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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE, RESPONDENT,

V.

TIFFANY REBECCA OWENS, APPELLANT

APPELLATE CASE NO. 2024-000085

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court's decision to deny Appellant immunity from prosecution under the Protection of Persons and Property Act was based on legal errors and on factual findings which were without support in the record, and thus Appellant's convictions require reversal?

STATEMENT OF THE CASE

On November 3, 2022, a Hampton County Grand Jury indicted Tiffany Rebecca Owens, Appellant, for murder and possession of a weapon during the commission of a violent crime. R*(indictments). On November 9, 2022, Appellant appeared before the Honorable Robert J. Bonds for a hearing pursuant to the Protection of Persons and Property Act. Appellant was represented by H. Fred Kuhn, Jr. Reed A. Evans prosecuted the case. Tr. I, 1. On or about November 30, 2022, the court issued an order denying immunity from prosecution. R. *(order).

Appellant was tried before the Honorable Carmen T. Mullen and a jury, on January 8, 2024, and January 10 – 11, 2024. Tr. II, 1; Tr. II, 71; Tr. II, 408. Appellant was convicted of the lesser-included offense of voluntary manslaughter, and of possession of a weapon during the commission of a violent crime. She was sentenced to serve concurrent terms of imprisonment of twenty years for voluntary manslaughter and five years for the weapons charge. R. *(sentence sheets); Tr. II, 496, l. 19 – 497, l. 17; Tr. II, 510, ll. 15-22.

This appeal follows.

STANDARD OF REVIEW

"A claim of immunity under the [Protection of Persons and Property 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. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011)). "A circuit court abuses its discretion when its ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support." *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019).

ARGUMENT

The court's decision to deny Appellant immunity from prosecution under the Protection of Persons and Property Act was based on legal errors and on factual findings which were without support in the record, thus Appellant's convictions require reversal.

A. Appellant was attacked by Decedent while Appellant was in her own car at the grocery store.

i. The attack

On May 29, 2021, at the Galaxy grocery store parking lot in Estill, Tiffany Owens (Appellant) was viciously attacked by Tijuana Johnson (Decedent). Tr. II, 101, l. 20 – 102, l. 18; Tr. II, 197, l. 18 – 198, l. 3; Defense Exhibit #1. Appellant was four-and-a-half or five months pregnant and had a cast on one arm from a car accident. Tr. II, 354, l. 13 – 355, l. 20; Tr. I, 11, ll. 13-22. Decedent did not like Appellant because Appellant's sister was involved with Decedent's ex-boyfriend. Tr. II, 336, l. 22 – 338, l. 21; Tr. II, 344, l. 20 – 345, l. 14. When Decedent was going into the store, Appellant was in her car out front. Appellant had her window down and was waiting on her boyfriend. Decedent began cursing at Appellant and the two women exchanged words. Decedent had been using the drug ketamine, which causes aggression. State's Exhibit #8; Tr. II, 345, l. 15 – 348, l. 6; Tr. II, 316, l. 17 – 318, l. 20; Tr. II, 374, ll. 4-6.

Appellant called her mother to complain about Decedent's outburst. Appellant's mother told her she would call the police, and Appellant decided to leave. Tr. II, 349, l. 16 – 351, l. 6; Tr. 367, l. 1 – 369, l. 23. It was undisputed that Appellant's mother hung up and called the police. The 911 call by Appellant's mother, which was entered into evidence at trial, was made two minutes before a 911 call came in about the shooting. Tr. II, 99, ll. 7-22; State's Exhibit #7. Decedent came out of the store. Appellant began to drive off and she headed directly for the exit

by turning left and going down the main aisle to the exit. State's Exhibit #8; Tr. II, 350, l. 14 – 351, l. 6.

While Appellant's car was still moving, Decedent ran up to Appellant's car and began to savagely and repeatedly punch her through the open car window using her keys as a weapon. Appellant hit the brakes because she could not see to drive with Decedent hitting her. State's Exhibit #8; Tr. II, 134, l. 14 – 136, l 9; Tr. II, 147, ll. 8-17; Tr. II, 351, ll. 4-8; Tr. II, 385, ll. 1-24; Tr. I, 23, ll. 3-4. In addition to being punched, Appellant would have bloody scratches on her breast and a bruise on her arm from Decedent's attack. State's Exhibit #9; Tr. II, 239, ll. 7-15; Tr. II, 247, ll. 12-20. Law enforcement would recover Decedent's keys from inside Appellant's car. Tr. II, 171, l. 20 – 172, l. 7.

Decedent also grabbed Appellant's car door handle and pulled on the door, but it was locked. Appellant grabbed her gun from the console in self-defense, and the women struggled over the gun. Two shots were fired. State's Exhibit #8; Tr. II, 351, ll. 8-23; Tr. II, 390, l. 24 – 392, l. 23; Tr. I, 23, ll. 5-6. One shot went wide but one shot struck Decedent in the chest. This all happened in a matter of seconds. As soon as Decedent took a step away from Appellant's car, Appellant drove off. Appellant went to her mother's house. She turned herself in at the police station later that day. Defense Exhibit #1; R. *(Defense Exhibit #3 at 1); Tr. II, 304, l. 20 – 306, l. 17; State's Exhibit #9; Tr. II, 233, ll. 1-24.

