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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge

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BRITTANY PEARSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000561

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# SUPPLEMENTAL APPENDIX

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SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SUZANNE J. SHAW
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3372

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit
180 Magnolia St, Third Floor
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

BRITTANY SHAUNTA PEARSON,

APPELLANT

APPELLATE CASE NO. 2016-001216

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# FINAL BRIEF OF APPELLANT

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LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

Did the court abuse its discretion by failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the decedent attacked Appellant in her occupied vehicle and Appellant shot the decedent in self-defense after the decedent continually beat Appellant in the head and repeatedly slammed her head into the car window?

## STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant on March 12, 2015 for murder and possession of a firearm during the commission of a violent crime. R. 256. Her case was called to trial on May 23, 2016 before the Honorable J. Derham Cole, and a jury. R. 1. Assistant Solicitors Timi Poulos, Russell Ghent, and Grady Anthony represented the state, and Thomas Quinn represented Appellant. R. 1.

On May 25, 2016, the jury found Appellant guilty of the lesser included offense of voluntary manslaughter and possession of a firearm during the commission of a violent crime. R. 247, l. 13 – 248, l. 3. Judge Cole sentenced Appellant to twenty-four years' imprisonment for voluntary manslaughter and five years concurrent the weapons offense. R. 250, l. 22 – 251, l. 7.

This appeal follows.

## STATEMENT OF THE FACTS

Appellant moved to dismiss the indictments pursuant to the Protection of Persons and Property Act (the Act). R. 252. The court held a pretrial hearing to determine whether Appellant was immune from criminal prosecution under the Act.[1] R. 5, ll. 23-25. Appellant was the ***only*** witness who testified during the hearing. The following evidence was established during Appellant's testimony.

The decedent, Myah Cole, was Appellant's girlfriend. They had been dating for almost a year and were living together at the time of the decedent's death. R. 11, l. 16 – 12, l. 4. On the afternoon of November 8, 2014, Appellant and the decedent went to a baby shower that was hosted and attended by the decedent's family and friends. During the baby shower, the decedent grabbed Appellant's butt in front of everybody. This upset Appellant because the couple had agreed not to engage in public displays of affection. The decedent was angered at the way Appellant reacted and the two argued. R. 13, l. 8 – 14, l. 13.

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[1] Before the hearing, the state moved to have the Act declared unconstitutional. Quoting State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994), the assistant solicitor argued, "Under the separation of powers doctrine, which is the basis for our form of government, the executive branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution and the South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands. The attorney general as the state's chief prosecutor may decide when and where to present an indictment and may even decide whether an indictment should be sought. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. The judicial branch is not empowered to infringe on the exercise of this prosecutorial discretion." R. 8, l. 18 – 9, l. 12. He continued, "What the legislature has done here is carved out a huge hole in the prosecutor's absolute discretion to decide who will and who won't receive immunity." R. 8, ll. 15-17. Consequently, the solicitor claimed the statute was unconstitutional. R. 10, l. 21. The court ultimately dismissed the state's argument and found the statute constitutional. R. 11, ll. 1-3.

When the couple left the shower, the decedent was still angry with how Appellant had reacted in front of her family and friends. The two continued to argue on the way home to their apartment and after they got home. R. 14, l. 14 – 15, l. 1. Their argument was purely verbal. R. 14, ll. 14-16.

Later that night, Appellant and the decedent met another couple at Red's Bar and Grill. While they were at the bar, the other couple was "kissing in public." The decedent "made a smart comment" to Appellant about public displays of affection. R. 15, ll. 5-21. In response to the decedent's comment, Appellant walked out of the bar and went to her car. As Appellant was trying to leave, the decedent started banging on the car window to get Appellant's attention because she did not want Appellant to leave her. R. 16, ll. 7-11. The decedent then stood in front of Appellant's car "to where if [Appellant pulled out she] would hit her with [her] car. So [Appellant] unlocked the door" and let the decedent in the car. R. 15, l. 22 – 16, l. 6.

