STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Honorable J. Mark Hayes, Circuit Court Judge

Appellate Case No. 2023-000571

THE STATE,.....APPELLANT,

v.

ANIJAH YARNELL,.....RESPONDENT.

FINAL BRIEF OF APPELLANT

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[1] Pursuant to the Supreme Court of the United States' new disavowal of *passim*, Appellant will refrain from using it.

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether Judge Hayes abused his discretion by finding Yarnell was without fault in bringing on the difficulty when Yarnell called Remi over 200 times, made her fearful he would attack her with a weapon, showed up at her friends' private condo and refused to leave after being lawfully ejected multiple times, then left and came back full of anger with no lawful reason to return *and* presented a weapon to the unarmed victim.

2. Whether Judge Hayes abused his discretion by finding Yarnell was in actual danger of death or great bodily injury when it lacked evidentiary support: Yarnell's window was only cracked 2-3 inches, the door was locked, the victim was squeezed up against another car, and the victim had no weapon, tool, or way by which to enter the vehicle, making it impossible for Yarnell to have been in actual danger of death or serious bodily injury.

3. Whether Judge Hayes abused his discretion and committed an error of law by applying strict liability to Section A of the PPPA, ruling that because one of Pennington's fingerprints was found on Yarnell's car, Yarnell automatically had the right to shoot to kill because he was entitled to Section A's presumption of reasonable fear (regardless of whether actual entry into the vehicle was possible) when every element of self-defense and the corresponding sections of the PPPA are analyzed as a totality test.

4. Whether Judge Hayes abused his discretion and made an error of law by finding Section B of the PPPA (revoking any entitlement to Section A's presumption of reasonable fear) did not apply when Yarnell was engaged in an unlawful activity when he fired, and by finding Yarnell was in a place he had the right to be and his presence was not the proximate cause of the victim's death under Section C.

STATEMENT OF THE CASE

This case examines the importance of private property, relational boundaries, and an invited guest's right to eject a trespasser from that property in immunity rulings under the Protections of Persons and Property Act ("PPPA"). Respondent Anijah Yarnell was indicted in June of 2021 by an Horry County Grand Jury for the murder of Michael Pennington and possession of a weapon during the commission of a violent crime. (2021-GS-26-02687 and -2688). The case was prosecuted by Violent Crimes Assistant Solicitor Nancy Livesay and Assistant Solicitor Christopher Helms. R. 1. Yarnell, represented by M. O'Bryan Martin, Esq. and L. Morgan Martin, Esq., then filed a motion for immunity under the PPPA, S.C. Code § 16- 11-410, *et. seq.*, on November 7, 2022, and the State filed a reply shortly after. A full, three-day immunity hearing with 15 witnesses and approximately 76 exhibits was held before the Honorable Mark J. Hayes from November 14th to 16th, 2022, and Judge Hayes issued his order granting immunity from prosecution to Yarnell on April 4, 2023. R. 547. The State timely filed its notice of appeal on April 10, 2023, and this Brief of Appellant now follows.

STATEMENT OF FACTS

On May 14, 2020, Remington Hargrove ("Remi") was in Surfside Beach in Horry County visiting her family who were in town from New York. R. 64, R. 75-76. She and Anijah Yarnell (6'0", 180 pounds) had lived together at an apartment at Winchester Circle in Myrtle Beach, but the two were arguing that day and eventually ended up breaking up. Remi then made it clear she did not want to see him or talk to him. R. 1-25, R. 311-312; State's Exhibit 51 at R. 579, R. 581 (text messages between Yarnell and his friend Michelle); Defense Exhibit's 46 # R. 611 (text messages between Remi and Yarnell). Remi sent her last message to him in the middle of the afternoon, and then her messages stopped. *Id.* Yarnell, on the other hand, proceeded to call her over 200 times from *67 and with a spoofing app to disguise his phone number. R. 286, R. 382-384. He also sent texts where he threatened to destroy photos of her deceased father. R. 382; Defense Exhibit 46 – R. 587 (text messages between Remi and Yarnell).

Yarnell texted his friend Michelle at 5:51 PM, "Hey you better tell Remi to come get her shit before I throw it all out." State's Exhibit 51 at R. 573. He then said, "I guess she forgot I was the wrong one to fuck with I haven't ate all day because of them." *Id.* at R. 575. Then, from 6:30 PM to 7:39 PM, Yarnell texted his friend Missy about the situation, and he again threatened to destroy Remi's belongings if she did not come get them immediately. State's Exhibit 19, R. 562. Missy texted back at 7:27 PM, "Michelle says please don't throw anything out, we will come tomorrow and get it if you want it gone." Yarnell replied, "It's out now, tell Remi to respond to see if she wants it if she says no it's gone." State's Exhibit 19 at R. 565. He then texted at 7:34 PM, "Okay she said she doesn't care so it's gone sorry for bothering y'all." *Id.*

Around 8:30 or 9:00 PM, Yarnell decided to drive to the Cross Gate Villas Apartment Complex anyway—it was a part of the larger Maddington Place collection of condos. R. 206, R. 384, R. 473-480; State's Exhibit 54 (map of complex); State's Exhibit 55 (Private Property

sign). Maddington Place was a private property that was not open to the public; owners needed a sticker on their car to park anywhere, and guests needed tags from the owners. If a car did not have a sticker or tag, Quality Towing would tow it.[2] R. 469-471. An individual could only come onto the property if they were an owner or an invited guest of an owner, because the HOA wanted to "protect the owners and keep out the bad guys." R. 479, R. 482-483. If a person was not invited, they would be declared a trespasser. R. 480, R. 483.

Jennifer Tassone (Remi and Emily's aunt), Jennifer's boyfriend Darrin Card, Remi, Emily Cerio, and Emily's boyfriend Michael Pennington ("victim") were at dinner at Handley's Pub in Carolina Forest in the early evening. R. 78, R. 92-93, R. 268-269, R. 273. Remi was very upset about Yarnell at dinner, and made it known that she was afraid of him. R. 78. Darrin said, "I know that she was telling her aunts and her cousins just how bad things were and how violent he was." "[S]he talked of violence and abuse and very controlling behavior." R. 77, R. 78. Everyone at dinner knew that Remi had turned her phone off that day to avoid talking to Yarnell, as he had been harassing, messaging, texting, and calling her so much that she couldn't use her phone; any time she went to use it, a call from him would prevent her from accessing its functions. R. 271, R. 291. Remi then told Darrin Card she did not want Yarnell near her and wanted him and Michael Pennington to help make sure Yarnell did not come over because she was afraid of what he might do. R. 86. Emily also asked her boyfriend (the victim) to come and make sure they were safe. R. 93

Darrin and Jennifer rode back to Maddington Place in a separate car from Remi and Emily. R. 64. Remi and Emily stopped at a Speedway Gas Station, and Emily called

[2] FedEx trucks, mailmen, etc. were allowed on the property as invited guests for the limited purpose of delivering packages the owners had invited them to deliver. R. 484.