A video surveillance camera from the business captured the fatal encounter on film. It caught the speed and viciousness with which Decedent attacked Appellant. *See* Defense Exhibit #1.

ii. The immunity hearing

A pretrial immunity hearing was held. The video of the fatal altercation was entered as Defendant's Exhibit #1, and it is on file with this Court. Tr. I, 2; Tr. I, 4, ll. 15-20. The exhibit contained several segments of film. It is the segment labeled "Ch32_20210529172955" which contained the fatal encounter.[1] Appellant's black car is parked at the top of the image, towards the left, partially eclipsed by a pillar. The Decedent is wearing all yellow. The bag boy is in a blue t-shirt. The fatal encounter takes place at the very top of the screen.

Watching the video once while looking only at Appellant's car shows her car stopped at exactly 0:01:40. Watching the video again while only looking at Decedent shows Decedent threw her first visible punch at that same moment, 0:01:40. Watching the video a third time while only looking at Decedent shows Decedent began moving towards Appellant at 0:01:38. Watching the video a fourth time and only looking at Appellant's car confirms that Appellant's car was still moving at 0:01:38. Decedent ran up to Appellant's car while Appellant was still driving. Appellant did not stop the car until she was being attacked. Defense Exhibit #1.

Decedent was clearly depicted striking Appellant, and it also appears she was grabbing Appellant's door handle. The car was shaking from the fight. It appears the shots may have been fired at 0:01:47 and 0:01:48. As soon as the shots repelled Decedent's attack and Decedent began to move away from Appellant's car, Appellant drove off and left the parking lot via the exit directly in front of her. Defense Exhibit #1.

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[1] When viewing the video, it is helpful to move your mouse so that the cursor is no longer over the video image or the video player. Moving your mouse cursor off the video image and player to another part of your desktop will cause the dark band at the top of the video to disappear after a few seconds so that the video may be viewed without obstruction.

Appellant testified that she knew Decedent because they were raised in the same neighborhood, although Decedent was older than her. Decedent "had some problems with" Appellant's sister. Tr. I, 5, l. 24 – 7, l. 6. Appellant's relationship with Decedent became "antagonistic" because Appellant's sister became involved with Decedent's "son's father." Appellant stated Decedent was "known to fight." Tr. I, 6, l. 14 – 7, l. 15.

Appellant explained that the day of the attack, she was at the grocery store waiting to meet her boyfriend.[2] Appellant had done some of the shopping and was waiting on her boyfriend to bring some money so she could go back in to buy the rest of the groceries. Tr. I, 7, l. 16 – 8, l. 19. Appellant was sitting in her car in front of the store. Decedent came up to Appellant and said, "Oh, you're not going to speak to me?" Appellant told Decedent she had not noticed her. Decedent accused Appellant of lying and began cursing at Appellant. Decedent told Appellant she should leave the store and Appellant "better not be there when she gets back." Tr. 8, l. 20 – 9, l. 12. When Decedent went in the store, Appellant opened her back door to look for her cell phone. Appellant called her mother and told her what had happened with Decedent. Appellant stated she called her mother because she was worried Decedent might "jump on" her. Tr. I, 9, l. 6 – 10, l. 3.

Appellant testified her mother told her to leave, and that she would call the police. Decedent was coming out of the store at that point. Appellant stated when she tried to leave, Decedent "jumped in my window, striking me. I just felt burning and s[aw] a little blood. I didn't know where it was coming from or what happened. I thought maybe it was a knife or something, but it was her car keys that she was striking me with." Tr. I, 10, ll. 5-20.

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2 Another video segment contained on Defense Exhibit #1, labeled "Ch32_20210529171817_1," showed Appellant when she first arrived at the store, walking in to do her shopping. Appellant was wearing a red shirt and blue shorts.

Appellant stated she felt Decedent cutting her on the neck and shoulder. Appellant said she was in fear for her life. She said she was not in good shape. She was pregnant and had a cast on her arm from a car accident. Appellant grabbed her weapon from the console to try to repel Decedent. "I thought it would scare her, but she grabbed it, and then when she grabbed it I shot her. I panicked." Tr. I, 10, l. 25 – 11, l. 22. Appellant stated she was in fear for her own life and for that of her unborn child. Tr. I, 12, ll. 1-3.

Appellant noted Decedent was acting "erratic and upset," as if she were intoxicated. Appellant stated she did not understand why Decedent was so upset with her: "She was just very erratic and upset with me, and I couldn't understand why because I honestly did not see her. I went that day to get my food and go home with no intent to hurt anybody, so I don't understand where the anger came from, but I tried to leave." Tr. I, 12, ll. 1-16.

On cross-examination, the solicitor asked Appellant if she had the opportunity to leave before Decedent came out of the store, and Appellant agreed she did. Appellant stated she did not leave because she "didn't know it would result in that. I didn't know she would come attack me in my car as I'm trying to leave." Appellant stated she was going to wait on the police but decided to leave on her mother's advice, and because Decedent said, "You still here?" and began to curse at Appellant again as she was walking from the store. Tr. I, 15, l. 21 – 19, l. 2. Appellant still had her cell phone in her left hand. Appellant stated she did not slow down or talk back at Decedent. Decedent ran up to Appellant's car. Tr. I, 20, l. 12 – 21, l. 14. Appellant testified she only stopped the car when Decedent began striking her. "I couldn't pull her off because it's like when she was striking me I couldn't see. I didn't want to just run off and just wreck or something like that. I was actually trying to get away." Tr. I, 22, ll. 15-21.

Appellant explained that Decedent was pulling on her door handle. When asked why she had her foot on the brakes, Appellant stated: "Because how was I gonna go anywhere? How was I gonna see? All I know, I thought she was cutting me with something, but it was the car keys. I felt blood and I felt burning at that point. I had to save myself, because she had already tried to get the door open. My door was locked." Tr. I, 23, ll. 1-6.