Appellant then drove home to the couple's apartment. Her plan was to drop the decedent off and leave. After she parked the car, Appellant told the decedent, who was sitting in the front passenger seat, to get out of the car. She gave the decedent her keys to their apartment because the decedent did not bring hers. Appellant "kept trying to get her to get out of the car." While the decedent refused at first, she eventually got out of the car and stood outside. Nevertheless, she quickly got back into the car and began to attack Appellant, who was still sitting in the driver's seat. R. 16, l. 12 – 17, l. 19. The decedent had her knees on the front passenger seat and was "punching" Appellant in the head and "beating [her] head into the window." R. 18, ll. 4-17. Appellant said the decedent's left hand was holding Appellant's head down and she was punching Appellant with her right hand. R. 18, ll. 22-24.

As the decedent was beating her, Appellant "was trying to fend her off" and had her hands up in a defensive position. R. 18, l. 25 – 19, l. 3. Appellant's vehicle, a Dodge Dart, was a very small car. Appellant still had her seatbelt on and was pulled up very close to the steering wheel because she is short. Consequently, she "couldn't move." R. 17, l. 20 – 18, l. 3; R. 20, ll. 1-2. Appellant "had never been put in a position like that before, and didn't know what to do." R. 19, ll. 21-25. She ultimately reached under her seat, grabbed her gun, cocked it, and shot the decedent.[2] R. 20, ll. 3-6. She fired "one time." R. 20, ll. 5-6. Appellant later said that she "wasn't aiming" and just put the gun between them "and fired." R. 24, l. 19 – 25, l. 7.

After Appellant shot the decedent, she opened the car door, threw the gun out, and got out of the car. When she got out of the car, the decedent fell over into the driver's seat. R. 20, ll. 17-21. Appellant immediately called 911 and told the operator that she "had just shot [her] girlfriend." R. 20, l. 21 – 21, l. 1; R. 29, ll. 18-23. Appellant was hysterical when the police arrived and felt "numb." R. 21, ll. 2-9. She cooperated with law enforcement and gave both a written and a recorded statement that night. R. 34, l. 16 – 36, l. 4.

Appellant testified that she had no "other option" but to shoot the decedent, and that if she had not shot the decedent, it would have been the decedent on trial instead of Appellant. R. 22, ll. 1-6. She also said she is "not a fighter" and that she feared she would be seriously injured or killed if she did not shoot the decedent. R. 20, ll. 7-9.

Appellant was five feet, three inches tall and 145 pounds. The decedent was the same height as Appellant, but approximately ten to fifteen pounds heavier. R. 19, ll. 4-10; R. 32, ll. 7-17. Appellant had purchased the Dodge Dart about a month before the decedent's death. It was exclusively her car. She and the decedent had different schedules and did not share transportation

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[2] Appellant had a valid concealed weapons permit. R. 36, 14-18.

during the week. However, if they did something together on the weekends, they would ride together in the same vehicle. Appellant said she "probably" let the decedent drive her car at some point, but she could not recall. R. 31, l. 12 – 32, l. 6.

At the conclusion of the hearing, the court broke for a lunch recess without permitting argument. R. 40, ll. 3-9. After the recess, the court found Appellant was not entitled to immunity under the Act. The court simply said, "I . . . find that the motion to dismiss or to grant immunity to the defendant based upon 16-11-450 should be, and therefore is, denied." R. 44, ll. 8-10.

## ARGUMENT

The court abused its discretion by failing to grant Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the decedent attacked Appellant in her occupied vehicle and Appellant shot the decedent in self-defense after the decedent continually beat Appellant in the head and repeatedly slammed her head into the car window.

Appellant was entitled to immunity under the Protection of Persons and Property Act because the evidence presented pretrial established that Appellant shot and killed the decedent in self-defense after the decedent attacked Petitioner in her car.

"Section 16-11-450(A) of the South Carolina Code provides immunity from criminal prosecution to a person using deadly force as permitted by the Act." State v. Douglas, 411 S.C. 307, 317, 768 S.E.2d 232, 238 (Ct. App. 2014). The Act expresses the General Assembly's finding "that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others." S.C. Code Ann. § 16-11-420(B). "[T]he legislature intended to create a true immunity, and not simply an affirmative defense." State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial." Id. "[W]hen a party raises the question of immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665.

Section 16-11-440 sets forth the circumstances under which the Act allows the use of deadly force. Id. The statute states in relevant part:

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

> (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.
>
> ...
>
> (C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has the 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.
>
> (D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

Our Supreme Court emphasized in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) "that immunity under the Act 'is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by a preponderance of the evidence,' save the duty to retreat." Douglas, 411 S.C. at 318, 768 S.E.2d at 238 (quoting Curry, 406 S.C. at 371-372, 752 S.E.2d at 266-267). "[A] valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." Id. at 318, 768 S.E.2d at 238 (quoting Curry, 406 S.C. at 371, 752 S.E.2d at 266) (alternation in original).

