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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2025-UP-017 (S.C. Ct. App. Filed January 23, 2025)

Lower Court Case No. 2018-CP-40-04637

HOLLY JO THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000846

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on March 6, 2025.

QUESTION PRESENTED

Whether the Court of Appeals erred in finding that trial counsel was not ineffective for failing to pursue immunity under the Protection of Persons and Property Act where the Court determined that an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home?

STATEMENT OF THE CASE

On January 27, 2014, Odell Middleton discovered the body of James Solomon (Decedent)[1] on the floor of the Decedent's trailer and called 911. App. 103, l. 20-App. 104, l. 7; App. 112, ll.13-17. Middleton saw that there was blood and broken glass around the decedent's head. He also noted signs of a struggle in the home, such as the rugs being "kicked" and "tangled" up, and the "sheets and stuff" having been "tore up on the bed." App. 104, l. 18-App. 105, l. 18; App. 109, ll. 5-13.

Investigators with the Richland County Sheriff's Department responded and processed the scene. Evidence collected included various blood swabs from the hallway, bedroom, and living room, a knife from the bedroom with blood on it, the bedroom sheets, and pieces of a glass vase. App. 267, l. 5-App. 268, l. 21. The blood evidence recovered from the home matched the Decedent. App. 382-398. A palm print in blood on the neck piece of the glass vase was matched to Holly Jo Thompson (Petitioner). App. 172, l. 24-App. 174, l. 4; App. 360, ll. 10-16.

An autopsy revealed that the Decedent had died from exsanguination due to multiple blunt and/or sharp force injuries. App. 322, ll. 21-24. The blunt force injuries were contained to the head with several superficial or shallow cuts to other parts of the body. App. 312, ll. 19-24; App. 318, ll. 11-18. A toxicology of the Decedent revealed alcohol, cocaine, and cocaine metabolites were present in his blood at the time of his death. Based on the levels of cocaine and cocaine metabolites in his blood, an expert with SLED opined that it was very possible the Decedent had taken multiple doses of cocaine on the day of his death and that the drug was influencing him at the time of his death. App. 612, ll. 7-23; App. 614, l. 23-App. 615, l. 8.

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1 Decedent was found approximately two to three days after his death. App. 324, ll. 4-5.

Petitioner was arrested for the murder of Decedent. At the time of her arrest, Petitioner told officers that she had been at the Decedent's home the night of the incident but that she "didn't kill the man." App. 628, ll. 10-14. Both before and during trial, Petitioner stated that she worked as a prostitute and that the Decedent was a regular client of hers. He would generally provide her with drugs in exchange for sex. App. 522, ll. 2-13; App. 523, ll. 21-25. In the roughly nine months to a year that Petitioner had known the Decedent, they had engaged in sex for drugs and/or money over one hundred times. App. 522, l. 22-App. 523, l. 2; App. 635, ll. 19-22.

On the night of the incident, Petitioner received a message from her then boyfriend/pimp, Michael Richardson, that the Decedent wanted her to come over to his trailer. App. 420, ll. 1-4; App. 524, ll. 13-16; App. 538, ll. 19-20. When she arrived, the Decedent let her into his home where the two began conversing. Petitioner noted it was extremely warm in the trailer, and she started to undress. She also thought that the Decedent was acting funny when she arrived and was not himself. The two used crack cocaine together, and Petitioner tried multiple times to engage the Decedent in various forms of sex, but he was unable to achieve or maintain an erection. App. 526, ll. 16-App. 527, l. 7. As the evening progressed the pair continued smoking crack cocaine. Petitioner would attempt to arouse the Decedent, but he was unable to perform sexually and began to become angry. App. 528, ll. 10-App. 529, ll. 10.

After attempting to engage the Decedent in sex multiple times without success, Petitioner decided it was time for her to leave. However, when she tried to leave, the Decedent started to yell at her to give him his money and crack back, and repeatedly stated that he was going to kill her. He grabbed a knife that he had been using to cut the crack cocaine with and began to swing it at Petitioner. App. 529, l. 21-App. 530, ll. 13; App. 534, ll. 10-12. Petitioner sustained

defensive wounds on her hands and arms from where she attempted to avoid the knife Decedent was swinging at her. App. 530, ll. 7-13; App. 340, ll. 4-10. To protect herself, Petitioner grabbed a glass vase that was full of the Decedent's urine[2] and swung it at him. The two continued to fight, he with a knife and her with a vase, until they both fell to the floor and the vase broke. At that point Petitioner got up, grabbed the remainder of her clothing, and left the trailer. When Petitioner fled from the Decedent's trailer, the Decedent was on his hands and knees, still yelling that he was going to kill her. App. 530, l. 17-App. 531, l. 19; App. 534, l. 1-App. 536, l. 22.

Petitioner thought she had struck the Decedent five or six times in the head with the vase prior to it breaking but was not sure. Petitioner maintained that she only grabbed the vase to defend herself against the Decedent's attack with the knife, that she was scared for her life, and that she did not feel she had any other option than to strike the Decedent with the vase. App. 534, ll. 20-App. 537, ll. 10. After she left the Decedent's trailer, she went back to Richardson's house and then called for Moses Warren to come pick her up. Both Richardson and Warren testified that Petitioner admitted to getting in a fight that night but that she did not offer any details about the event. Additionally, both men testified that they noticed marks or scratches on Petitioner. At trial, Warren confirmed he picked up Petitioner from the side of the road in the rain and took her to his home. Once there, he told Petitioner to shower so that she could warm up, and he noted that "she had all these blue marks on her, looked like somebody was throwing her around or knocking her out or something." He stated the marks were on Petitioner's arms, back, and legs. App. 421, l. 12-App. 422, l. 3; App. 439, l. 10-App. 442, l. 7.