Appellant stated she did not remember telling Decedent, "Don't worry I'll be here when you get out" as Decedent walked into the store. Tr. I, 21, ll. 1 19-25. Appellant confirmed she turned herself in at the police station. Tr. I, 23, ll. 7-9.

The defense introduced five exhibits at the hearing, which are all on file with this Court.[3] One of the exhibits was body camera footage of witness statements at the scene, including one man's comment to law enforcement that: "she just turned right here and that girl beelined to her and went straight to her window and just started beating the hell out of her. Next thing you know you saw her jump back, I said, yup, she just got shot." Another witness stated, "old girl right here went in her window." *See* Defense Exhibit #2.

Additionally, the defense introduced a copy of the pathology report, which included the toxicology report. R. *(Defense Exhibit #3). The toxicology report showed Decedent had ketamine in her system, as well as cannabinoids. R. *(Defense Exhibit #3 at 10). The pathology report showed that Decedent was thirty-seven years old and weighed two hundred and thirteen pounds. R. *(Defense Exhibit #3 at 1-2). The defense also introduced photographs which showed drugs found in Decedent's car. *See* Defense Exhibit #4.

Finally, the defense entered three written witness statements. R. *(Defense Exhibit #5, 1-11). One statement was that of seventy-three-year-old Alexander Singleton, who stated that he

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[3] The written statements are located in the Record on Appeal. The photographs and video footage have been transported to the Court.

was in the Galaxy grocery store the day of the shooting when Decedent approached him and began to curse him for no reason. "I think the Saturday before Memorial Day I was at the Galaxy buying food. I was approached by the lady who got shot. This was prior to the shooting. I was inside the Galaxy by the seasoning salt when the woman who got shot started cussing me for no reason—she told me 'mother fucker I'm back.'" Mr. Singleton stated after he left, he later heard the woman was shot. Mr. Singleton stated this was not the first time he had been cursed at by Decedent; she had cursed at him a few days before at the "3 Way." R. *(Defense Exhibit #5, statement of Alexander Singleton at 1).

Another statement was that of Appellant's sister, Ana Marie Fields, who stated that Decedent was a "person that is aggressive and she was always a bully . . . This has been going on for many years . . . It is my opinion that when she can't get to me she finds a way to go after my sister." R. *(Defense Exhibit #5, statement of Ana Fields at 1). Finally, in the statement of Appellant's mother, Jeanette Fields, Mrs. Fields confirmed that Appellant was indeed pregnant and had a cast on her arm. Mrs. Fields stated Appellant had called her from the grocery store just prior to the shooting, and complained about Decedent cursing at her. Mrs. Fields stated she told Appellant to leave, and Mrs. Fields called 911 and asked for police to respond to the grocery store. Shortly thereafter, the shooting occurred, and Appellant drove home frantic and crying. Mrs. Fields took Appellant to the police station around 5:30 or 6:00 p.m. R. *(Defense Exhibit #5, statement of Jeanette Fields at 1-4).

Appellant asked the court to find she was immune from prosecution. Tr. I, 34, ll. 8-9; Tr. I, 35, ll. 16-18. Defense counsel argued that although the State had "made a lot of the fact that Tiffany did not leave when she saw Ms. Johnson," *"[t]here is no duty to retreat."* Tr. I, 31, ll. 20-25 (emphasis added). "*The question is* did she have a – *was she in fear for her life when Ms.*

Johnson attacked her. This case is somewhat unique. We have video that shows conclusively that my client was being attacked. She was in her car, a place she had a right to be, doing something she had a right to do when Ms. Johnson" attacked. Tr. I, 32, ll. 8-15 (emphasis added). Defense counsel handed the court a copy of S.C. Code Ann. § 16-11-440 and noted Appellant was entitled to a "presumption of reasonable fear of imminent peril" since the decedent was "in the process of unlawfully and forcefully entering an occupied vehicle." Tr. I, 33, ll. 19-24.

The solicitor argued that although Appellant had no duty to retreat, whether she had the "ability to retreat" should be considered by the court. The solicitor argued it was not "the end of the inquiry if somebody is attacked," because that would be granting anyone in a car a "license to kill." Tr. I, 38, l. 21 – 39, l. 1.

B. The circuit court concluded Appellant was not entitled to immunity from prosecution.

On or about November 30, 2022, the circuit court issued an order denying Appellant immunity. R. *(order, 1-9). The order cited to the video of the grocery store parking lot.[4] The judge thought that Appellant should have avoided driving past Decedent. The order reflected the following findings. "From the security camera video, it seems there are multiple paths that Owens could have taken to exit the store's parking lot. She turned up the middle lane of the parking lot, directly towards Johnson. She appeared to be speaking to Johnson while driving,

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[4] The order stated the video was a court's exhibit. The Hampton County Clerk of Court's Office has no court's exhibits from this hearing. As seen, the defense introduced several video segments as Defense Exhibit #1, which is on file with this Court. However, the copy of this exhibit that was received by undersigned counsel from the Clerk's Office does not contain the segment with Appellant and Decedent's initial exchange of words. It is unclear whether this was a copying error. Appellant has therefore designated State's Exhibit #8 (from the trial), which contains both the fatal event and the initial exchange of words.

although she disputed that on cross-examination during the hearing." R. *(order at 4). "Owens testified that Johnson was wielding her car keys as a makeshift weapon and swinging her fists at her . . . Owens testified that she was afraid for her life, and that Johnson was attempting to open her car door. Owens said that she showed Johnson her gun, attempting to frighten her into withdrawing, but Johnson did not. Owens testified that she did not know where the anger came from." R. *(order at 4).