"There are four elements required by law to establish a case of self-defense: First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury,

or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance." Id. at 318, 768 S.E.2d at 238-239 (internal citation omitted). As mentioned, the last element, the duty to retreat, need not be shown when seeking immunity under the Act. Id. at 318, 768 S.E.2d at 239 (citing Curry, 406 S.C. at 371, 752 S.E.2d at 266.

Appellant's testimony pretrial established that the decedent unlawfully entered Appellant's car after Appellant had ordered her out of the vehicle, and immediately began to attack Appellant. The decedent continually punched Appellant in the head with her fists and repeatedly slammed Appellant's head into the car window. Because the decedent unlawfully entered Appellant's car after Appellant had ordered her out of the vehicle, Appellant was "presumed to have a reasonable fear of imminent peril of death or great bodily injury" under § 16-11-440(A) when she shot the decedent. Consequently, Appellant reasonably believed under the presumption created by the statute that the decedent was going to seriously injure or kill her if she did not use deadly force to protect herself.

Additionally, Appellant established by a preponderance of the evidence that she was acting in self-defense when she shot the decedent. First, Appellant was without fault in bringing on the difficulty. Appellant's testimony pretrial established she drove the decedent home from the bar with the intention of dropping her off and leaving. Appellant gave the decedent her

house keys and told her to get out of the car. While the decedent initially got out of the car, she reentered the vehicle and immediately began beating Appellant. Appellant, who had a valid concealed weapons permit, only armed herself after the decedent attacked her. Therefore, there is no question Appellant was without fault in bringing on the difficulty. Cf. State v. Dickey, 394 S.C. 491, 500, 716 S.E.2d 97, 101 (2011) (finding the state did not produce any evidence to contradict Dickey's testimony that he routinely carried his concealed weapon for which he had a permit, and did not deliberately arm himself in anticipation of a conflict that evening, and consequently, the state did not carry its burden to disprove the elements of self-defense beyond a reasonable doubt); State v. Slater, 373 S.C. 66, 71, 644 S.E.2d 50, 53 (2007) (holding the trial court correctly found Slater was not entitled to a self-defense charge because his actions, including the unlawful possession of the weapon, proximately caused the exchange of gunfire and ultimately the death of the decedent, and any act of the accused in violation of the law and reasonably calculated to produce the occasion amounts to bringing on the difficulty); and State v. Smith, 406 S.C. 547, 554-555, 752 S.E.2d 795, 798-799 (Ct. App. 2013) (finding the state presented evidence Smith was not acting in good faith at the time of the shooting in that he took a gun to a drug deal, and holding going to a drug deal while armed with a deadly weapon is evidence of fault in bringing on the difficulty).

Moreover, not only did Appellant believe she was in imminent danger of losing her life or sustaining serious bodily injury, she actually was in such imminent danger. As seen *supra*, the decedent was holding Appellant's head with her left hand and continually punching her in the head with her right fist. See State v. Davis, 309 S.C. 326, 344, 422 S.E.2d 133, 144 (1992) *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) (holding a hand or fist may be a deadly weapon). She was also slamming Appellant's head into the

window. Appellant testified that she had no "other option" but to shoot the decedent, and that if she had not shot the decedent, it would have been the decedent on trial instead of Appellant. R. 22, ll. 1-6. Due to the constant punches, Appellant feared she would be seriously injured or killed if she did not shoot the decedent. R. 20, ll. 7-9. Under the circumstances, a reasonable person in Appellant's position would have likewise believed he or she was in imminent danger and acted as Appellant acted in order to save herself from serious bodily injury or death.

As mentioned, the last element, the duty to retreat, need not be shown when seeking immunity under the Act. Id. at 318, 768 S.E.2d at 239 (citing Curry, 406 S.C. at 371, 752 S.E.2d at 266. Therefore, when Appellant reached under her seat, grabbed her gun, and shot the decedent once, she was lawfully acting in self-defense.

Respectfully, this Court should reverse Appellant's convictions and sentence and hold she is immune from prosecution under the Act.

## CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse her convictions and sentence and hold she is immune from prosecution pursuant to the Protection of Persons and Property Act.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 20014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 27, 2017

Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

BRITTANY SHAUNTA PEARSON,

APPELLANT

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case have been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of July, 2017.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2017.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions
J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2016-001216

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THE STATE,

Respondent,

v.

BRITTANY SHAUNTA PEARSON,

Appellant.

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# FINAL BRIEF OF RESPONDENT

---

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

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

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's motion for immunity under the Protection of Persons and Property Act when she failed to establish by a preponderance of the evidence she was not without fault in bringing on the difficulty or that she reasonably feared for great bodily injury or for her life, and when this case "presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution."

## STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant for murder and possession of a firearm during the commission of a violent crime. (R. 256–59) On May 23, 2016, Appellant proceeded to a trial before the Honorable J. Derham Cole and a jury. Thomas Quinn, Esquire, represented Appellant, and Assistant Solicitors Timi Poulos, Russell Ghent, and Grady Anthony represented the State. The jury found Appellant guilty of the lesser included offense of voluntary manslaughter and possession of a firearm during the commission of a violent crime, and Judge Cole sentenced her to twenty-four years' imprisonment for voluntary manslaughter and five years' imprisonment for the weapon offense, to be served concurrently. (R. 247, 250–51).

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of her appeal. This Brief of Respondent follows.

## STATEMENT OF FACTS[1]

On November 8, 2014, Appellant and Victim, who were living together and in a relationship, attended a baby shower. (R. 12, lines 2–8). Everything was going fine that day until Victim grabbed Appellant's butt in front of everyone at the shower and then got upset with the way Appellant, who did not like it, reacted. (R. 13, lines 8–16). The incident sparked a verbal argument that continued throughout the day. (R. 14, lines 12–16). The couple went out to a bar and grill later that evening and were with another couple who kissed in public. (R. 15, lines 5–18). After Victim made a "smart comment," Appellant decided to leave and went out to the parking lot. (R. 15, lines 18–25). Appellant tried to leave in her car, but Victim blocked the car and beat on the window until Appellant unlocked the door, let Victim in, and drove home to their apartment. (R. 16, lines 2–16). When they reached the parking lot of the complex, Appellant told Victim to get out of the car, pushed her out, and handed her the keys to the apartment. (R. 16, lines 17–20; R. 145, line 17–R. 146, line 16). Victim initially got out of the car but then got back in and started hitting Appellant. (R. 16, lines 20–23). Appellant offered no testimony that she told Victim she could not re-enter the car or otherwise prohibited the re-entry of the vehicle they shared.[2] Victim was in the passenger seat on her knees over Appellant, punching her in the head and beating her head into the window. (R. 18, lines 4–24). Appellant tried to fend her off by putting her hands up and then reached under the seat for her gun, which she grabbed, cocked, and fired at Victim. (R. 19, line 1–R. 20, line 4). Appellant then opened the car door, threw the gun out, and called 911. (R. 20, lines 19–24). Victim died from a single gunshot wound that

[1]The facts are based solely on Appellant's version of events as presented at the immunity hearing. Unfortunately, Victim could not offer her version because she was killed by Appellant.
[2] While Appellant adamantly denied that she and her girlfriend, Victim, actually shared the car, she did reluctantly admit they rode together in it on the weekends and that Victim sometimes drove the car even though Appellant paid for and owned it. (R. 31, line 12–R. 32, line 6).

entered where her collarbone joined her breastplate and came out her lower back. (R. 107, lines 10–20). Appellant was arrested and charged with murder and possession of a firearm during the commission of a violent crime and proceeded to trial.

Pretrial, Appellant moved for immunity under section 16-11-440 of the South Carolina Code. (R. 6, lines 4–6). The defense called Appellant, who testified as described above about the incident that led to her shooting and killing Victim. On cross-examination, Appellant explained that she had her seat belt on when Victim was punching her and felt like she could not go anywhere and "froze." (R. 32, line 25–1). However, when asked if she could have pushed the button to release the seat belt, she admitted she could have. Further, she admitted she could have pulled the latch on the door and pushed it open, rolled into the parking lot, and yelled for help. (R. 23, lines 5–20). She also admitted Victim did not have a weapon. (R. 24, lines 3–12). She testified that after she reached under the seat for the gun, she put it between them and fired. (R. 24, lines 13–22). Defense counsel showed Appellant photographs of her arms and hands taken after the incident and asked about any marks, abrasions, cuts, scratches, or bruises. Other than her arms being red, Appellant acknowledged the absence of any injuries on her arms or hands. (R. 26, line 15–R. 27, line 25). Similarly, after being shown a photograph, she agreed there were no injuries on her face. (R. 28, lines 12–17). Although she claimed at trial that she had a knot on the side of her head, she recalled telling the investigator after the incident that she did not have any injuries she could point to. (R. 38, lines 5–16). Appellant testified she cocked the gun as soon as she picked it up from under the car seat and did not tell Victim she had a gun before shooting her. (R. 28, line 23–R. 29, line 12). She testified she remembered telling an investigator she did not tell Victim to stop hitting her, did not tell her to stop because she had a gun, and did not make any attempt to tell her to back away. (R. 37, lines 4–23). She recalled