Pennington, who was in a third car, and told him, "She's scared, she's scared, she's pregnant." R. 272-275. Remi was 7 months pregnant at the time. R. 293. A few minutes later, Remi and Emily pulled into the complex and saw Yarnell in his car in the parking lot, and Remi again said she was scared. State's Exhibit 49 at R. 567. They called Pennington and told him this, and he told them to meet him at Murphy's Gas Station. R. 272-275. After they met up, Emily called her Aunt Jennifer and told her what was going on. Everyone agreed they would not go back to the complex without Pennington there, because Remi and Emily weren't equipped to deal with an angry man. R. 293, R. 301-302; State's Exhibit 4, R. 566, (Statement of Emily Cerio.)[3]

Remi then briefly talked to Yarnell on the phone. R. 272-274, R. 301-302. Remi told him she did not want to go home with him or see him; she asked him to leave her stuff at the complex and go home. R. 274-275, R. 293-294, R. 301-302. "[L]eave it and go . . . I'll get it you need to go home. I don't want to see you." State's 49, R. 566 (Statement of Emily Cerio).

About 15 minutes later, at approximately 9:30 PM, Darrin saw Pennington arrive in a second car, and then he saw Emily and Remi pull into the complex in the third car. R. 271, R. 293. He also saw Yarnell pull out of the complex and watched as Yarnell saw Emily and Remy pulling in and decide to turn around and drive up next to them. The three of them then had a brief conversation. R. 68, 81, 271, 275. Remi was terrified, shaking, and scared. R. 292, 302. Remi once again told Yarnell to leave because she didn't want to see him. R. 277, R. 281. He yelled at her aggressively and accused her of blocking him in, and she said they weren't blocking him. R. 279, R. 294-295. Yarnell drove off, and the two girls went upstairs right away after Emily

[3] Pennington was a guest invited over for the purpose of protecting Remi and Emily from Yarnell. R. 87-88, R. 287. Darrin and Jennifer lived in the complex, and Emily's brother and father also lived there; Emily had a key. R. 287-289.

told Pennington again that Remi was scared. R. 69, R. 82, R. 292-293. Remi said, "What if he has a weapon?" State's Exhibit 49, R. 566.

Pennington, Jennifer, and Darrin had a conversation in the parking lot while this was going on. R. 279-280, R. 297. Jennifer had just gotten into her van to take a phone call and Emily was coming back down to get her phone charger when Yarnell wheeled back into the complex and pulled right up next to Pennington. R. 83-84, R. 98-99, R. 281, R. 297-298. He had fully turned out onto Deerfield Lakes Drive and had to turn around to come back in. R. 206, R. 210, R. 231; R. 249; Defense Exhibit 32 (aerial photo of apartment complex). Pennington was not acting aggressively when he walked up to Yarnell's driver's side window and said, "Hey, why don't you just go home, you're not welcome at this time."[4] R. 72, R. 281, R. 284- 285, R. 310. "No one wants you here, go home." *Id.* Yarnell refused to leave. R. 83, R. 289.[5]

He had partially pulled into a parking space but had not turned off his car; his doors were locked, the driver's-side window was mostly rolled up,[6] and he was moving his car slowly while he was talking to Pennington. R. 86-88, R. 304-306.[7] No one blocked his car at any point. R. 87-88, R. 249.

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[4] Pennington's blood showed traces of substances, but the defense's toxicologist testified Pennington was not actively under the influence of any of the substances when he was shot, and Judge Hayes did not take the victim's toxicology report into consideration in making his ruling. R. 124; 558, FN 1. Judge Hayes ruled, "Nothing suggested Petitioner was afraid because he knew Pennington was on something."

[5] It was debatable whether Yarnell was invited in the first place, but he was certainly not invited back after he fully left the complex after Remi told him to leave. R. 80-82, R. 85-86, R. 289.

[6] There were many differing opinions as to how far the window was down, so the forensic evidence showing how far it could have actually been down will be discussed shortly. R. 70, 73.

[7] Yarnell was on the phone with Melissa Cannon at the time, who testified she heard Pennington say: "Get the f*** out of the car . . . I'm going to beat your a**, get out of the car." R. 41. "I'm going to f*** you up." Darrin Card and Emily Cerio did not hear Pennington say this. R. 72, R. 281-282. Melissa also said,"[I]t was loud and belligerent, and it scared me." R. 44

Pennington also said, "Hey, what's your problem?" R. 91. After Yarnell continued to refuse to leave, Pennington said, "You know what, why don't you just get out of the car?" "Come on, let's go, come on tough guy." R. 84. Yarnell replied, "Am I supposed to be scared of that?" several times. R. 41, R. 43, R. 46. Pennington did not threaten Yarnell with a weapon and did not put his hands on the car until the gun came out. R. 87, R. 299.

Yarnell then fully stopped his car (yet left it running), pulled his Glock 17 up, and Pennington said, "You have a gun," looking shocked. R. 84, R. 257. Pennington then moved to the side and tried to reach for the gun or hit it to push it out of the way through the window crack. R. 282-284, R. 299-300, R. 304-306. He then said, "I'm from Virginia and if you pull a gun you better pull the trigger." R. 281. Yarnell then cocked the gun. State's 49, R. 566. Emily was standing close to Pennington, and she testified Pennington was trying to protect her and the others from the gun Yarnell had. R. 282-284. Pennington tried to pull on the door handle, but the door was locked. R. 45, R. 70-72, R. 283-285, R. 300. Yarnell then pulled the trigger and shot him. R. 73-74. The round went through the window, and Yarnell drove off, leaving Pennington dying in the parking lot. Yarnell never called 911. State's Exhibit 23 (photograph of the window); State's Exhibit 36 (photograph of where Pennington landed in the parking lot); Defense Exhibit 16 (another photograph of the parking lot).

5'11" Pennington was not touching the car and he was at least 10-12 inches from the gun when Yarnell fired. R. 85, R. 174. Pennington was unarmed – and there was no stippling found under his arms, so his arms could not have been up and in the window at the moment he was shot. R. 219. He was bent over when the bullet entered his chest in a downward direction.
State's Exhibit 33 (autopsy photo showing bullet wound); Defense Exhibit 15 (autopsy photo showing the bullet's trajectory). Pennington's DNA was not found on the gun. R. 260-261, R.

266. Yarnell lied later and said Pennington had taken off his belt and wrapped it around his hand and was hitting him with it like it was a gang thing, but no other witness testified to that, and the photos of Pennington showed he still had his belt on. R. 56, R. 242-249; State's Exhibit 32 (photograph of the contents of Pennington's pockets). Yarnell also testified that Pennington had punched him through the window. R. 339.

