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**Jan 29 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County  
Hon. Perry H. Gravely, Circuit Court Judge  
Appellate Case No. 2022-001287

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THE STATE .....RESPONDENT,

v.

EUGENE TURNER, JR ..... APPELLANT.

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INITIAL REPLY BRIEF OF APPELLANT

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January 29, 2024

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## INTRODUCTION

In its Response Brief, the State argues that Mr. Turner received a fair, impartial hearing and that the lower court conducted a thorough analysis and review of his Motion for Immunity. The Record reflects the opposite. *First*, the trial court abused its discretion by failing to analyze and apply the elements of self-defense when denying Mr. Turner’s Motion for Immunity. The doctrine of self-defense was critical to Mr. Turner’s Motion, and the trial court’s analysis (or lack thereof) provide this Court with no ability to meaningful review its findings. *Second*, the trial court denied Mr. Turner’s motion for a mistrial after evidence in violation of Rule 403 was presented at trial—even after both parties agreed that this evidence would be unfairly prejudicial to Mr. Turner.

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.

## ARGUMENT

### **I. The trial court abused its discretion by denying Mr. Turner’s Motion for Immunity under S.C. Code Ann. § 16-11-440(C) because it failed to address the elements of self-defense.**

The trial court erred when it failed to address the elements of self-defense when it denied Mr. Turner’s Motion for Immunity—a defense that was critical Mr. Turner’s case, and an error that was prejudicial to his defense.

#### **A. In ruling on a motion for immunity, the trial court must make specific findings as to the elements of self-defense.**

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. *State v. Curry*, 406 S.C.

364, 371, 752 S.E.2d 263, 266 (2013). “[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.* (emphasis added). 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 406 S.C. at 371 n.4, 752 S.E.2d at 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.

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”). (Tr. 28:23–29:1 (Sep. 6–7).) The State contends that “the trial court made sufficient findings to enable review” and that “the trial court did address the elements of self-

defense in its ruling and the record demonstrates the court considered specific testimony and made appropriate factual determinations.” Brief of Respondent at 8–9. However, the State does not acknowledge that the trial court denied Mr. Turner’s Motion for Immunity in an abrupt ruling constituting only two pages of the transcript (Tr. 220:7–9 (Sep. 6–7)), the abruptness of which is only highlighted by the fact that the ruling followed hundreds of pages of testimony and argument regarding the Motion for Immunity (Tr. 28:3–219:12 (Sep. 6–7)). The trial court did not take the time to consider the facts adequately or to provide the sufficient details of its determination of the facts as required by law.

The “abuse of discretion” standard requires the record to reflect that the trial court “thoughtfully appl[ied] the correct law to the information and evidence before it.” *State v. Wallace*, 440 S.C. 537, 543, 892 S.E.2d 310, 313 (2023). The evidence must be applied to the law and evidence.

The State acknowledges that the trial court must “follow a thought process that begins with the trial court’s clear understanding of the applicable law, continues with the court’s sound analysis of the situation before it in light of the law, and ends with the trial court’s ruling that follows the law and is supported by the facts and circumstances.” Brief of Respondent at 10 (quoting *Morris v. BB&T Corp.*, 438 S.C. 582, 586, 885 S.E. 2d 394, 397 (2023)). The State admits in its argument that the trial court must actually apply the law to the facts in its ruling and that failure to do so would be an abuse of discretion. The trial court failed adequately to do so, and Mr. Turner was materially prejudiced as a result.

**B. The trial court failed to apply the facts of the case to the elements of self-defense.**

In its ruling, the trial court failed to apply the facts of the case to the law and make a factual determination regarding the application of each element of self-defense.