telling him she was not in so much fear that she felt she had to shoot someone. (R. 39, lines 4–7).

Following a lunch recess, the State then called Investigator Christopher Banks of the Spartanburg Police Department to testify as to the voluntariness of Appellant's statement. In testifying about his interview with Appellant, which was conducted at 12:45 a.m. on the night of the shooting, he testified she admitted pushing Victim to get her out of the car. (R. 41, line 24–R. 43, line 3). He testified he could not see any injuries on Appellant at the time of the interview, nor did she point any injuries out to him. (R. 42, lines 7–11). Following Banks' testimony, the trial judge found the statement was freely and voluntarily made and denied Appellant's motion for immunity based on section 16-11-450. (R. 44, lines 6–10).

The case then proceeded to trial and the jury ultimately found Appellant guilty of the lesser included offense of voluntary manslaughter and possession of a firearm during the commission of a violent crime. (R. 247). The trial court sentenced her to twenty-four years' imprisonment for voluntary manslaughter and five years' imprisonment for the weapon offense, to be served concurrently. (R. 250–51).

## ARGUMENT

**The trial court properly denied Appellant's motion for immunity under the Protection of Persons and Property Act when she failed to establish by a preponderance of the evidence she was not without fault in bringing on the difficulty or that she reasonably feared for great bodily injury or for her life, and when this case "presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution."**

Appellant contends the circuit court erred in denying her motion for immunity under the Protection of Persons and Property Act (the Act), and specifically, Section 16-11-450(A) of the South Carolina Code. However, the circuit court correctly found Appellant failed to establish by a preponderance of the evidence that she was not without fault in bringing on the difficulty or that she was reasonably in fear of sustaining great bodily injury or for her life. Further, this case presents "a quintessential jury question" regarding Appellant's entitlement to self-defense. As a result, the circuit court did not abuse its discretion in denying Appellant's motion for pretrial immunity and allowing the case to proceed to the jury for consideration under the reasonable doubt standard.

The question of whether a defendant is entitled to immunity under the Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." *Id.* at 411, 709 S.E.2d at 665. The South Carolina Supreme Court has clarified that consideration of immunity under the Act does not require a trial court to accept a defendant's version of the underlying facts. *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013).

In an appeal from a circuit court judge's pretrial determination regarding a claim of statutory immunity, the appellate court reviews the circuit court judge's ruling for an abuse of discretion. *Curry*, 406 S.C. at 370, 752 S.E.2d at 266. "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." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007). The abuse of discretion standard does not allow the evidence to be reweighed or allow for a reassessment of the trial court's assessment of witness credibility or lack thereof. *Cf. State v. Mitchell*, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009) (equating the "any evidence" standard of review in criminal cases to the abuse of discretion standard of review and emphasizing that, under this standard, the appellate court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence").

Pursuant to the Act:

> 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, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450(A) (2015). The Act also states, "The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others." S.C. Code Ann. § 16–11–420(B) (2015).

The Act further provides:

> (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
>
> (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.
>
> (B) The presumption provided in subsection (A) does not apply if the person:
>
> (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder
>
> . . . .
>
> (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.
>
> (D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440 (2015) (emphasis added).

In analyzing the interplay between sections 16-11-440 and 16-11-450, the South Carolina Supreme Court explained: "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-

defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat." *Curry*, 406 S.C. at 371, 752 S.E.2d at 266. The Court further articulated: "[I]mmunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence." *Id.* at 372, 752 S.E.2d at 267.

As a result, in addition to establishing application of section 16-11-440, Appellant must also establish the elements of self-defense:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

*State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (emphasis added). The fourth element of self-defense—the duty to retreat—is excused under the Act if the defendant can establish entitlement to its consideration.