Detective Jonathan Kelly went to Yarnell's apartment around 11 PM that night to talk to him about what had occurred. R. 158-159. Detective Kelly said the window on Yarnell's was slightly bowed outward like it had been pushed out but there was no other damage to the car. R. 162, R. 164. He also testified the bullet hole was about 6 inches down from the top of the window, meaning the window was likely only cracked 2-3 inches (as it shows below) to a maximum of 6-8.5 inches down if the bullet had been fired into the very bottom of the window. R. 163, R. 167, R. 241-242; State's Exhibits 23, 25; Defense Exhibits 14, 20, and 43 (showing the window and then showing the length of Yarnell's car). Below is Defense Exhibit 43:

The detective testified Yarnell did not have injuries on his hands or any part of his body, and neither did his car. R. 163. SLED dusted for prints, and only one of Pennington's left- handed fingerprints was found on the paint below the middle part of the window. R. 180-185, R. 193-198. SLED's latent prints expert testified Pennington could have just as easily put his hand on the bottom part of the window when he initially went up to talk to Yarnell. R. 198. Pennington's prints were not found on the front side or back side of the window. *Id.* Neither his DNA nor his fingerprints were found on the door handle of Yarnell's Hyundai. R. 263. Yarnell was also examined at the Horry County Detention Center later that night, and it was reported that he was not bleeding and had received no medical treatment. No part of his body showed injury, except what looked like a cold sore on his bottom lip. R. 256, R. 320-325, R. 353-354; State's Exhibits 38 to 44 and 47 (photographs of Yarnell's face and body); State's Exhibits 45-46 (photographs of the tops and bottoms of Yarnell's hands).

Emmet Leonard Hall, who had thirty-years of experience installing auto glass, testified that regulators (which are down inside car doors) attach to vehicle windows and are what are responsible for making the windows go up and down on their tracks. He testified the regulator in State's Exhibit 23 (Yarnell's Hyundai) was not on the track, so the regulator would not have pushed the window up or down; the glass would have fully shattered if someone had tried to raise or lower it. R. 488-490, R. 493-494. He testified that the window was therefore inoperable after the bullet went through it and was only being held together by window tint. R. 490-494.

Anijah Yarnell never made any real attempts to drop off Remi's clothes that night, and never told anyone he was scared of Pennington. R. 46, R. 310-311.

MOTION FOR IMMUNITY:

In his written motion for immunity, Yarnell claimed he was entitled to it under Section (A)(1) and (2) of the PPA, because the victim had been attempting to enter Yarnell's occupied vehicle when Yarnell shot him. R. 540, 542. He claimed he was without fault in bringing on the difficulty, was in reasonable fear of death or serious bodily injury and was lawfully parked in the apartment complex not engaging in illegal activity at the time. R. 542-543. He argued that the fact the victim was unarmed was only one factor in the entire determination, that he was entitled to Section A's presumption of reasonable fear, and that he had the right to act on appearances, even if his belief was ultimately mistaken. R. 542-543.

REPLY:

In the State's written reply, the State argued Yarnell was only telling half of the story. R. 544. "The statute does not allow unfettered immunity nor any kind of presumption to a person in every circumstance as long as the person is in their ... occupied vehicle." *Id.* Instead, the State maintained Yarnell lost his presumption of reasonable fear under Section B because Yarnell was engaged in unlawful activity with his vehicle at the time he shot the victim. *Id.* Yarnell had been threatening his ex-girlfriend Remi via text and phone calls (over two hundred) all day without a response from her, so he got into his vehicle with a loaded weapon and drove to a private drive, uninvited, and laid in wait for Remi for forty-five minutes. R. 545.

Remi got back to the complex and immediately went upstairs, so Yarnell left. R. 545. However, he turned around and re-entered the complex, so the victim, an invited guest, asked Yarnell to leave, but Yarnell refused again. After words were exchanged, Yarnell shot the unarmed victim as he was sitting in his locked vehicle with the motor on and the windows up. R. 545. The State argued Yarnell was not entitled to immunity because he was a trespasser who was engaged in unlawful activity in a place he had no right to be and had no reasonable fear of death.

R. 546. Pennington had no way to actually enter the vehicle: he was unarmed, the space between Yarnell's car and the other parked car was very small, the vehicle was locked, the window was barely cracked, and Pennington had no tool by which to break the glass.

IMMUNITY HEARING:

The immunity hearing was conducted over the three full days of November 14-16, 2022. R. 1. After multiple pre-hearing motions to exclude various pieces of evidence, Judge Hayes ruled the text messages between Yarnell and Remi were admissible to show Yarnell's state of mind. R. 24-27. The State argued:

- Yarnell committed unlawful use of a telephone by calling 200 times;
- He trespassed on private property and was stalking Remi;
- The above was the res gestae of the crime, and Yarnell did not have to be officially charged with the above crimes for his criminal actions to matter in the immunity determination;
- There were no cracks in the window or dents or damage to the car; and
- Yarnell had no injury on him at all – no brackets on his braces were broken.

R. 443-450.

The defense argued a person's car is his castle, so essentially strict liability should be applied to Section A regardless of whether a person actually had a real ability to enter the vehicle. R. 444. They argued the parking lot was like a Wal-Mart parking lot that invited the public in, and that the parking lot was like the hotel lobby in *State v. Williams*, 280 S.C. 305, 312 S.E.2d 555 (1984). They argued that the Supreme Court in *State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019), made the place the person was when they engaged in self-defense not matter. R. 434-455, R. 513. They also argued Yarnell was not a trespasser, and that if he did not have a right to be there, neither did Pennington, Darrin Card, Emily Cerio, or Jennifer Tassone.

R. 455. They continued by arguing no one had the right to invite or disinvite Yarnell, and the fact he was not invited was not important. R. 456-457.

They also argued that *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022), and *State v. Scott*, 424 S.C. 463, 819 S.E.2d 116 (2018), ruled the fact the victim was unarmed was only one factor in the totality test of immunity, and that the case facts were like *State v. Leaks*, 114 S.C. 257, 10 S.E. 549 (1920),[8] (where both the victim and defendant were engaged in illegal gambling), and again reiterated that Yarnell was entitled to the protection of Section A of the PPPA for the sole reason that he was in his occupied vehicle. R. 456, R. 500, R. 503. They argued his phone calls should not be considered because he was not using his vehicle to make the calls. R. 457. They then argued in the alternative that Yarnell was entitled to the protection of Section C, and that Pennington had brought on the difficulty. R. 459-460.