The order concluded Appellant did not establish self-defense because Appellant's actions in driving past Decedent rather than taking another route out of the parking lot meant that Appellant 1) brought about the difficulty, 2) did not actually believe she was in imminent danger, and 3) that any belief she was in imminent danger was unreasonable. R. *(order at 8 – 9). The court also found Appellant's testimony she was in fear was not credible since she drove towards Decedent. R. *(order at 9).

As to the first element of self-defense, the order stated the following. "Evidence exists that shows Owens did contribute to the difficulty. Having viewed the video, it appears that Owens continued her prior verbal argument with Johnson after Johnson had left the store and appeared to be going about her business. Owens attempted to leave the store's parking lot only after Johnson had exited the store. Owens testified that as soon as she finished her conversation with her mother, who told her to leave, Owens began to leave but this was at the same time Johnson was exiting the store." R. *(order at 6 – 7). "It is clear that when Owens decided to put her car in drive and depart, that she chose a route taking her directly past where Johnson stood. Owens had other routes she could have taken to exit the store's parking lot, but she chose a path that took her directly next to Johnson." R. *(order at 7). "It is not believable that Owens' conversation with her mother ended, and Owens began to leave the store's parking lot, at the

exact moment Johnson was exiting the store." "Johnson's physical pivot from her own car to Owens', followed by what was without question a physical attack, was so abrupt it is more likely than not that she was provoked by some word or phrase uttered by Owens." R. *(order at 7). Thus, the evidence shows that Owens was not completely at fault without bringing on the difficulty." R. *(order at 7).

As to the second element of self-defense, the rulings contained in the order included following. "Evidence exists that shows Owens did not actually believe she was in imminent danger of losing her life. Johnson's own reputation for violence, as Owens testified to, in particular her reputation for fighting, serves to undermine the Defendant's position on this question. If she was considering Johnson as a dangerous individual, then continuing to argue with her, and driving towards her, appear to represent Owens seeking out a confrontation, rather than attempting to leave the parking lot and being attacked out of the blue." R. *(order at 7). "Moreover, Owens did not deny saying 'Don't worry, I will be here when you get out' to Johnson. This tends to show that Owens was not scared of Johnson." R. *(order at 7). "Further, Owens testified that she doesn't know where the anger came from which the Court believes was the Defendant acknowledging that she was not in fear for her life and was merely angry." R. *(order at 7 – 8). "Additionally, the route Owens chose to exit the store's parking lot tends to show that she was not in fear of losing her life . . . It is simply not believable that if Owens was in fear of losing her life, she would have slowly passed Johnson and bring her car to a stop only feet from the violent individual with her window down. This version of events does not make it believable that Owens was fearful of Johnson." R. *(order at 8).

The order addressed the third element of self-defense as follows. "[I]n the event Owens proved self-defense [sic] by a preponderance of the evidence, the question then becomes whether

Owens actions were based on the reasonable belief that such actions were necessary to prevent death or great bodily injury to herself, or to prevent the commission of a violent crime(s)." R. *(order at 8). "The Court finds that Owens failed to show this by a preponderance of the evidence." R. *(order at 8). The order stated that there was "no dispute about the fact that the Defendant was in a place where she had a legal right to be and was not engaged in unlawful activity[.] [H]owever, . . . [w]hile S.C. Code Ann. 16-11-440(A) creates presumption of reasonableness on the part of those using deadly force against others attempting to enter their vehicle, the presumption can be rebutted." R. *(order at 8-9). "The evidence tends to rebut the presumption of reasonableness of Owens' actions. The Court fails to find the Defendant credible in this respect." R. *(order at 9). "It is not reasonable to believe that someone who was in fear of losing their life would ride right by the person who they are fearful of, at a very slow rate of speed, bring her car to a stop, all the while the car window is down." "Additionally, there is evidence that Owens may have told Johnson that she would be waiting for Johnson when she left the store. Therefore, Owens' actions were not reasonable making her unable to prove an entitlement to immunity under the Act." R. *(order at 9).

C. Satisfying the Protection of Persons and Property Act and the common law of self-defense results in immunity.

"In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force." *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 495 (2019). S.C. Code Ann. §§ 16-11-410 – 16-11-450, the Protection of Persons and Property Act (Act) codified the common law Castle Doctrine and extended its reach. *State v. Glenn*, 429 S.C. at 117, 838 S.E.2d at 495; *State v. Curry*, 406 S.C.

364, 369, 752 S.E.2d 263, 265 (2013). "Under the Castle Doctrine, '[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense.'" *State v. Jones*, 416 S.C. 283, 291, 786 S.E.2d 132, 136 (2016) (quoting *State v. Gordon*, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924)). It was the "intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle[.]" S.C. Code Ann. § 16-11-420(A).

"[I]t 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[.]" S.C. Code Ann. § 16-11-420(B). "Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed." S.C. Code Ann. § 16-11-420(C). "[P]ersons residing in or visiting this State have a right to expect to remain unmolested and safe within their . . . vehicles." S.C. Code Ann. § 16-11-420(D). "[N]o person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." S.C. Code Ann. § 16-11-420(E).