To the extent Appellant argues Victim unlawfully entered the car and, thus, she is entitled to a presumption of reasonable fear under subsection (A) of the statute, nothing in the record demonstrates Victim unlawfully entered the car. The car belonged to Appellant but was shared by the couple and they rode in it together on the day and night of the shooting. This was not a situation where Victim broke into the car unlawfully. Even Appellant's own testimony does not support a conclusion that Victim got back into the car by some unlawful means. Appellant gave no testimony that she tried to lock the doors, drive away, or in any other way prevent Victim

from getting back into the vehicle after she pushed her out. She also failed to testify that she told Victim she had a gun in order to stop the alleged attack. Thus, she is not entitled to any presumption under subsection (A) that would arise in the case of someone "unlawfully and forcibly enter[ing an] occupied vehicle." S.C. Code Ann. § 16-11-440(A) (2015). Finally, the statute itself explains the presumption in subsection (A) does not apply if the person against whom the deadly force is used has the right to be in the occupied vehicle. Appellant, who regularly shared occupancy of the vehicle with Victim, offered no proof Victim did not have the right to be in the vehicle when she was shot. The mere act of pushing her out is not sufficient under the circumstances of this case.

Furthermore, Appellant does not meet the requirements of self-defense and, thus, a grant of immunity under the Act. First, as implicitly found by the trial court, Appellant was not without fault in bringing on the difficulty. Based on her own testimony, and her statement to police, she was engaged in an ongoing verbal dispute as a result of Victim's previous public display of affection and then she pushed Victim out of the car. (R. 41, line 24–R. 42, line 3; R. 145, line 22–R. 146, line 17). While she attempted to downplay the pushing by telling the solicitor "it was more like a go type of push," she ultimately agreed she did made physical contact. (R. 145, line 17–R. 146, line 16). Appellant invites this Court to look at it only from the time she actually grabbed the gun, but that is not the time the difficulty was "brought on." In similar cases, the Supreme Court has looked at the entire event leading up to the violent encounter, not just the shooting itself. In *State v. Dickey*, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011), the Court looked at the circumstances prior to Dickey pulling his gun and determined that when he exited the building and stood on the doormat to ensure the trespassers' departure, he was exercising his right to eject trespassers in good faith and that as a matter of law, he was

without fault in bringing on the difficulty. Here, Appellant's pushing Victim out of the car in the heat of their day-long argument, which had escalated in the parking lot of the bar and grill, certainly did not demonstrate being "without fault." Additionally, no good faith attempt was made by Appellant to get Victim to stop punching her, including trying to threaten her to stop by telling her about the gun or displaying the gun to her before firing. Instead, Appellant immediately fired the fatal shot without warning.

Second, Appellant failed to prove she was in actual imminent danger of great bodily injury or death or she actually believed she was in such danger. She argues not only did she believe she was in imminent danger but actually was in such danger. (App.Br.10). She cites *State v. Davis*, 309 S.C. 326, 344, 422 S.E.2d 133, 144 (1992), for the proposition that a hand or fist may be a deadly weapon. However, *Davis* concerned the trial judge's charging the jury that a hand or fist may be considered a deadly weapon. Just because the Court determined the jury charge was proper, the case does not stand for the proposition that anyone assaulted by a hand or fist is in imminent danger of death or great injury. Indeed, *Davis* was a murder case that had nothing to do with immunity or self-defense. The jury charge at issue actually stated: "Under the law of the State of South Carolina, the hand, or fist, of a person is not normally considered a dangerous, or deadly, object, but under some circumstances, a hand, or fist, or a person may be used in such a fashion, or in such a manner, as to constitute a dangerous, or deadly object." *Davis*, 309 S.C. at 343, 422 S.E.2d at 144. It then left the determination up to the jury based on the evidentiary record in that case. The circumstances in *Davis* were that the victim was murdered by stangulation; it was not a case about punching and self-defense and it was not a case about granting immunity and preventing a jury from even considering a case. The Court determined that there should be no difference between a jury charge on considering an inanimate

object a deadly weapon and a hand or fist a deadly weapon, "depending upon the manner and means of its use, the wounds inflicted, and other relevant facts." *Id.* at 344, 422 S.E.2d at 144. The Court found that whether Davis had murdered his victim using a heavy object or his hands, a jury charge regarding use of a deadly weapon, in connection with implied malice, was appropriate. Thus, *Davis* has little or no applicability to the case at hand.