The State countered by stating there was no evidence Maddington Place was open to the public, and that it was the defense's burden to prove it was. R. 462-463. They stated Wal-Mart parking lots did not have "No Trespassing" signs, and one did not need a sticker or tag to park in the parking lot, day or night, so the complex parking lot was in no way like a public Wal-Mart parking lot. R. 462-463. They concluded by arguing Yarnell's case was different than *State v. Leaks* because gambling was an intervening factor that broke the causal chain of proximate cause, but here, the trespass nature of Yarnell's actions led directly to the shooting. R. 531-532.

The defense finished by arguing again that the fact the victim was unarmed was only one factor a judge had to consider in making an immunity determination, and that Yarnell had the right to act on appearances; that threatening words and aggressive actions were enough for him to fire in self-defense. R. 501.

[8] The transcript says, "State versus Lee," but there is no such case. R. 457.

STANDARD OF REVIEW

A grant of immunity is immediately appealable because it is a final order that ends the case. *State v. McCarty*, 437 S.C. at 369, 878 S.E.2d at 910; *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). The order is the nature of an injunction. *State v. Isaac*, 405 S.C. 177, 182, 747 S.E.2d 677, 679 (2013); S.C. Code § 14-3-330(1) & (3). The Court reviews a grant of immunity under an abuse of discretion standard. *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). There must be errors of law or factual conclusions that are without evidentiary support for an order to be reversed. *Jones*, 416 S.C. at 290, 786 S.E.2d at 136; *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007).

ARGUMENT

To be entitled to immunity after using deadly force, a defendant must first prove all four elements (or applicable sections of the PPPA) of self-defense by a preponderance of the evidence:

(1) He must be without fault in bringing on the difficulty;

(2) He must have believed he was in imminent danger of losing his life or sustaining great bodily injury ("GBI"), or actually was in such danger;

(3) "Reasonable Fear." If his claim is based on the belief he was in imminent danger of losing his life or sustaining GBI, a reasonably prudent person of ordinary fitness and courage would have entertained that same belief; and

(4) He must have had no other probable means of avoiding the danger or sustaining serious bodily injury than to act how he did.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984); *State v. Jones*, 416 S.C. at 290, 786 S.E.2d at 136 (2016) (citation omitted.)

If a defendant only proves the first two elements, then he must also prove the applicable section(s) of the Protection of Persons and Property Act ("PPPA") that replace elements **(3)** reasonable fear (Section A); and **(4)** the duty to retreat (Section C). However, if the State disproves one element at any point, the judge may deny immunity right then and there and send the case to a jury.[9] *State v. Bixby*, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) ("It is an axiomatic principle of law that the defense has not been established if any one element is disproven.") "Th[e elemental structure of self-defense] places the burden on the defendant to produce some evidence to support the existence of each element." *State v. Williams*, 427 S.C. at 249, 830 S.E.2d at 906.

The summarized sections of the PPPA are as follows:

[9] By its very nature, a judge who did this would (and must) be making a ruling on the element(s) as required by *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022).

Section (A): The presumption of reasonable fear applies (replacing element 3) if:

(1) The victim was in the process of unlawfully and forcefully entering or had entered an occupied vehicle or attempted to remove another person against his will from the vehicle; and

(2) Knows or has reason to believe that unlawful and forcible entry is or has occurred.

Section (B): Section A does not apply, however, if:

(1) The victim had the right to be in the residence or vehicle; or ((**2**) and **(4)** are not relevant)[10]

(3) The defendant was engaged in an unlawful activity at the time or used an occupied vehicle to further such unlawful activity.

Section (C): A person who:

- Is not engaged in unlawful activity; and
- Who is attacked in another place he had the right to be . . .
- Has no duty to retreat and has the right to meet force with force to prevent death or great bodily injury ("GBI") to himself or others. (Replacing element 4).

Section (D): A person who attempts to enter a person's occupied vehicle is presumed to be doing so with the intent to commit an unlawful act or violent crime. PPPA – S.C. Code §§ 16-11-410 to 450 (2015) (emphasis added).

"'[T]he General Assembly did not intend' to require the circuit court 'to accept the accused's version of the underlying facts' in determining a motion for immunity under the Act." *State v. Oates*, 421 S.C. at 13, 803 S.E.2d at 918 *quoting State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013).

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[10] "The person **(2)** sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or" "**(4)** against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer."

To set up the discussion, in *State v. Oates*, this Court upheld the trial court's denial of immunity from prosecution to Oates even though the victim had actually entered his occupied vehicle right before, because he was not in the active process of entering at the time Oates shot and killed him. *Oates*, 421 S.C. at 17, 803 S.E.2d at 920 (certiorari denied). The victim illegally parked his van, and Oates, an agent of the neighborhood's HOA, showed up to tow it. The victim and two other men approached Oates and started an argument about it, so Oates retreated inside his vehicle and locked the door. The argument continued through the cracked window.

Two men then jumped up on Oates' running board, and the victim said, "Go get my shotgun." Oates heard a round being chambered, and the victim said, "You're going to take this [vehicle boot] off right now and I'm leaving." Oates said, "That's fine." The victim then pulled a gun from his pants, ratcheted it, and said, "Nobody's going to take my car." The victim then unlocked the door of Oates' truck, pulled the handle, opened it, and ordered Oates out of his truck at gunpoint. The victim then began to walk away from the vehicle, and Oates shot him.
Oates, 421 S.C. at 7-11, 803 S.E.2d at 915-917.

Even so, this Court rightly held Oates was not entitled to Section A of the PPPA's presumption of reasonable fear *even though* the victim forced Oates from his vehicle at gunpoint because the argument had subsided at the exact moment Oates shot the victim. *Id.* at 15, 803 S.E.2d at 919. This Court also held Oates was not entitled to Section C of the PPPA's immunity from the duty to retreat because his use of deadly force against the victim was not necessary to prevent his own death or injury; he only had the right to meet force with force. *Oates*, 421 S.C. at 16, 803 S.E.2d at 919. This case is similar to *State v. Oates* in many ways. Thus, this Court should reverse and remand Judge Hayes' order granting immunity from prosecution to Yarnell.

I. **Judge Hayes abused his discretion by finding Yarnell was without fault in bringing on the difficulty. Yarnell called Remi over 200 times, made her fearful he would attack her with a weapon, showed up at a private condo and refused to leave after being lawfully ejected multiple times, then left and came back full of anger. He had no lawful reason to return. He then killed an invited guest who was ejecting him.**

Judge Hayes found Yarnell was without fault in bringing on the difficulty by a preponderance of the evidence because he "had done nothing to Pennington to provoke Pennington's attack" while Yarnell was in his vehicle. R. 560. The State disagrees and asks this Court to vacate and / or reverse and remand for further proceedings. This ruling is without evidentiary support and is an error of law, as Judge Hayes did not properly factor either in the res gestae of how the victim knew of and knew what Yarnell's state of mind was when he walked up to the vehicle or the victim's right to eject Yarnell, a trespasser, in making his determination.

