. Turner while threatening him, and (3) reached for what looked like a weapon—testimony that the State failed to rebut. (*See id.* at 142:5–18, 142:24, 165:8–12.) Mr. Turner, like the defendant in *Dickey*, was physically unable to run away from Mr. Stokes because Mr. Turner had an injury which caused numbness in his toes, hindered his mobility, and diminished his ability to run. (*See id.* at 122:14–15, 124:21–125:10; 137:25–138:1.) Thus, under *Dickey*, Mr. Turner was under attack as a matter of law, and the Court committed an error of law by ruling that S.C. Code Ann. § 16-11-440(C) was inapplicable.

The Court, therefore, should reverse and hold that Mr. Turner is entitled to immunity under the Act or, alternatively, reverse and remand for a new hearing to determine whether Mr. Turner meets the requirements of S.C. Code Ann. § 16-11-440(C).

C. The Trial Court Committed Reversible Error By Failing To Make Specific Findings On Each Element Of Self-Defense Under S.C. Code Ann. § 16-11-440(C).

Under S.C. Code Ann. § 16-11-440(C), a defendant is immune from prosecution if he was attacked where he had a right to be, and a valid case of self-defense exists. *See Curry*, 406 S.C. at 371, 752 S.E.2d at 266. "[T]he trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity," which "includes all elements of self-defense, save the duty to retreat." *Id.* These elements of self-defense are (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have believed he was in imminent danger of losing his life or sustaining serious bodily injury; and (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief. *See id.* at 371, 266 n.4.

In ruling on a motion for immunity, the trial court must consider and address each of these elements. And while a trial court may provide its analysis orally on the record rather than in a written order, it still must consider and address these specific elements. *See State v. Glenn*, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019) ("While we understand that written orders are not always practical given the timing of the immunity hearing, the circuit court, in announcing its ruling, should at least make specific findings on the elements on the record."). "While the Act does not require a written order upon an immunity determination, specific findings of fact and conclusions of law are critical to reviewing courts, particularly given the gravity of the circumstances these cases necessarily involve." *State v. Cervantes-Pavon*, 426 S.C. 442, 452 n. 4, 827 S.E.2d 564, 569 n.4 (2019). Failure

to address each of the elements of self-defense makes appellate review difficult and constitutes reversible error. *Glenn*, 429 S.C. at 123, 838 S.E.2d at 499.[1]

Here, the trial court failed to consider and specifically address these elements either in writing or orally. The trial court did not issue a written order; instead, it denied Mr. Turner's Motion for Immunity abruptly on the record in a terse, two-page part of the transcript. The trial court stated, "I have considered the evidence, reviewed the case law and I just find that the Defense has not met its burden by a preponderance of the evidence." (Sept. 6–7 Tr. 220:7–9.) The evidence the trial court supposedly considered included "inconsistencies in the statements made or presented on behalf of [Mr. Turner]." (*Id.* at 220:10–11.) Yet the trial court identified no such inconsistencies with specificity to permit this Court to review the findings. *See Glenn*, 429 S.C. at 123, 838 S.E.2d at 499 ("The circuit court is the fact-finder in immunity hearings, and we are reluctant to infer findings of fact which do not appear in the record.").

The trial court relied entirely on *State v. Marshall*, 428 S.C. 11, 832 S.E.2d 618 (Ct. App. 2019), for the proposition that "the Supreme Court [has] upheld the circuit court finding that defendant was not entitled to immunity because he failed to prove elements of self-defense by a preponderance of the evidence due to inconsistencies of the record." (Sept. 6–7 Tr. 221:2–6.) But that neither fully characterizes *Marshall* nor justifies the trial court's failure to identify and analyze the elements of self-defense. In *Marshall*, this Court clarified that "just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court

[1] Just two years ago, this Court similarly reversed and remanded a criminal appeal because the trial court had failed to rule on all elements of self-defense. Because that ruling was an unpublished opinion, Mr. Turner mentions that case without citation, *see* Rule 268(d)(2), to show the ongoing vitality of the holding in *Glenn*.

must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act." 428 S.C. at 19, 832 S.E.2d at 622 (quoting *State v. Cervantes-Pavon*, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019)). "Thus, the relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence." *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019). Here, however, the trial court did not analyze the conflicting evidence or weigh the evidence.