The evidence in this case supports the trial court's determination that Appellant failed to demonstrate what was required to be granted immunity, in other words that she was in reasonable fear for her life or of great bodily injury at the time she shot Victim. She did not meet the third element of self-defense, showing that a reasonable person of ordinary firmness or courage would have entertained the same belief or would have reacted in the same manner to save herself from imminent death or great bodily injury. Instead, the evidence indicates—by way of her own testimony—that Appellant could have gotten out of the vehicle and, thus, shooting Victim was not, as argued by Appellant in this appeal, her only option. Additionally, she suffered no apparent injuries as a result of Victim's attack with her fists. The objective evidence presented in this case does not establish Appellant's alleged belief of imminent danger was reasonable. Appellant and Victim were girlfriends and had never had any physical altercations before. (R. 136, lines 6–10). Appellant admitted she had been verbally arguing with Victim throughout the day of the incident but it had not become physical. The women were approximately the same size with the exception of Victim possibly weighing ten to fifteen pounds more, according to Appellant's testimony. (R. 19, lines 4–10). All of these factors support the trial court's decision.

The circuit court in the instant case did not abuse its discretion in denying Appellant's motion for immunity. This case is similar to the case of *State v. Manning*, 418 S.C. 38, 791

S.E.2d 148 (2016). In *Manning*, the victim, who was an invited guest, and the defendant got into a physical and verbal argument. The victim originally pulled a weapon on the defendant, who was able to take the weapon from the victim. *Id.* at 41, 791 S.E.2d at 149. The defendant then fired when the victim approached him, shooting the victim in the head. At the hearing, the State maintained because the victim was unarmed at the time of the shooting, the defendant was not reasonably in fear of great bodily injury or death at that time. In affirming the denial of immunity, the South Carolina Supreme Court explained: "[T]he victim was unarmed at the time she was shot, meaning we cannot say that the trial judge abused his discretion in denying Respondent immunity under subsection (C)." *Id.* at 45, 791 S.E.2d at 151.

In this case, the physical part of the argument began when Appellant pushed Victim out of the car upon returning to the apartment. (R. 41, line 24–R. 42, line 3; R. 145, line 22–R. 146, line 17). Victim then returned to the car, got in, and began physically assaulting Appellant. At the beginning of the altercation, neither person was armed. However, Appellant's gun was under the car seat within reach. Just before the shooting occurred, Appellant became armed, which Victim was not. This fact is not in controversy. In *Manning*, the Supreme Court held the trial court did not abuse its discretion in denying immunity when one party was armed, and the other was not, regardless of the other facts presented. The instant case does not present the same level of apprehension experienced by the defendant in *Manning*, who disarmed his girlfriend of the gun originally pointed at him. Here, Victim was never armed, never drew or presented a weapon, and never threatened Appellant with a weapon. The only party ever armed in this altercation was Appellant, and she never used the gun as a deterrent, but instead immediately fired without warning. The trial court correctly determined Appellant was not entitled to immunity under the Act. Or at least, as in *Manning*, this Court cannot say the trial judge abused

his discretion in denying Appellant immunity. She was not reasonably in danger of losing her life or sustaining great bodily injury at the time of the shooting, especially in light of the fact that she was the person who had access to and eventually held the only gun. This conclusion is only heightened given the lack of injuries to Appellant, as testified to by Investigator Christopher Banks of the Spartanburg Police Department and as shown in photographs, which even Appellant herself admitted showed no injuries. (R. 42, lines 7–11; R. 26, line 15–R. 27, line 25; R. 28, lines 12–17; R. 38, lines 5–16). As a result, the circuit court did not err in denying Appellant's motion for immunity.