First, Judge Hayes did not sufficiently develop the reasons why he ruled Yarnell was not at fault in bringing on the difficulty as *State v. McCarty* requires.[11] Even if he had, though, "the [Castle Doctrine] rule is predicated on the absence of aggression or fault on [the defendant's] part in bringing on the difficulty; the doctrine is for defensive, and not offensive, purposes." *State v. Grantham*, 224 S.C. 41, 45, 77 S.E.2d 291, 292 (1953). A defendant "who provokes or initiates an assault cannot escape criminal liability by invoking self-defense." *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). "Statements or circumstances which are explanatory of the main fact are admissible in evidence as part of the res gestae . . . [they] must possess the very characteristic of being well calculated to unfold the nature and quality of the

[11] *McCarty*, 437 S.C. at 360, 370, 878 S.E.2d at 905, 910 (finding a trial court must analyze each element of self-defense and the PPPA in making its determination until they happen upon an element the defendant has decisively not proven. If they find the defendant has proven all elements, they must analyze all of the elements and give specific reasons (including credibility determinations) for making their ruling.)

main fact, and so harmonize with it as to obviously constitute a single transaction." *State v. Long*, 186 S.C. 439, 195 S.E. 624, 626 (1938).

Yarnell had been harassing his ex-girlfriend Remi all day, had called her over 200 times, and sat and waited for her for 45 minutes as his anger built. Then, even though she asked him over the phone while she and Emily were still at the Speedway to leave her clothes and go home, he stayed and waited for her in a private parking lot. Then, 15 minutes later, when the two saw him in the parking lot against her wishes (she and Emily were invited guests of owners at the complex, so they legally had the right to eject), they drove away and got Pennington, then came back to the complex and once again told Yarnell to leave. *He left*. Then, nevertheless, he came back with no legal justification for returning. An individual is not permitted by law to sit outside a private residence in their vehicle for as long as they want when they are creating reasonable fear in the occupants by nature of their presence. Boundaries have to matter. What would the purpose be of posting a "Private Property" sign, if owners and their agents could not eject?

Even if Remi *had* initially invited him over to drop off her clothing, her consent for him to be on the premises was unequivocally revoked before Yarnell ever talked to Pennington.[12] Judge Hayes did not analyze or consider this fact in his Order; instead, he merely found that Yarnell had been invited by Remi, and therefore the fact that Yarnell was asked to leave did not matter. R. 552, FN 8. Legally, he should have considered that when Yarnell returned, and Pennington, who was also an invited guest with the legal right to eject Yarnell (especially because Remi and Emily asked him to), asked him to leave and Yarnell refused, Yarnell brought on the difficulty by refusing to leave a place he was lawfully ejected from at least three times.

[12] The defense argued Yarnell being there was like a FedEx or mail truck on the complex to drop off a package. Yes, the drivers would be like invited guests. But an invitation can always be revoked, and Judge Hayes did not analyze or consider that, which was an error of law.

A person has a right to eject "one who, either by virtue of a warning before entry, or as a result of a duly communicated revocation after entry of an express or implied license to enter, has become a trespasser." "That such a proprietor has the right to eject a trespasser from his premises and to use such reasonable force, short of killing him, as may be necessary to accomplish the expulsion, is, as we apprehended, well settled." *State v. Rogers*, 130 S.C. 426, 126 S.E. 329, 331 (1925). If a person is "engaged in the legitimate exercise in good faith of his right to eject, he would in such case be without fault in bringing on the difficulty and would not be bound to retreat." *State v. Brooks*, 252 S.C. 502, 510, 167 S.E.2d 307, 310 (1969). An individual clothed with the proper agency may eject from a private parking lot. The absence of a duty to retreat also extends to the curtilage, which includes outbuildings, the yard around a dwelling, a garden of the dwelling, or a parking lot of a dwelling or business. *State v. Wiggins*, 330 S.C. 538, 548 n. 15, 500 S.E.2d 489, 494 n. 15 (1998); *cf. State v. Dickey*, 394 S.C. 401, 509, 716 S.E.2d 97, 106 (2011) (holding there is no right to eject from a public parking lot.)

Wouldn't the victim also have a right to self-defense or a right to defend the others in the parking lot, namely his girlfriend? Or can a victim's right to self-defense never be considered in an immunity determination? Here, Pennington knew Remi was scared, and he had been asked to protect Remi and his girlfriend Emily from Yarnell, who he knew had been harassing Remi all day. He then watched Yarnell refuse to leave when Remi asked, and then approached Yarnell himself and asked him to leave. After a verbal argument, Yarnell then presented a weapon, and Pennington's actions showed he was acting in defense of himself and the others by attempting to push the gun out of the way. Yes, Yarnell had a right to remain unmolested in his vehicle, but he lost that privilege when he refused to leave and then presented his weapon. That is why the first element of self-defense takes away the right to remain unmolested if one brings on the difficulty.

Even so, even if Pennington had brought on the difficulty, hypothetically, "there are circumstances in which the right to self-defense may be restored." *McCarty*, 437 S.C. at 373, 878 S.E.2d at 912; *Bryant*, 336 S.C. at 345, 520 S.E.2d at 322. "One's right to self-defense is restored after a withdrawal from the initial difficulty with the victim if that withdrawal is communicated to the victim by word or act." *Bryant*, 336 S.C. at 345, 520 S.E.2d at 322. "A person is not obliged to retreat even though he can do so without increasing his danger where, being without fault in bringing on the difficulty, he is assaulted while on his own premises." *State v. Hewitt*, 205 S.C. 207, 31 S.E.2d 257, 258 (1944); *see also State v. Bradley*, 126 S.C. 528, 120 S.E. 240, 242 (1923) (considering the interplay between a person's right to eject a trespasser and self-defense law) ("Such a person cannot lawfully be ejected by the use of violence until he has been requested to depart, and if he refuses to heed the request the hands must be laid on gently and thereafter only so much force be used as is necessary to accomplish the ejectment.")[13]

Here, when Pennington saw the gun, he stepped either back or to the side and said, "You have a gun?" Emily Cerio his girlfriend testified Pennington was then defending her and the others from Yarnell's gun when he tried to put his hand through the barely-cracked window to push the gun away. But he was not touching the vehicle at all at the exact moment he was shot. As in *Oates*, this signifies he was withdrawing from his encounter with Yarnell. So even if Yarnell did not bring on the difficulty, Pennington clearly withdrew from the conflict, giving him a right to engage in self-defense of his own. The victim's right to self-defense has to matter. It should be considered in the totality test of whether a defendant met his burden of proving the elements of self-defense and the PPPA. The victim was unequivocally in a place he had the right

[13] Further, *see also State v. Starnes*, 213 S.C. 304, 316-317, 49 S.E.2d 209, 213-214 (1948); *State v. Sparks*, 179 S.C. 135, 183 S.E. 719 (1936).

to be, was unarmed, and had no way to defend himself from Yarnell, who was in a locked and running vehicle with a gun. Judge Hayes did not analyze or consider these facts when making his ruling, and his ruling that Yarnell proved he had not brought on the difficulty (element one of self-defense) was without evidentiary support. Judge Hayes, further, committed an error of law by failing to analyze the victim's right to eject Yarnell. This Court should reverse and remand.