Thus, the trial court committed an error of law, and this Court should reverse and, at a minimum, remand for a new hearing on whether Mr. Turner is entitled to immunity under the Act.

D. The Trial Court Abused Its Discretion By Finding That Mr. Turner Failed To Prove The Elements Of Self-Defense As Required By S.C. Code Ann. § 16-11-440(C).

The trial court erred by finding that Mr. Turner failed to prove the elements of self-defense because of supposed inconsistencies in the record. The trial court's ruling rested on factual conclusions that lack any support in the record. Because the trial court abused its discretion by denying the Motion for Immunity, this Court should reverse. The evidence in the record is sufficient for this Court to decide that Mr. Turner is entitled to immunity under the Act. At a minimum, the Court should remand for a new hearing on whether Mr. Turner is entitled to immunity under the Act.

1. The trial court's conclusion that Mr. Turner brought about the difficulty is without evidentiary support in the record.

The evidence presented at the immunity hearing shows that Mr. Turner did not bring about the difficulty. But the trial court still expressed doubts: "I think there's, also, a little bit of issue of whether he's without fault in bringing about the difficulty in the fact that there was testimony that he knew that some of those – that person would be there." (Sept. 6–7 Tr. 221:9–12.)

The testimony to which the trial court referred may be Mr. Turner's statements that he knew that Ms. Fletcher would be at the Dugout that night because she had posted on Facebook that she was having her birthday party there. (*Id.* at 169:17–170:5.) But knowing that Ms. Fletcher would be at the Dugout is a far cry from inciting violence. In fact, Mr. Turner was standing in the parking lot of the Dugout, where he had a legal right to be, when Mr. Stokes approached him from behind, screaming profanities. (*Id.* at 142:5–12.) After Mr. Turner turned to face Mr. Stokes, Mr. Stokes escalated the situation by continuing to come closer to Mr. Turner, threatening him, and reaching for what Mr. Turner believed to be a weapon. (*Id.* at 142:13–18.) Thus, the trial court should have found by the preponderance of the evidence that Mr. Turner satisfied the first element. Further, because there is no evidentiary basis to conclude that Mr. Turner brought about the difficulty by merely being in a public place where he had a legal right to be, the trial court abused its discretion.

The Court, therefore, should reverse and, at a minimum, remand for a new immunity hearing.

2. The trial court's conclusion that Mr. Turner was not in fear for his life is without evidentiary support in the record.

The unrebutted evidence presented during the immunity hearing shows that at the time of the incident at the Dugout Mr. Turner believed he was in imminent danger of losing his life or sustaining serious bodily injury. Yet the trial court seems to have concluded that Mr. Turner failed to prove the second element of self-defense by a preponderance of the evidence. The trial court said that it "considered the 911 call that [Mr. Turner] made" several days *after* the incident in which "the word drama was used." (Sept. 6–7 Tr. 220:19–22.) The trial court appears to question the fact that Mr. Turner did not state during that 9-1-1 call he was "scared for [his] life" or that he believed that he "had to defend [his] life." (*Id.* at 220:23–24.) While the trial court did not say so, it apparently

concluded that Mr. Turner's comments on the 9-1-1 call conflicted with being fearful for his life at the time of the incident. The trial court's conclusion is unfounded for at least two reasons.

First, the 9-1-1 call is not inconsistent with Mr. Turner's testimony about his subjective fear of harm. Mr. Turner testified that he believed that he was in imminent danger of losing his life or sustaining serious bodily injury *at the time* Mr. Stokes approached him on September 1, 2017. (*See id.* at 153:9–20.) The State presented no evidence during the immunity hearing which contradicted Mr. Turner's testimony. That several days later, during his 9-1-1 call, Mr. Turner quickly described the incident without exhaustively explaining every element of the confrontation and his contemporaneous fears does not negate his testimony that he feared serious, imminent harm during the confrontation at the Dugout. His hasty description on the 9-1-1 call may have been an *incomplete* description of the incident, but it was not *inconsistent* with his testimony about his fear during the incident.