"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[.]" S.C. Code Ann. § 16-11-450(A). "'[A]nother applicable provision of law' includes the common law of self-defense." *State v. Glenn*, 429 S.C. at 117–18, 838 S.E.2d at 496 (citing *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018); *State v. Jones*, 416 S.C. at 300 n. 8, 786 S.E.2d at 141 n. 8). "This means a defendant may seek immunity from prosecution under the Act by 'demonstrating the

elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.'" *State v. Glenn*, 429 S.C. at 118, 838 S.E.2d at 496 (quoting *Curry*, 406 S.C. at 372, 752 S.E.2d at 267).

"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 or another person or to prevent the commission of a violent crime as defined in Section 16-1-60." S.C. Code Ann. § 16-11-440(C). "A person who unlawfully and by force enters or attempts to enter a person's . . . 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 § 16-11-440(D).

"Section 16-11-440(A), the main thrust of the Act, provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle." *State v. Curry*, 406 S.C. at 370, 752 S.E.2d at 266.

> **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[n]** 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.**

S.C. Code Ann. § 16-11-440(A). "[I]f a person seeking immunity under subsection 16-11-450(A) c[an] prove the elements of self-defense in an immunity proceeding, immunity must be granted." *State v. Scott*, 424 S.C. at 473, 819 S.E.2d at 120–21. The Act applies not only to the homicide but to the accompanying weapons charges. *State v. Ford*, 439 S.C. 261, 272, 886 S.E.2d 710, 716 (Ct. App. 2023).

"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." *State v. Curry*, 406 S.C. at 371, 752 S.E.2d at 266. Because the Act incorporates the elements of self-defense save the duty to retreat, a review of South Carolina's self-defense jurisprudence is helpful. 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 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). Stated differently, "a defendant seeking immunity under the Act must prove he was acting in self-defense by showing: (1) he was

without fault in bringing on the difficulty; (2) he was in imminent danger of death or serious bodily injury or believed he was in such danger; and (3) if the defense is based on an actual belief of imminent danger, a reasonably prudent person of ordinary firmness and courage would have held the same belief." *State v. Rosenbaum*, 438 S.C. 91, 103, 882 S.E.2d 180, 186 (Ct. App. 2022).

An individual has the right to act on appearances. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000) . Additionally, "when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased." *State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978).

D. Appellant satisfied the requirements of the Protection of Persons and Property Act.

i. Subsection (A)

The trial judge erred in failing to grant Appellant immunity from prosecution under the Act. Appellant satisfied the Act and the elements of self-defense. Turning first to the Act, Appellant was in her own car, which invoked § 16-11-440(A), and provided her with a presumption of reasonable fear of imminent peril of death or great bodily injury. As seen, a "person is presumed to have a reasonable fear of imminent peril of death or great bodily injury . . . 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[n] . . . occupied vehicle, or if he removes or is attempting to remove another person against his will from the . . . 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." S.C. Code Ann. § 16-11-440(A). Appellant was attacked by another person who had unlawfully and forcefully entered

her occupied vehicle, and who was attempting to enter it further, and Appellant knew the unlawful and forcible entry was happening.

In *State v. Dennis*, 444 S.C. 353, 358, 907 S.E.2d 142, 145 (Ct. App. 2024), Dennis stabbed someone who was leaning into his vehicle outside the Cook-Out restaurant. Dennis's car was surrounded by a chaotic group of students from a rival school after a basketball game. After immunity was denied prior to a trial which ultimately resulted in a mistrial, Dennis sought a new immunity hearing prior to his second trial. Dennis was permitted to proffer testimony. The trial court denied the motion for immunity, "finding Dennis was not without fault in bringing on the difficulty because he sought out the [rival] DFHS students, chose the situation, and chose not to leave via the other exits available to him. The court also found the testimony of Dennis's fear was in direct contradiction to the testimony of the DFHS students, and *if he was in fear, it was not a belief a reasonably prudent person would have entertained.* The court next found Dennis did not prove he had no other means to avoid the danger." *Id.*, 444 S.C. at 362, 907 S.E.2d at 147 (emphasis added). The trial court also found Dennis's allegation of fear was neither credible nor reasonable. *Id.*, 444 S.C. at 369, 907 S.E.2d at 151. The trial court ruled that due to a contradiction in witness testimony, the self-defense claim presented a quintessential jury question. Therefore, the trial court found Dennis was not entitled to immunity and declined to rule whether he was entitled to a second immunity hearing. *Id.*

Dennis claimed immunity under both 16-11-440(A) and (C). This Court held the trial court erred in denying Dennis a second immunity hearing. This Court explained that because the victim did not have the right to be in Dennis's vehicle during the confrontation, "the presumption that Dennis's fear was reasonable applied to the extent he met his burden of showing the victim was unlawfully in or entering his vehicle pursuant to subsection (A)." *Id.*, 444 S.C. at 371, 907

S.E.2d at 152. This Court also observed that where the defendant has not proven the duty to retreat element, the trial court must consider whether that duty is excused under subsection (C). The case was remanded for the trial court to make further fact findings which complied with the applicable presumptions. *Id.*, 444 S.C. at 372, 907 S.E.2d at 152.