II. Judge Hayes abused his discretion by finding Yarnell was in actual danger of death or great bodily injury. The window was only cracked 2-3 inches, the victim had no weapon or tool by which to enter the vehicle, the doors were locked, and the victim was squeezed up against another car. The victim had no way to actually enter the vehicle, making it impossible for Yarnell to have been in actual danger of death.

In analyzing the second element of self-defense, Judge Hayes ruled Yarnell was actually in imminent danger of losing his life or sustaining serious bodily injury. R. 560. The "[c]ircumstances of the attack placed the Petitioner in actual imminent danger and these circumstances were such that would warrant a man . . . to strike the fatal blow to save his own life." R. 560. This was a factual error wholly without evidentiary support. It was a factual impossibility that Yarnell was in danger of actual death or serious bodily injury. Under the PPPA, "Great bodily injury" means "bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ." S.C. Code § 16-11-430(2).

As the photos showed and as the detective and the auto glass installer expert testified, Yarnell's window was rolled down only 2-3 inches when he fired. Defense Exhibits 14, 20, and 43; State's Exhibit 23. It was forensically and factually impossible for it to have been rolled down further. It was undisputed Yarnell's vehicle was locked. As State's Exhibit 36 shows, Yarnell had pulled in between two other vehicles when he was talking to Pennington, so Pennington did not have room to create enough force to enter Yarnell's vehicle with his bare

hands. Pennington did not have a weapon or tool on him with which to break the window. How could he have caused protracted loss or impairment to one of Yarnell's organs, *e.g.*, with just his hands, through a 2-to-3-inch crack? How could he have killed Yarnell? The photos of Yarnell, taken mere hours after he shot Pennington, showed Yarnell did not have any injuries to his face, body, or vehicle. There were no scratches or dents on the vehicle (except for the bullet hole).

However, Judge Hayes found the window was down enough for Pennington to reach in and punch Yarnell and attempt to grab the gun. R. 554, FN 11. How could a grown man's fist punch another through a 2-3 inch cracked window? Judge Hayes, contrary to what the physical evidence showed, found the window was 2/3rds, or at least half of the way down. R. 556. This ruling was without evidentiary support, and he abused his discretion in finding Yarnell had met his burden of proving element two of self-defense. This Court should reverse and remand.

III. Judge Hayes abused his discretion by applying strict liability to Section A of the PPPA because every element of self-defense and the corresponding sections of the PPPA are to be analyzed as a totality test. Judge Hayes ruled that because one of Pennington's fingerprints was found on Yarnell's car, he automatically had the right to claim Section A's presumption of reasonable fear. This was legal error.

Judge Hayes made an error of law when he applied strict liability to Section A of the PPPA (that could replace element 3 of self-defense with a presumption of reasonable fear of imminent death or great bodily injury) instead of analyzing the section as a totality test. The defense admitted at the hearing that the whole determination was a totality test by arguing the fact the victim was unarmed was only one factor to be considered in the totality of the circumstances surrounding the shooting. Yet Judge Hayes ruled that, as has been stated, because Pennington touched Yarnell's vehicle and tried to reach through the cracked window, that meant Yarnell had automatically proven Section A by a preponderance of the evidence and was thus entitled to its presumption of reasonable fear. But presumptions by their very nature can be

rebutted with additional facts that are to be analyzed via a totality test. But Judge Hayes ruled, "The greater weight of the evidence establish[es] that Pennington was attempting to open the vehicle's door in order to reach Petitioner." R. 554. "[T]he facts are uncontested that Petitioner had a right to be in his vehicle. Thus, the occupied vehicle of subsection (A) is met." R. 552, FN 8. Then a third time:

> For purposes of Section 16-11-440(A), the Petitioner is entitled to be presumed to have a reasonable fear of imminent peril of death or great bodily injury when he used deadly force because the person against whom he used deadly force was in the process of unlawfully and forcefully entering Petitioner's occupied vehicle, and the person had attempted to remove Petitioner from his occupied vehicle. The requirements of 16-11-440(A) have been established.

R. 560.

Those rulings bear the language of strict liability. "Pennington touched the vehicle, so that means the section is met." However, again, it was a forensically proven fact that it was impossible for Pennington to have actually entered Yarnell's vehicle (due to the mere 2-3 inches of rolled-down window, the fact the victim was squeezed against Yarnell's car and another, and the victim's lack of a weapon or tools by which to break the window or open the car's door, or an unlocked door). That has to matter in the analysis. Further, Judge Hayes did not take into account that the victim had let go of the vehicle well before Yarnell fired. He did not take into account the forensic fact that no stippling existed under the victim's arms, meaning the victim's arms could not have been up and in the window when Yarnell fired. R. 554. Those facts should have been analyzed in a totality of the circumstances analysis when Judge Hayes was determining whether Yarnell had proven Section A's elements. The surrounding circumstances matter and must be weighed when determining whether someone was legally justified in taking another person's life.

The summarized language of the statute is as follows:

Section (A): The presumption of reasonable fear applies (replacing element 3) if:

(1) The victim was in the process of unlawfully and forcefully entering or had entered an occupied vehicle or attempted to remove another person against his will from the vehicle; and

(2) The person knows or has reason to believe that unlawful and forcible entry is or has occurred.

Section (D): A person who attempts to enter a person's occupied vehicle is presumed to be doing so with the intent to commit an unlawful act or violent crime. (Emphasis added).

A vehicle is distinctly different from a home or a place of business for purposes of self-defense. One cannot put a home or a brick-and-mortar business (where a person has the right to be) on a piece of land where a person does not have the right to be. Here, yes, Yarnell was in his occupied vehicle, but he was in his occupied vehicle *parked on* a piece of land he had no right to be parked on. Pennington was in the process of ejecting him from the private property when Yarnell shot him. Again, especially when analyzing the elements of self-defense when a shooting occurs at a vehicle's window (because of how different a vehicle is from a building), the totality of the circumstances all matter. Section (A) mandates that for a court to find a person was in reasonable fear of imminent *death* (or GBI), the victim must have actually been able to remove the person from their vehicle by force when they attempted to. Section (A)(2) says the defendant must know or believe unlawful entry *is* occurring or *has* occurred. If a person attempts to assault someone, but the person is safely behind a glass wall, could they be found guilty of assault and battery under our statutes? The above facts matter in determining whether Section A applied, and Judge Hayes did not take them into consideration.