Second, that Mr. Turner's description on the 9-1-1 call was not an exhaustively detailed account of the incident at the Dugout can be forgiven considering his understandable agitation at the time of the 9-1-1 call itself. Mr. Turner testified that he called 9-1-1 because he feared that Mr. Stokes was at his door to execute "the green light [that was] already out on my head." (Sept. 6-7 Tr. 150:11–12.) Mr. Turner testified that he believed that Ms. Fletcher had told Mr. Stokes where he lived, and "that's the only thing I could think about [ ] when I called 911." (*Id.* at 150:17–18.) Thus, Mr. Turner testified that he called 9-1-1 when he heard banging at his door because he feared that his life was in danger.

Mr. Turner, therefore, satisfied the preponderance of the evidence standard as to element two, and the trial court's finding to the contrary has no basis in the evidence. This Court, therefore, should reverse and, at a minimum, remand for a new immunity hearing.

3. The trial court's conclusion that Mr. Turner's fear was unreasonable is without evidentiary support in the record and constitutes an error of law.

A reasonably prudent person of ordinary firmness and courage would have entertained the same belief that his life was in danger as Mr. Turner under the circumstances. In the context of self-defense, an individual has the right to act on appearances, even if that belief is ultimately mistaken. *State v. Scott*, 424 S.C. 463, 472, 819 S.E.2d 116, 120 (2018). Still, the belief must be objectively reasonable. *State v. Douglas*, 411 S.C. 307, 328, 768 S.E.2d 232, 244 (Ct. App. 2014). "Once the right to fire [a weapon] 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." *Starnes*, 340 S.C. at 322, 531 S.E.2d at 913.

Mr. Turner reasonably believed that his life was in danger because he knew that Mr. Stokes was a violent man who had maliciously damaged his property and threatened his life. (*See* September 6-7 Tr. 30:24–33:6). Mr. Stokes was approaching Mr. Turner rapidly in the dark, while yelling obscenities and reaching for an apparent weapon. (*See id.* at Tr. 30:24–33:6, 133:2–134:4, 142:5–25, 155:14–20.) Mr. Turner's experiences with Mr. Stokes's prior violent outbursts and his threats to Mr. Turner's life, combined with Mr. Stokes's manner of approaching Mr. Turner, caused Mr. Turner to have a reasonable fear that his life was in danger.

Mr. Turner's experience with Mr. Stokes's violent tendencies dates to August 2013, when Mr. Stokes attacked Mr. Turner's car with a machete. (*See* Sept. 6–7 Tr. 31:3–32:18.) As a result of

these actions, Mr. Stokes was convicted of malicious injury to property. (*Id.* at 32:19–33:6.) Then, in December 2016, another incident arose in which Mr. Turner was baselessly accused of inappropriately touching Mr. Stokes's thirteen-year-old stepdaughter. (*Id.* at 130:15–131:8.) DSS and the Greenville County Police Department investigated the accusations, but no charges were ever brought against Mr. Turner. (*Id.* at 41:21–23.)

In any event, shortly after this incident, Mr. Stokes began threatening Mr. Turner's life on social media. (*See* Sept. 6–7 Tr. 61:24–62:11.) On January 13, 2017, through his Facebook page called "Lethal Cutz," Mr. Stokes posted a picture of Mr. Turner and the text:

> His name is Eugene Turner!!!! If you see this bitch ass child malester [sic] call the police before I get to hem [sic] because on my family and life he done all my niggas green light mash on sight !! Its face off fuck boy not god, not my mama, not Police, not your mama can save you on the Shao u dead bitch !!!

(Tr. Ex. D-1.)

Several days later, on January 17, 2017, Mr. Stokes went live on Facebook to threaten Mr. Turner a second time as transcribed below:

> Yo, yo, yo,
> Your boy had a great day
> Just checking in to let you know that I'm about
> To clock outta this clock
> And get on another clock
> Ni**a I'm still looking for your bitch ass
> Alright
> Think you done fucked up
> Fuckin around ni**a
> I don't give a damn nobody say
> Can't nobody save you ni**a
> You better pray to Allah, Buddha and Shania
> Twain
> Cause bitch I'm coming

(*See* Tr. Exs. D-2, D-3.)