The presumption of reasonable fear from subsection (A) applied to Appellant, as it did to Dennis. The presumption could only be "rebutted" to the extent it did not apply. *See State v. Jones*, 416 S.C. at 301, 786 S.E.2d at 141 ("*if section 16–11–440(A) applies, there is no requirement that the defendant prove he believed he was in imminent danger* of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A)"). It was undisputed that Appellant was attacked through the window of her car by Decedent. The evidence was incontrovertible—it was on video that Decedent was attacking Appellant in Appellant's car: parts of Decedent's body had entered Appellant's car. Decedent was also attempting to open Appellant's door to further enter the car. The court saw this video. Defense Exhibit #1. The court erred by denying Appellant the protections of subsection (A) to satisfy the imminent danger elements of self-defense. Appellant satisfied them as a matter of law. *State v. Jones*, 416 S.C. at 301, 786 S.E.2d at 141. The trial court committed an error of law by holding Appellant failed to prove she believed she was in imminent danger or that that belief was reasonable despite the applicability of subsection § 16-11-440(A).

ii. Subsection (C)

In addition to subsection (A), § 16-11-440(C) applied. *See State v. Jones*, 416 S.C. at 297, 786 S.E.2d at 139 ("By using the language 'but not limited to, his place of business,' we find the Legislature intended the protection of subsection (C) to apply to incidents, provided the

other requirements are met, without a geographical restriction."). As the circuit court noted in its order, there was no dispute that Appellant was in a place where she had a legal right to be and was not engaged in unlawful activity. R. *(order at 8-9). "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 or another person or to prevent the commission of a violent crime as defined in Section 16-1-60." S.C. Code Ann. § 16-11-440(C). Repeatedly punching a pregnant woman with fists and car keys while she is operating a car could cause death or great bodily injury. Moreover, Decedent evinced an intent to pull Appellant out of the car: she was pulling on Appellant's door handle.

The attack on Appellant was also a violent crime. *See* S.C. Code Ann. § 16-1-60 (violent crime includes assault and battery of a high and aggravated nature); S.C. Code Ann. § 16-3-600(B) (a person commits assault and battery of a high and aggravated nature if the person unlawfully injures another person, and the act is accomplished by means likely to produce death or great bodily injury); S.C. Code Ann. § 16-3-600(A)(1) (for purposes of assault and battery of a high and aggravated nature, "great bodily injury" means "bodily injury which causes 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").

An assault and battery under these circumstances was a violent crime, could have caused Appellant to crash the car, could have harmed Appellant's unborn child, or could have caused her to have a miscarriage. Appellant had the right to be in the grocery store parking lot, she had no duty to retreat, and she was entitled to meet force with force pursuant to S.C. Code Ann. § 16-11-440(C).

E. Appellant satisfied the elements of self-defense.

i. Without fault in bringing on the difficulty

Appellant satisfied the elements of self-defense, and her conduct was immune from prosecution. As to the first element of self-defense, Appellant was without fault in bringing about the difficulty. "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide." *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (citing 40 Am.Jur.2d Homicide § 149 (1999)). However, "[o]ne who merely does an action that affords an opportunity for conflict is not thereby precluded from claiming self-defense. Fault implies misconduct, not lack of judgment." *State v. Douglas*, 411 S.C. 307, 321, 768 S.E.2d 232, 240 (Ct. App. 2014) (cleaned up).

In *Bryant*, the defendant was in the process of breaking into the victim's car, and when the victim spotted him, the defendant pulled out a knife. The defendant claimed he then dropped his knife to the ground (he claimed this meant he withdrew from the conflict) before picking up a screwdriver and stabbing the victim to death. *State v. Bryant*, 336 S.C. at 343–46, 520 S.E.2d at 321-22. When explaining that an act by the accused in violation of the law and reasonably calculated to produce the occasion brings on the difficulty, the Supreme Court quoted the following.

> "A robber, who is met with such violent resistance by his victim that he has no opportunity to convince the victim that he has abandoned his criminal intentions and only wants to withdraw, may not claim self defense if he injures or kills his victim." 55 A.L.R.3d at 1003–04; *see also United States v. Thomas*, 34 F.3d 44 (2d Cir. 1994) (one who commits or attempts a robbery armed with deadly force and kills the intended victim when victim responds with force may not avail himself of the defense of self-defense); *People v. Couch*, 436 Mich. 414, 461 N.W.2d 683 (1990) (a robber or other wrongdoer engaged in felonious conduct has no privilege

> of self-defense); *Stiles v. State*, 829 P.2d 984 (Okla. Crim. App. 1992) (one who kills while committing armed robbery is an aggressor and an aggressor is not entitled to a claim of self-defense).

State v. Bryant, 336 S.C. at 345, 520 S.E.2d at 322 (cleaned up). In the above cases, unlike this case, the defendant was committing an act which was a crime, and that act brought about the occasion (auto breaking in *Bryant*; robbery and armed robbery in the block-quoted cases). In this case, Appellant was committing no crime. She drove past Decedent in a public parking lot. She took the first aisle that led directly to the exit. She remained in her own car. As the court's order reflected, it was undisputed she was in a place she had the right to be and was not engaged in unlawful behavior.

Nor was Appellant's act one reasonably calculated to produce the occasion. *Cf. State v. Williams*, 427 S.C. 246, 250–51, 830 S.E.2d 904, 906 (2019) ("Williams' act of intentionally bringing a loaded, unlawfully-possessed pistol to an illegal drug transaction was a violation of law that was reasonably calculated to produce violence.") (cleaned up). Appellant's actions merely provided Decedent the opportunity to charge at Appellant and attack her. *See State v. Douglas*, 411 S.C. at 321, 768 S.E.2d at 240 ("Fault implies misconduct, not lack of judgment."). Appellant did not jump out and assault Decedent, or try to run her over, or spit at her. It was undisputed she was in a place she had the right to be and was not engaged in unlawful behavior. Appellant's act was not "reasonably calculated to produce the occasion". *State v. Bryant*, 336 S.C. at 345, 520 S.E.2d at 322.