The trial court correctly identified the first required element of self-defense by identifying that it had an issue with whether Mr. Turner was at fault in causing the situation but failed to identify with any specificity what evidence led to the conclusion that Turner may not be at fault. (Tr. 221:9–12 (Sep. 6–7)). The court made a passing reference to testimony that Turner may have known someone was going to be present, but did not identify any specific testimony or even identify which individual it referred to as the person that Turner allegedly knew would be present. (*Id.*) The court provided no specificity and no clear application of the law to the facts because it failed to identify in what Turner was involved in bringing about the dangerous situation. The trial court did not point to any testimony showing that Turner went to the scene to provoke a confrontation or was in any way involved in creating the dangerous situation. There is no application of the law to the facts to make clear in what specific ways Turner would bear fault in bringing on the difficulty.

The trial also failed to provide sufficient clarity to show an application of law to facts by only vaguely identifying that there was some evidence that a gun was fired at a truck. (Tr. 221:13–16 (Sep. 6–7)). It is not clear in what way this alleged gunfire applies to the elements of self-defense and the trial court does not provide sufficient application to identify how this fact applies to inform its decision of the application of the law. The trial court was not clear if this evidence was being used to show the defendant was at fault or that the defendant may not be in imminent danger of losing his life or sustaining seriously bodily injury. The inability to ascertain which element of self-defense the mentioning of this fact applies to shows the lack of specificity in the trial court's ruling.

Finally, the trial made a conclusory statement that it did not “feel like the evidence showed that [] an attack had occurred sufficient enough to trigger that statute.” (Tr. 221:19–21 (Sep. 6–7)).

Once again, the trial court failed to identify any specific evidence to support its conclusory statement and did not apply facts to the law. The court’s “feel[ing]” that an attack did not occur does not point to any evidence with enough specificity to allow for appellate review. There is no reference to any elements of self-defense or application to show how the elements were or were not satisfied. The trial court essentially asks this Court to blindly trust its judgment and conclusory statements without providing any fact-specific references to the evidence that supports those conclusions.

The trial court instead appeared to consistently rely on its own conclusion that self-defense could not apply because there were inconsistencies in the record. However, the case cited to by the trial court itself, *State v. Marshall*, specifically holds that “just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act.” 428 S.C. 11, 19, 832 S.E.2d 618, 622 (Ct. App. 2019) (quoting *State v. Cervantes-Pavon*, 426 S.C. at 451, 827 S.E.2d at 569). The trial court here did not identify any specific testimony or facts beyond its general identification of inconsistencies to support the application of the law to these facts that self-defense should not apply. The determination of inconsistencies or doubt about the evidence is not relevant if the trial court does not identify how those facts apply to the law. The court did not apply the facts surrounding any inconsistencies to show why that specifically means that self-defense cannot apply or why any of the elements of self-defense are not met.

The trial court failed to take the essentially next step after identifying the law and identify clear evidence, point to specific testimony from the preceding days, or make clear how it is applied any facts to the law to show the elements of self-defense. The State now attempts to rehabilitate

this mistake by the trial court by performing the exercise the trial court failed to do and attempting to point to specific facts that challenge Turner's claim for self-defense. Brief of Respondent at 11–14. Proper review by the trial court is not determined by whether any party *can* properly apply the facts to the law, but whether the trial court *actually* appropriately applied the law and facts itself. *Morris v. BB&T Corp.*, 438 S.C. at 587, 885 S.E.2d at 397. Mr. Turner should at minimum be granted a new trial and given the opportunity to have the law properly applied to him.

**II. 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 abused its discretion by denying Mr. Turner's Motion for a Mistrial after evidence was presented in violation of SCRE 403. Throughout the trial, the State, the defense, and the trial court were *all* in universal agreement that the mention or implication of evidence of the particular allegations of child molestation or abuse against Mr. Turner would unfairly prejudice him. (*See* Tr. 188:1–3 (Sep. 6–7).) After the trial court instructed the parties to come to an agreement regarding how to refer to the allegations, 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.)