Mr. Turner—like any objectively reasonable person—understood these Facebook posts as "threat[s] to [his] life." (Sept. 6–7 Tr. 133:17–19.) In response, Mr. Turner fled to Georgia to "stay[] out of the way." (*Id.* at 138:9–10.) Months later, after returning to Greenville, Mr. Turner was still frightened by these threats and reported them to the Greenville County Sheriff's Department. (*Id.* at 138:15–24.)

After these Facebook posts, Mr. Turner did not see Mr. Stokes until the night of September 1, 2017. (Sept. 6–7 Tr. at 139:7–13.) On September 1, 2017, Mr. Turner went to the Dugout, where he saw Ms. Fletcher. (*Id.* at 140:9–19.) Soon after seeing Ms. Fletcher, Mr. Turner exited the Dugout and was standing in the parking lot when Mr. Stokes approached him from behind, screaming obscenities. (*Id.* at 142:9–14.) When Mr. Turner turned around, Mr. Stokes was only about ten steps away from him. (*Id.* at 142:14–15.) Mr. Stokes continued to approach Mr. Turner rapidly and appeared to be reaching into his pocket for a gun. (*See id.* at 142:24, 165:8–12.) When Mr. Turner saw that Mr. Stokes was not stopping and was potentially reaching for a weapon, Mr. Turner believed that his life was in danger and defended himself accordingly. (*Id.* at 167:7–14; *id.* at 187:6–9.)

A reasonable person in this situation would have reached the same conclusion. Considering Mr. Stokes's prior violent crime toward Mr. Turner's property, Mr. Stokes's threats to Mr. Turner's life, and Mr. Stokes's rapid approach toward Mr. Turner while screaming obscenities and reaching into his pocket for what might have been a weapon, Mr. Turner reasonably believed that his life was in danger. His subjective fear is undisputed, and the objective reasonableness of it is shown by *Dickey* in which the South Carolina Supreme Court held as a matter of law that "a reasonable person would have entertained the same belief" of imminent physical harm that the defendant felt when he fatally shot an aggressor who yelled obscenities at the defendant, approached the defendant rapidly, and

appeared to the defendant to be reaching for a weapon. 394 S.C. at 496–97, 501, 503, 716 S.E.2d at 99–100, 102. Here too, Mr. Stokes approached Mr. Turner from behind, screaming profanities, and proceeded to come closer to Mr. Turner while threatening him. (September 6-7 Tr. 142:5–18.) Mr. Turner also testified that he saw Mr. Stokes reaching for what looked like a weapon, and the State failed to rebut this testimony. (*See id.* at 142:24, 165:8–12.) Thus, under *Dickey*, Mr. Turner's fear of losing his life or sustaining serious bodily injury was reasonable as a matter of law.

Because the trial court committed legal error and its factual conclusions lack evidentiary support, this Court should find that the trial court abused its discretion.

II. The Trial Court Erred By Denying Mr. Turner's Motion For Mistrial.

A. Standard Of Review

"The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014) (quoting *State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011)). A mistrial should be granted when a defendant shows both error and resulting prejudice. *State v. Wilson*, 389 S.C. 579, 585–86, 698 S.E.2d 862, 865 (Ct. App. 2010). "[W]hether to grant or deny a mistrial is within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." *State v. Chisholm*, 395 S.C. 259, 265–66, 717 S.E.2d 614, 617 (Ct. App. 2011) (quoting *State v. Herring*, 387 S.C. 201, 216, 692 S.E.2d 490, 498 (2009)). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Jones*, 416 S.C. at 290, 786 S.E.2d at 136 (citing *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007)).

B. The Trial Court Abused Its Discretion By Denying The Motion For Mistrial When Evidence Was Presented In Violation Of Rule 403, SCRE.

The trial court erred by denying Mr. Turner's Motion for Mistrial for at least two reasons. *First*, as explained more fully below, the unfair prejudice to Mr. Turner of Mr. Stokes's testimony falsely implying that Mr. Turner sexually molested or abused a child substantially outweighed any probative value of such evidence. *Second*, the admission of such evidence was not harmless error, and the trial court should have granted the Motion for Mistrial. Because the trial court abused its discretion by denying the Motion for Mistrial, this Court should reverse and remand for a new trial.