Holding that Appellant brought about the difficulty was an error of law. The court ruled that because Appellant drove by Decedent rather than taking another path, she brought about the difficulty. R. *(order at 7). This ruling imposed a duty of retreat upon Appellant that is expressly contradicted by the common law Castle Doctrine. "Under the Castle Doctrine, one

attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." *State v. Jones*, 416 S.C. at 291, 786 S.E.2d at 136 (cleaned up). The court's rulings regarding the first element of self-defense undermined the stated purpose of the Act: "The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." S.C. Code Ann. § 16-11-420(E). The duty to retreat is expressly contravened by the Act. "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." S.C. Code Ann. § 16-11-440(C). A "statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." *Town of Mount Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). *See also State v. Dennis*, 444 S.C. at 362-72, 907 S.E.2d at 147-52 (where the trial court denied the motion for immunity, "*finding Dennis was not without fault in bringing on the difficulty because he sought out the [rival] DFHS students, chose the situation, and chose not to leave via the other exits available to him*, this Court remanded *Dennis* for the trial court to make fact findings which complied with the Act). Appellant was in compliance with § 16-11-440(A) and (C). The trial court's findings imposed a duty to retreat upon Appellant which was expressly at odds with the Castle Doctrine, § 16-11-440, and with the intent and findings of the General Assembly as stated in § 16-11-420. Appellant had no duty to retreat.

The court's ruling that: "It is not believable that Owens' conversation with her mother ended, and Owens began to leave the store's parking lot, at the exact moment Johnson was

exiting the store," was pure speculation. There was no evidence to support this finding. R* (order at 7).

The court's ruling that Appellant contributed to the difficulty because based on "the video, it appears that Owens continued her prior verbal argument with Johnson," and that "Johnson's physical pivot from her own car to Owens', followed by what was without question a physical attack, was so abrupt it is more likely than not that she was provoked by some word or phrase uttered by Owens," was also speculation. R. *(order at 6-7). The "plea of self-defense is not available to one who uses language so opprobrious that a reasonable man would expect it to bring on a physical encounter, and which did actually contribute to bringing it on." *State v. Strickland*, 389 S.C. 210, 215, 697 S.E.2d 681, 684 (Ct. App. 2010) (quoting *State v. Woodham*, 162 S.C. 492, 502, 160 S.E. 885, 889 (1931)). There was no evidence Appellant used words "so opprobrious that a reasonable man would expect to be attacked for saying them." *Id.*

In sum, the court's ruling that Appellant brought about the difficulty was error since it placed a duty to retreat upon Appellant which contravened the Act. S.C. Code Ann. §§ 16-11-410 – 16-11-450. Appellant's actions merely afforded an opportunity for conflict. *State v. Douglas*, 411 S.C. at 321, 768 S.E.2d at 240. The video showed who brought about the difficulty—Decedent, when she rushed Appellant's car and began to punch her. Defense Exhibit #1. Appellant demonstrated by a preponderance of the evidence that she was without fault in bringing on the difficulty.

ii. Was in imminent danger of death or serious injury or believed she was in such danger

Because the decedent was in the process of unlawfully entering the defendant's car, Appellant satisfied the second self-defense element pursuant to S.C. Code Ann. § 16-11-440(A) as a matter of law. *See State v. Jones*, 416 S.C. at 301, 786 S.E.2d at 141 ("if section 16–11–

440(A) applies, there is no requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A)"). The video evidence showed Decedent attacked Appellant while Appellant was driving her own car in a public lot. Decedent pulled on Appellant's door handle while beating her through the open window. Appellant got her gun out in hopes it would scare Decedent and cause her to back off. Instead, Decedent grabbed for the gun. Decedent continued to attack Appellant even after the first shot was fired. Defense Exhibit #1; Tr. I, 10, l. 25 – 11, l. 22; Tr. I, 12, ll. 1-3; Tr. I, 23, ll. 1-6. The video shows Appellant was still driving when Decedent began to approach her car. Appellant did not stop her car until Decedent threw her first visible punch. The car stopping and the punch being thrown occur simultaneously, at 0:01:40. The video is indisputable in this regard, and the finding Appellant did not meet this element was an error of law, and was wholly without evidentiary support. Because §16-11-440(A) indisputably applied, Appellant satisfied this element. *Jones*, 416 S.C. at 301, 786 S.E.2d at 141.

The court's findings on this element, at R. *(order at 7-8), like its findings on the first element of self-defense, improperly placed a duty to retreat on Appellant and reflected a fundamental misunderstanding of law regarding danger. A "defendant seeking immunity under the Act must prove he was acting in self-defense by showing . . . (2) he was in imminent danger of death or serious bodily injury or believed he was in such danger[.]" *State v. Rosenbaum*, 438 S.C. at 103, 882 S.E.2d at 186. Appellant was required to show she was in imminent danger (or believed so) when she acted in self-defense. Appellant was not required to be in imminent danger when she sat in the parking lot or when she attempted to drive past Decedent. She was

required to be in imminent danger when Decedent attacked her and Appellant repelled her with deadly force.