Under Section D, for argument's sake, Yarnell could claim Pennington was attempting to enter his vehicle for the purposes of committing an unlawful act or violent crime against him.

That still does not make the analysis of whether he met Section A a strict liability determination. The victim's right to self-defense still has to be weighed against the presumption that the victim was attempting to commit an unlawful or violent act against Yarnell. Many individuals commit violent acts in self-defense that are not deemed lawful until a hearing is later held. Here, had the window been rolled down further, in order to defend himself and the others around him from Yarnell's gun, the victim very well might have injured Yarnell. (He did not.) That, again, still does not make Section A a strict liability test. Appellate courts in this state have recently overturned many a case where judges have said, "One box is checked, so that means I do not have to, or am bound not to, exercise discretion or analyze the facts."[14]

Yes, as the defense said, Yarnell had a right to act on appearances, but his belief had to be objectively reasonable. *McCarty*, 437 S.C. at 369 n. 7, 878 S.E.2d at 910. It is not reasonable to conclude that just because the victim touched Yarnell's vehicle, it thus became obvious that Yarnell was in peril of death when it was factually impossible for Pennington to get inside it. Reasonableness is the cornerstone of any self-defense determination. *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014). Totality tests are used to determine reasonableness. This Court should reverse and remand.

IV. Judge Hayes abused his discretion by finding that Yarnell did not lose Section A's presumption of reasonable fear under Section B because Yarnell was not engaged in an unlawful activity when he fired. Judge Hayes also made an error when he found Yarnell was in a place he had the right to be under Section C. Yarnell had put Remi in reasonable fear, he was trespassing, and he refused to be lawfully ejected.

Judge Hayes made multiple errors of law when he ruled Yarnell was not engaged in an unlawful activity and thus did not lose his already-granted Section A presumption of reasonable

[14] *E.g. State v. Heyward*, 441 S.C. 484, 895 S.E.2d 658 (2023); *State v. Hawes*, 411 S.C. 188, 767 S.E.2d 707 (2015); *State v. Curry*, 406 S.C. 364, 752 S.E.2d 452 (1984).

fear; and when he found Yarnell was in a place he had the right to be under Section C. Judge Hayes further made an error of law when he found Yarnell's unlawful presence was not the proximate cause of the victim's death. R. 561. Yarnell had engaged in unlawful use of a telephone and was trespassing on private property when the victim lawfully attempted to eject him. What purpose was there for Yarnell to return to the complex when *he left* after being asked to by Remi? Remi had already asked him to drop off her clothes and leave before she returned to the complex. Yarnell did not. Yarnell then could have dropped her clothes off to her when he talked to her in the condo parking lot. He did not. He then complied with her ejectment and left.[15] He had no lawful reason to return. This Court should reverse and remand.

The summarized parts of Sections B and C of the PPPA are as follows:

Section (B): Section A (that replaces element 3 of self-defense) does not apply, however, if:

(1) The victim had the right to be in the residence or vehicle; or

(3) The defendant was engaged in an unlawful activity at the time or used an occupied vehicle to further such unlawful activity.

Section (C): A person who:

- Is not engaged in unlawful activity; and
- Who is attacked in a place he had the right to be . . .
- Has no duty to retreat (replacing element 4) and has the right to meet force with force to prevent death or great bodily injury ("GBI") to himself or others.

(Emphasis added).

[15] Although unpublished, this Court correctly analyzed a woman's right to withdraw permission from even a boyfriend to be in a place they both had stayed many times before in *State v. Elmore*, 2023-UP-307 (S.C. Ct. App. filed September 6, 2023). "[She] testified multiple times she was not in a relationship with Elmore . . . Bluford testified that Elmore did not have permission to be in her house on the night of the incident. She did not invite him over that evening."

Section B – Yarnell Engaged in Unlawful Activity

As the State here argued, calling someone 200 times (when they do not want you to) is an unlawful use of telephone under S.C. Code § 16-17-430, which created reasonable fear in Remi and showed why the victim approached Yarnell's vehicle in the first place.[16] Judge Hayes, however, found Yarnell's texts only showed his affection for Remi, and they were just "young kids who argued a lot." R. 557. He just wanted to "give her a kiss before he went home." R. 557. Remi could not ask him to leave, ever, because she was in a relationship with him? Yarnell was trespassing and was refusing to be ejected when he fired. That was unlawful activity. Under Section (B)(2), he was using his occupied vehicle to further such unlawful activity. Therefore, even if he had been entitled to Section A's presumption of reasonable fear, he forfeited it by engaging in unlawful activity.

Section C – Yarnell Was Not in a Place He Had the Right to Be[17]

Judge Hayes ruled Yarnell was in a place he had the right to be, and that his presence did not violate Maddington Place's rules and common practices. R. 557, FN 19, 559. Legally, however, that was not true. Yarnell was trespassing under S.C. Code § 16-11-620: "Any person who, without legal cause or good excuse, enters ... on the premises of another person after having been warned not to do so ... **and refuses . . . to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representatives** ...." (emphasis added). FedEx trucks, etc. were invited guests, unlike Yarnell was here.

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[16] "**1.** That the accused did anonymously or otherwise: **b.** Telephone or electronically contact another repeatedly, regardless of whether or not conversation ensues for the purpose of annoying or harassing another person or his family."

[17] The judge ruled Yarnell did not claim entitlement to Section C, but that is not true. He did. R. 459.

What is the purpose of having a No Trespassing sign, or private property in general for that matter, if ejectment cannot occur? The Maddington Place HOA manager, in contradiction to Judge Hayes' Order, testified Yarnell was, in fact, in violation of their rules. If this line of thinking stands, any individual would be able to park on a road outside anyone's home for as long as they wanted, and make them as afraid as they wanted, and no one would be able to make them leave for the sole reason that they were and are in their occupied vehicle. The law has to matter. As the solicitor stated at the hearing, the fact that Yarnell was not officially charged with the crimes did not mean his having committed them could not be used or analyzed for purposes of an immunity determination. R. 447-448. "Not engaged in unlawful activity" was and is an element of the Act that Yarnell had to prove, as is "in a place he had the right to be."

The defense argued that where Yarnell's vehicle was parked did not matter, because our Supreme Court apparently eliminated any and all geographical restrictions when it came to self-defense in *State v. Jones* and *State v. Glenn.*[18]. However, that is not what the Court meant. The quote the defense relies on from *Jones* was, "[W]e find the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographic restriction." *Jones*, 416 S.C. at 297-298, 786 S.E.2d at 139-140. The Court was talking about how Section C in general opened up the right to claim self-defense to and at any place a defendant *had the right to be*, where previously individuals could only claim it in homes, businesses, and vehicles. The fact that Yarnell was trespassing still matters here.[19]

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[18] *State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019); *State v. Jones*, 416 S.C. 283, 786 S.E.2d 132 (2016).