1. Both parties and the trial court agreed that the unfair prejudice of introducing any reference to the allegations of child molestation and child abuse substantially outweighed any probative value of the evidence.

"Rule 403, SCRE states that '[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.'" *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012) (quoting Rule 403, SCRE). Mr. Turner moved to "exclude testimony about the child molestation and investigation." (September 6–7 Tr. 187:20–22.) On December 1, 2016, police and DSS responded to a complaint that Mr. Turner had criminal sexual conduct with a minor. (*See id.* at 36:15–37:11.) During the investigation, Mr. Turner explained to the police and DSS that he believed that the alleged victim's father, Mr. Stokes, had persuaded her to make these accusations. (*Id.* at 47:1–5.) No charges were ever brought against Mr. Turner based on these allegations. (*Id.* at 41:21–23.) Even so, these child abuse and child molestation allegations prompted the Facebook posts by Mr. Stokes in which Mr. Stokes threatened Mr. Turner's life (*see id.* at 61:24–62:11) and the Facebook posts by Ms. Wolfe-Young threatening Mr. Turner (*see* Ex. D-7, Ex. D-6, and Ex. D-2). These child abuse

allegations and the resulting Facebook posts caused Mr. Turner to believe his life was being threatened (*see* Sept. 6–7 Tr. 133:17–134:4) and that the Alleged Victims were trying to harm him (*see id.* at 137:17–19.) Thus, these child abuse allegations were relevant as much as they explain the motivation of Mr. Stokes's and Ms. Wolfe-Young's conduct toward Mr. Turner leading up to the night of September 1, 2017, and why Mr. Turner feared for his life.

But Mr. Turner moved to exclude evidence of the particular allegations against him because any mention or implication of the child molestation or child abuse investigation would unfairly prejudice him. (*See* Sept. 6–7 Tr. 188:1–3.) The trial court agreed and asked the parties to come to an agreement on how to reference the child molestation and child abuse investigation. (*Id.*) After discussion, defense counsel and counsel for the State agreed that everyone would refer to the matter as "a serious family incident involving a family member." (*Id.* at 223:3–6.)

During the discussion with the trial court, Mr. Smith stated, "[The State is] just afraid that just the mention of molestation, or sex abuse, or inappropriate touching might be something that is just so prejudicial that the jury wouldn't be able to overcome that, more so than the probative value that would be on our side. So the - - even though there were no charges brought or DSS unfounded the case, it was just decided that the prejudicial effect was just too great." (*Id.* at 223:21–224:3.) The trial court agreed with Mr. Smith's assessment and confirmed the stipulation to only refer to a serious family incident involving a family member. (*Id.* at 224:3–6.) The trial court emphasized this importance by stating that the witnesses should be informed of this stipulation and that it was crucial for the State's witnesses to comply with the stipulation. (*Id.* at 223:9–16.) Thus, the trial court and Mr. Smith agreed that even mentioning these allegations would be so prejudicial to Mr. Turner as to taint the jury beyond recovery. *See Lee*, 399 S.C. at 530, 732 S.E.2d 225, at 229.

2. The admission of such evidence caused unfair prejudice to Mr. Turner that was harmful and warranted a mistrial.

The State called Mr. Stokes to testify about the history of his relationship with Mr. Turner and the incident at the Dugout on September 1, 2017. During his testimony, the State asked multiple questions to Mr. Stokes about the identity of his children and the mothers of his children. (Sept. 6–7 Tr. 247:20–251:25.) Mr. Stokes was previously in a romantic relationship with Ms. Fletcher, and they had a child and stepchild together. (*Id.* at 125:16–17.) Mr. Stokes met Mr. Turner through his relationship with Ms. Fletcher, and they interacted regularly at family events while Mr. Stokes coparented with Ms. Fletcher. (*Id.* at 251:10–252:24.) The State asked Mr. Strokes multiple questions about the time he spent with his children around Mr. Turner and tried to establish that Mr. Turner was regularly around the children. (*Id.* at 251:1–253:7.) The State asked if there "were any difficulties in dealing with the kids and Ms. Fletcher and Mr. Turner?" (*Id.* at 252:25–253:1.) Mr. Stokes responded that there had been a dispute over discipline of the children. (*Id.* at 253:2–7.)