Moreover, the court's finding that Appellant stated she "did not know where the anger came from," and thus she was not in fear for her life, was unsupported by the record. Appellant was clearly referring to the Decedent's anger—her answer was in response to a question about *Decedent*. Tr. I, 12, ll. 1-16.

iii. If self-defense is based on actual belief of imminent danger, a reasonably prudent person of ordinary firmness and courage would have the same belief

Turning to the third element of self-defense, if the defendant acted based on the mere belief she was in imminent danger of losing her life or sustaining serious bodily injury, rather than the actuality that she was in in fact imminent danger, such a belief must be reasonable. A "person is presumed to have a reasonable fear of imminent peril of death or great bodily injury . . . 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[n] . . . occupied vehicle, or if he removes or is attempting to remove another person against his will from the . . . 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." S.C. Code Ann. § 16-11-440(A). *See State v. Jones*, 416 S.C. at 301, 786 S.E.2d at 141 ("if section 16–11–440(A) applies, there is no requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A)"). *See also State v. Dennis*, 444 S.C. at 358-72, 907 S.E.2d at 145-52 (where the trial court denied the motion for immunity in the stabbing of a man who leaned into Dennis's car, finding "*if he was in fear, it was*

not a belief a reasonably prudent person would have entertained," this Court explained that because the victim did not have the right to be in Dennis's vehicle during the confrontation, "the presumption that Dennis's fear was reasonable applied to the extent he met his burden of showing the victim was unlawfully in or entering his vehicle" pursuant to subsection (A), and remanded for the trial court to make further fact findings which complied with the applicable presumptions). *Id.*, 444 S.C. at 372, 907 S.E.2d at 152.

The evidence was indisputable that subsection (A) applied. Because Decedent was entering and trying to further enter Appellant's car, Appellant met this element as a matter of law. *Dennis*, 444 S.C. 353, 371, 907 S.E.2d 142, 152 (Ct. App. 2024) ("the presumption that Dennis's fear was reasonable applied to the extent he met his burden of showing the victim was unlawfully in or entering his vehicle").

The court's ruling that the presumption of reasonableness created by § 16-11-440(A) was rebutted because: "It is not reasonable to believe that someone who was in fear of losing their life would ride right by the person who they are fearful of, at a very slow rate of speed, bring her car to a stop, all the while the car window is down," was error. R. *(order at 8-9). Because the presumption applied, Appellant satisfied this element. *Jones*, 416 S.C. at 301, 786 S.E.2d at 141. This finding was also unsupported by the record since Appellant did not stop the car until Decedent attacked her. Defense Exhibit #1. Moreover, this finding again reflects a fundamental misunderstanding of law: Appellant was not required to be in imminent danger when she attempted to drive past Decedent. She was required to be in imminent danger when Decedent attacked her in her car and Appellant used deadly force to defend herself and her unborn child. The court's finding that Appellant did not meet the third element of self-defense because "there is evidence that Owens may have told Johnson that she would be waiting for Johnson when she

left the store" yet again misses the application of the presumption, and misses that Appellant was required to be in fear when she used deadly force. R. *(order at 9).

The court erred in concluding that Appellant's "actions were not reasonable making her unable to prove an entitlement to immunity under the Act," since it held that someone who met the requirements of the Act was not entitled to the protections it contained—the presumption of reasonable fear when one is attacked by or attempting to remove another from her occupied vehicle, and the right to stand her ground and meet force with force. R. *(order at 9). Appellant satisfied this element. S.C. Code Ann. § 16-11-440(A).

iv. No other means to avoid the danger

The fourth element of self-defense, the duty to retreat, was excused by the Act. S.C. Code Ann. § 16-11-440(C). "Under the Castle Doctrine, '[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense.'" *State v. Jones*, 416 S.C. at 291, 786 S.E.2d at 136 (quoting *State v. Gordon*, 128 S.C. at 425, 122 S.E. at 502). The Act applied the Castle Doctrine to an occupied vehicle. S.C. Code Ann. § 16-11-420(A). "[T]he duty to retreat need not be shown when seeking immunity under the Act." *State v. Douglas*, 411 S.C. at 318, 768 S.E.2d at 239 (citing *Curry*, 406 S.C. at 371, 752 S.E.2d at 266). Appellant satisfied the elements of self-defense.

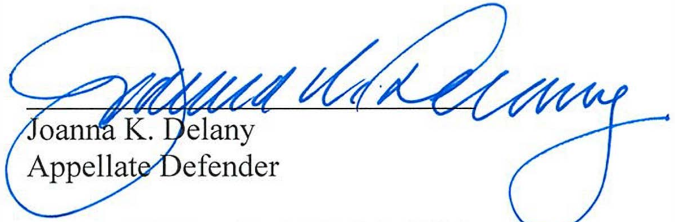
F. The court erred in denying Appellant immunity from prosecution.

Appellant was in the second trimester of pregnancy. Her pregnancy was visible. She had a cast on one arm. She was attacked in her own car while driving through a public parking lot. Decedent was beating Appellant and trying to open her car door. Appellant pulled her gun once she was attacked in an effort to repel her attacker. Appellant was in imminent danger when

Decedent began to savagely attack her through the open window. That is when Appellant stood her ground and met force with force. The court fundamentally misunderstood the law when it ruled she had to be in danger when she began to drive towards the exit. Moreover, the court's ruling that Appellant brought about the difficulty was error. The court essentially took issue with the General Assembly's wisdom in enacting the stand your ground law by finding she should have retreated. Appellant had no duty to retreat. She satisfied the Act and self-defense. She was entitled to immunity from prosecution under the Protection of Persons and Property Act. S.C. Code Ann. §§ 16-11-410 – 16-11-450.

CONCLUSION

Appellant respectfully requests this Court reverse her convictions and find that she was entitled to immunity from prosecution pursuant to the Protection of Persons and Property Act.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of February, 2025.