[19] It is worth noting that the defense utilized (not by name) *State v. Marshall*, 428 S.C. 11, 15, 832 S.E.2d 618, 620 (Ct. App. 2019) in their argument, R. 457, but in that case, *the victim* was on a no trespass order, but his girlfriend (who had asked for the order) had invited him over that night anyway, making the applicability of the case negligible.

The Court did *not* say that meant a person was entitled to the protection of self-defense no matter where they are parked or what they are doing. The "provided the other requirements are met" means all the elements of Section C (and the other self-defense elements and sections of the PPPA for that matter), including the one where a defendant must prove he had a right to be in the place he was, must still be proven. In *Jones*, both the victim and the defendant were in a place they had the right to be, so Jones could only claim immunity under Section C. If this line of thinking prevails, an individual could park in anyone's driveway without permission (because geography does not matter) and then be entitled to Section C's elimination of the duty to retreat when a homeowner started an argument with them about it and an altercation occurred. If Yarnell had been invited and had not been asked to leave, he *would* have been in a place he had the right to be and could avail himself of Section C. But he was asked to leave, and he refused.

The private parking lot was not like the public hotel lobby the defense argued it was from *State v. Williams*, 280 S.C. 305, 306-307, 312 S.E.2d 555-556 (1984). The *Williams* court drew a sharp distinction between a public and a private place. *Id.* The Maddington Place parking lot was not a place the "general public had the right to resort" or by "point of fact [was] public rather than private." *Id.* Williams had paid for a room already, and he was at the hotel's desk (where any member of the public could come in and rent a room) attempting to secure a refund when the fight happened. There were no "no trespassing" signs in the lobby (assumedly), and one could not be automatically penalized (or towed, as in this case) by their mere presence in the lobby. *Id.*

Nevertheless, Judge Hayes ignored the fact that Yarnell was breaking the law, and instead ruled that because Yarnell did not have a premeditated motive to do serious bodily harm, and because he was never actually charged with the lesser crimes, his lesser crimes did not matter to the analysis. R. 559, FN 22, 560. This was an error of law. But even if, for argument's sake, Yarnell did have a right to be there and was also not engaged in any unlawful activity, he still only

had the right to meet force with force to be entitled to Section C's elimination of the duty to retreat.

Like in *Oates*, where this Court held the appellant was not entitled to Section C of the PPPA's immunity from the duty to retreat because his use of deadly force against the victim was not necessary to prevent his own death or injury, Yarnell also only had the right to meet force with force, and killing the victim was not necessary to prevent Yarnell's own death or injury. *Oates*, 421 S.C. at 16, 803 S.E.2d at 919. An immunity determination is based, again, on reasonableness and proportionality. Here, the victim had no way to actually injure Yarnell. Therefore, Yarnell was not entitled to Section C, and thus had to prove element 4 of self-defense, and had the duty to retreat before firing. *State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328 (1989); *State v. Jackson*, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955) (finding one has the duty to avoid taking human life if at all possible, unless the danger of being killed or suffering serious bodily harm is increased by retreating.)

Judge Hayes Ruled Yarnell's Trespass was not the Proximate Cause of the Death

In *State v. Leaks*, 114 S.C. 257, 103 S.E. 549 (1920), a case our Supreme Court decided over ninety years before *Duncan* immunity hearings were established, and a case that the defense squarely hung its hat on, was a case where two men were *both* participating in the illegal act of gambling when they got into a fight, and one killed the other. The Court ruled, of course, that the "causal connection between the unlawful act of gambling and the encounter arising during the progress of the game between the participants [was] too remote to destroy the right of self-defense." *Leaks*, 103 S.E. at 551. But in *Leaks*, unlike in this case, both men were engaged unlawful activity. Here, only Yarnell was engaged in unlawful activity.

"Statements or circumstances which are explanatory of the main fact are admissible in evidence as part of the res gestae . . . [they] must possess the very characteristic of being well calculated to unfold the nature and quality of the main fact, and so harmonize with it as to obviously constitute a single transaction." *State v. Long*, 186 S.C. at 439, 195 S.E. at 626. In a proximate cause analysis, the res gestae of what occurred in the hours or even days leading up to the killing matters. Here, Yarnell was asked to leave a private property and actually left. As he had no lawful reason to return, his returning, full of anger, was the proximate cause of the death. Yarnell even admitted that the victim would not have died if he had not come back to the parking lot. R. 404. Judge Hayes made an error of law by finding Yarnell's return in his vehicle was not the proximate cause of Michael Pennington's death. R. 552-553. This Court should reverse and remand.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the Order granting immunity be vacated and reversed, and this matter remanded for further proceedings.

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September 19, 2024

* Ms. Battenfield filed the initial brief but has since left the Attorney General's Office. Thus, the signature block has been modified to reflect that change.

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Honorable J. Mark Hayes, Circuit Court Judge

Appellate Case No. 2023-000571

THE STATE, ...APPELLANT,

v.

ANIJAH YARNELL,.....RESPONDENT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This is the 19th day of September 2024.

s/Melody J. Brown
Melody J. Brown
Senior Assistant Deputy Attorney General

ATTORNEY FOR RESPONDENT

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ANIJAH YARNELL,.....RESPONDENT.

PROOF OF SERVICE

I, Melody J. Brown, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent, Certificate of Compliance, and Proof of Service have been forwarded to Appellant's counsel Robert Dudek., via email today, September 19, 2024 to RDudek@sccid.sc.gov, and Mr. Dudek's legal assistant, Kaylynn Warren, to KWarren@sccid.sc.gov.

I further certified that all parties required by Rule to be served have been served. This is the 19th day of September 2024.

s/Melody J. Brown
Melody J. Brown
Senior Assistant Deputy Attorney General

Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

Brandy Rankin

From: Brandy Rankin
Sent: Thursday, September 19, 2024 11:20 AM
To: Dudek, Robert
Cc: Warren, Kaylynn; Melody Brown
Subject: Anijah Yarnell Final Brief Re-filing to Include Certificate of Compliance
Attachments: Final Brief of Apellant & Proof of Service, Anijah Yarnell, 9-17-24.pdf

Dear Mr. Dudek,

Please accept this Final Brief of Appellant, filed on the 17th originally, however it came to our attention that the Brief was without the Certificate of Compliance. The Court advised to file it again to include the Certificate of Compliance and further advised that they did not require a Motion to File out of Time. Therefore, we are attaching the inclusive copy here. Our apologies for the error and any inconvenience it may have caused.

Sincerely,

Brandy Rankin

Brandy Rankin, Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305