Further, Appellant's reliance on *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014), is misplaced. The facts and circumstances of this case are clearly distinguishable from *Douglas* because there the victim taunted the defendant by refusing to give him back a bottle of prescription medicine. When the defendant yelled at the victim, the victim "snapped." The victim grabbed the defendant and threw him up against the refrigerator, causing Douglas to hit his head. *Id.* at 313, 768 S.E.2d at 236. The victim held him there until the defendant felt his knees buckle underneath him. When the victim released the defendant, Douglas fell on the floor and hit his head again. The victim then got on top of the defendant and struck him in the eye. Douglas told the victim several times to leave him alone and to leave his house, but the victim refused. After biting the defendant on the leg, the victim went into the dining room and started laughing. The victim advanced on Douglas and "looked like a man possessed." The defendant was "terrified" and fired a shot killing the victim. *Id.* at 314, 768 S.E.2d at 236. The circuit court in *Douglas* found by a preponderance of the evidence that (1) the defendant reasonably believed shooting the victim was necessary to prevent great bodily injury to himself, and (2) Douglas acted in self-defense. This Court explained: "The evidence supports these findings. [Douglas]

presented several photographs showing severe bruising on [his] upper arms, a black eye, a scraped knee, and several marks on his legs and chest." *Id.* at 319, 768 S.E.2d at 239. By comparison, the lack of injuries here is starkly different.

As demonstrated in the analysis above, it is clear our Legislature intended to significantly restrict when to grant pretrial immunity where a person has used deadly force. This intent is further supported when considered in the context of the principles of self-defense upon which it is founded. Prosecutors are already imbued with broad discretion to decline to prosecute where they determine the circumstances of the case do not merit pursuit of criminal charges. *Ex parte Littlefield*, 343 S.C. 212, 218–19, 540 S.E.2d 81, 84 (2000). Also, individuals may avail themselves of the common law Castle Doctrine and the common law defenses of habitation, of others, and self-defense in the event of a trial. Granting an individual immunity from prosecution rather than letting a jury determine whether the State has disproven self-defense beyond a reasonable doubt is an extreme result and should occur only in circumstances where a defendant has carried his burden of proof as to each and every aspect of the Act. Contrary to Appellant's assertion, any other result would be absurd and would lead to a society akin to the Wild West, where an individual in an altercation can shoot first and, if he kills another person, attempt to justify his actions by giving self-serving facts which cannot be contested by the person who has been killed. Even if immunity is denied, a defendant may still be able to rely on self-defense before the jury. Thus, a pretrial denial of immunity does not eliminate the presumption of innocence or the State's high burden of proof for a criminal conviction. Here, the trial court properly denied Appellant's request for immunity, and that ruling should be affirmed. *See State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (affirming the pretrial ruling on immunity because there was evidence to support the trial court's findings).

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: _____
Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

July 26, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions
J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2016-001216

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THE STATE,

Respondent,

v.

BRITTANY SHAUNTA PEARSON,

Appellant.

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: Jennifer Ellis Roberts
Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

July 26, 2017

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S.C. SUPREME COURT

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APPEAL FROM SPARTANBURG COUNTY

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THE STATE,

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v.

BRITTANY SHAUNTA PEARSON,

Appellant.

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**PROOF OF SERVICE**

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I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lara M. Caudy, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 26h day of July, 2017.

Angela Bennett

ANGELA BENNETT
Administrative Coordinator

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

**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

The State, Respondent,

v.

Brittany Shaunta Pearson, Appellant.

Appellate Case No. 2016-001216

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Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

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Unpublished Opinion No. 2018-UP-324
Submitted June 1, 2018 – Filed July 18, 2018

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**AFFIRMED**

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Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Jennifer Ellis Roberts, both of Columbia, and Solicitor Barry Joe Barnette, of Spartanburg, for Respondent.

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**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: S.C. Code Ann. § 16-11-440(C) (2015) ("A person who is not engaged

in an unlawful activity and who is attacked in another place where he has a right to be . . . 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 . . . ."); *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the [Protection of Persons and Property Act (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. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014) ("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." (quoting *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007)); *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 (finding the General Assembly did not intend for the Act to be construed to require a trial court to accept the accused's version of the underlying facts); *id.* ("[A] valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat."); *Douglas*, 411 S.C. at 318, 768 S.E.2d at 238-39 (providing the elements of self-defense save the duty to retreat are (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must believe he is in imminent danger of death or great bodily injury or actually be in such imminent danger; and (3) the defendant's fear must be reasonable); *id.* at 320 n.7, 768 S.E.2d at 239 n.7 ("[T]he standard for evaluating whether an accused had a reasonable belief that deadly force was necessary to prevent great bodily harm to himself is objective, rather than subjective."); *Curry*, 406 S.C. at 372, 752 S.E.2d at 267 ("Appellant's claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.").

**AFFIRMED.**[1]

**SHORT, THOMAS, and HILL, JJ., concur.**

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.