Counsel for the State specifically acknowledged: “[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 echoed this sentiment and made clear 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.) The trial court and the State acknowledged before the jury heard any testimony that

any association of the allegations of child abuse or molestation would be so prejudicial to Mr. Turner as to taint the jury beyond recovery. *See State v. Lee*, 399 S.C. 521, 530, 732 S.E.2d 225, 229 (Ct. App. 2012).

Despite this stipulation, and despite its own acknowledgment of the prejudicial effect of the allegations, the State primed the jury to connect Mr. Turner to allegations of child abuse by focusing the jury on Mr. Turner's interactions with Mr. Stokes's children. During his testimony, the State asked multiple questions to Mr. Stokes about the identity of his children and the mothers of his children. (Tr. 247:20–251:25 (Sep. 6–7).) 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. Stokes 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 focused the jury on Mr. Turner's interactions with Mr. Stokes's children, and then asked, “[Was there] a serious family incident involving a family member that you become aware of?” (Tr. at 253:9–11 (Sep. 6–7).) Mr. Stokes affirmed 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 an incident occurred 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). After the mention of a mother and resulting implication of abuse of children, Mr. Turner's attorney objected and made the Motion for Mistrial. (Tr. at 253:25–255:12 (Sep. 6–7).)

There is a clear connection to an allegation related to children that is created by the mention of a mother and possible action as a result of the incident described. The trial court agreed this statement violated the stipulation of admissible testimony by sustaining the initial objection. (*Id.* at 253:24). Counsel for the State agreed with Mr. Turner's counsel that testimony should be limited to discussion of "something due to the fact that this involved a serious family incident involving a family member." (*Id.* at 253:3–8). This made clear in the stipulation that both parties were agreeing there should not be a reference to children or the fact that children were specifically involved in the incident. The prejudice of associating an accusation with children was dangerous enough all parties, including the trial court, agreed it should be avoided and the association would be irreversibly prejudicial to Mr. Turner.

The State made Mr. Turner's credibility a central theme of their argument by questioning whether he was a reasonably prudent person in how he reacted to the situation and implied that Mr. Turner lied when he said he was in fear for his life. (Tr. 243:16–245:22 (Sept. 8–9).) 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 his life. The testimony associating Mr. Turner with a child abuse allegation unfairly prejudiced Mr. Turner by weakening his credibility and making it less likely the jury would believe his testimony and more likely they would believe another witness. In *State v. 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.

January 29, 2024

Respectfully submitted,

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of General Sessions  
Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001287  
Trial Court Case No. 2018GS2306134, 2018GS2306137,  
2018GS2306139, 2018GS2306141, 2018GS2306142

The State, ..... Respondent,


v.

Eugene Turner, Jr. .... Appellant.

**PROOF OF SERVICE**

Pursuant to Rule 262(c)(3), SCACR, undersigned counsel hereby certifies that a copy of Appellant’s Initial Reply Brief has been served upon the following counsel of record by electronic mail (see attached sent email):

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January 29, 2024  
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**Cc:** Miles Coleman; Dudek, Robert  
**Subject:** State v. Eugene Turner, Jr. - Appellant's Initial Reply Brief  
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Josh,

Please find attached for electronic service on you a copy of the Appellant's Initial Reply Brief, a copy of which will be filed shortly with the Court.

Best,  
Adam



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January 29, 2024

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**Via electronic mail**

The Honorable Jenny Abbott Kitchings  
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RE: Initial Reply Brief of Appellant  
*The State v. Eugene Turner, Jr.*  
Appellate Case No. 2022-001287  
Our File No. 058964/01500

Dear Ms. Kitchings:

Please find enclosed the Initial Reply Brief of Appellant for filing in the above-referenced appeal. Also enclosed is a Proof of Service of the same. We ask that you file the Initial Reply Brief of Appellant and, at your convenience, return an electronic version to us bearing the Court's file stamp. Please do not hesitate to contact us with any questions.

Very truly yours,

Adam McCoy  
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