The State, therefore, focused the jury on Mr. Turner's interactions with Mr. Stokes's children. The State then asked, "[Was there] a serious family incident involving a family member that you become aware of?" (Sept. 6–7 Tr. at 253:9–11.) Mr. Stokes said yes and stated that, in his "anger, and passion, and love for [his] family," he "went on Facebook and -- in a rage and made a Facebook post." (*Id.* at 253:15–17). Thus, Mr. Stokes implied that something happened with the family that caused him, as a father, to post something out of anger, passion, and love. The State continued, asking if law enforcement had been involved, and Mr. Stokes answered, "They were involved. But it was -- like, kind of shifty. They [sic] were like no evidence yet. *Mom hasn't taken any action or* --." (*Id.* at 253:18–22) (emphasis added). At this point, Mr. Turner's attorney objected and made the Motion

for Mistrial. (Sept. 6–7 Tr. at 253:25–255:12.) Mr. Turner moved for a mistrial because the mention of the mother made a clear connection to the children and implied that Mr. Turner was linked to allegations and an investigation involving abuse of children. (*Id.* at 254:17–255:12). The trial court denied the Motion for Mistrial. (*Id.* at 255:15–18.)

The trial court abused its discretion in denying the Motion for Mistrial because it failed to recognize the unfair prejudice to Mr. Turner of associating him with allegations of child abuse. This case is analogous to *Lee* in which this Court found that the admission of sexually graphic photos was likely to "raise the emotions of the jury and to establish that Lee had a general sexually deviant disposition" and was "highly prejudicial in light of their sexually graphic nature." 399 S.C. at 530, 732 S.E.2d at 229. In that case, this Court overturned the trial court's decision to admit the photographs because the connection of the defendant to sexually deviant behavior was so prejudicial as to outweigh any probative value. *Id.* The error was not harmless because the State's case was heavily based on the victim's word against Lee's, and thus the wrongful admission of evidence undermining his credibility by associating him with sexual deviancy was so prejudicial that the error was "harmful beyond a reasonable doubt." *Id.* Mr. Turner's credibility suffered similar damage because the jury heard evidence that the family incident involved a mother making accusations and implicated Mr. Turner in allegations of possible child abuse.

This case is also like *Lee* because attacking Mr. Turner's credibility and bolstering the credibility of the Alleged Victims were important parts of the State's case. In *Lee*, this Court found that the State's reliance on using the victim's word against Lee's made the unfairly prejudicial evidence more harmful because its admission undermined Lee's credibility by associating him with sexually deviant behavior. 399 S.C. at 530, 732 S.E.2d at 229–30. Here, in its closing argument, the

State questioned whether Mr. Turner was a reasonably prudent person in how he reacted to the situation at the Dugout and implied that Mr. Turner lied when he said that the Facebook posts made him fear for his life. (Sept. 8–9 Tr. 243:16–245:22.) The State also relied on the credibility of Mr. Stokes and the other Alleged Victims for the true version of events. (*Id.* at 248:1–15.) Thus, the State wanted the jury to believe its witnesses' version of events and to disregard Mr. Turner's claims of being in reasonable fear for this life. Mr. Stokes's testimony implying that Mr. Turner was the subject of a child abuse investigation strengthened this critical element of the State's case and made it more likely that the jury would believe the Alleged Victims over Mr. Turner. Besides being unfairly prejudicial, Mr. Stokes's testimony also harmed Mr. Turner and warranted a mistrial. In *Lee*, this Court found that this type of unfairly prejudicial evidence was not harmless error. 399 S.C. at 530, 732 S.E.2d at 230. Thus, the trial court should have granted Mr. Turner's Motion for Mistrial, and its failure to do so was an abuse of discretion. Accordingly, the Court should remand for a new trial.

CONCLUSION

For these reasons, this Court should reverse the trial court and hold that Mr. Turner is entitled to immunity under the Act. Alternatively, the Court should remand the case for a new hearing on whether Mr. Turner meets the requirements of S.C. Code Ann. § 16-11-440(C) and for a new trial.

Respectfully submitted,

June 14, 2023

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