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2 At trial Petitioner testified she had noticed the vase because it was pretty but could not determine what was inside of it. When she asked the Decedent, he stated that it was urine. When she asked why he peed in a vase he stated because he did not want to go to the bathroom to relieve himself. This was not typical behavior of the Decedent. App. 531, ll. 5-11

The case was called to trial on February 16, 2016, before the Honorable Robert Hood and a jury. The state was represented by Luck Campbell, Meghan Walker, and Laura Gregg. Petitioner was represented by Robert Bank, Alicia Goode, and Rhodes Bailey. App. 1. As she had from the beginning, Petitioner asserted she acted in self-defense when she killed the Decedent. App. 95, ll. 22-24. After a four-day trial, Petitioner was found guilty of murder and sentenced to forty-five years imprisonment. App. 758; App. 773, ll. 3-5.

Petitioner's conviction and sentence was affirmed on appeal. State v. Thompson, Op. No. 2018-UP-258 (S.C. Ct. App. filed June 13, 2018). Petitioner filed an application for post-conviction relief on August 29, 2018, alleging ineffective assistance of counsel for failing to call character witnesses and for failing to request Petitioner submit to a mental health evaluation. App. 776-781. The State filed a return dated January 10, 2019, requesting an evidentiary hearing. App. 783-790. A hearing was convened on October 29, 2019, before the Honorable Brian M. Gibbons. Petitioner was represented by Jonathan Waller. The State was represented by Samuel Key. App. 791. At the hearing, Counsel Waller proceeded on the claims of ineffective assistance of counsel raised in the original application. At the close of the hearing, Counsel Waller moved to amend the pleadings to conform to the evidence to include that counsel was also ineffective for failing to seek immunity prior to trial. App. 794-795; App. 836, ll. 4-10.

At the hearing, Petitioner testified that her claim had always been consistent, that she had been acting in self-defense, and that the Decedent was alive when she left his house. She confirmed that she had discussed the events of the incident with her lawyers many times. App. 799, ll. 4-20; App. 802, l. 20-App. 803, l. 7; App. 811, ll. 16-25. However, Petitioner did not remember talking with her attorneys about pursuing an immunity hearing and stated that she did

not know such a thing existed, so she did not ask them about it. App. 807, ll. 15-22; App. 809, ll. 5-7.

Counsel Bank testified that the case was assigned to him and as trial drew near, he brought in Counsel Goode and Counsel Bailey to assist him with the defense of Petitioner. He stated they had discussed the case many times, and he felt that Petitioner was always honest in her answers with him. He further testified that they had committed to asserting self-defense early-on in the case. App. 812, ll. 20-25; app. 815, ll. 3-25. Counsel Bank could not recall having a specific discussion with Petitioner about pursuing immunity under the Protections of Persons and Property Act (the Act). He did not have anything in his case file notes concerning the matter. He stated,

> I don't remember anything specifically other than just my general knowledge of the 30(b) (ph) statute in South Carolina. My first concern would probably be whether it was a place that she had a right to be, but I think it would have been. This was a place that she was invited into not only this night but regularly. So, I think it's definitely something that could have been explored.

He further clarified that it was his understanding that pursuing an immunity hearing pre-trial would not prevent him from asserting a claim of self-defense at trial. App. 816, ll. 4-22. When questioned by the State, Counsel Bank confirmed he was aware of the Act and that he could not recall a specific reason, "other than kind of typical pros and cons you do in any case" as to why he did not pursue an immunity hearing in Petitioner's case. App. 823, ll. 11-23.

Counsel Goode testified that she was technically the second chair during Petitioner's trial. She handled the opening statement and some of the crime scene witnesses. App. 828, ll. 8-10. She also testified she worked with Petitioner to prepare her for testifying at trial. App. 829, l. 17-App. 830, l. 8. Counsel Goode was not asked about whether they discussed pursuing an immunity hearing. Counsel Bailey stated he was brought in as third chair to assist and supervise

as Counsel Bank was "still pretty new" as a lawyer, and he believed this was his first murder case. He testified that he did not think they discussed seeking immunity in Petitioner's case, and he did not recall having an immunity hearing in Petitioner's case. App. 834, ll. 4-22.

The PCR court issued an order of dismissal on July 28, 2021, finding that Petitioner had failed to meet her burden of proof. App. 840-858. Regarding the failure to seek immunity claim, the court found that Petitioner's trial lawyers were not deficient because they "articulated a valid strategy of focusing the defense efforts on pursuing a theory of self-defense." App. 857.

Petitioner timely appealed the denial of her PCR application. On June 13, 2022, the Petition for Writ of Certiorari and the Appendix were filed in this Court. The State's return was filed on September 23, 2022. This Court transferred the case to the Court of Appeals on October 17, 2022. The Court of Appeals granted Certiorari on August18, 2023. Following final briefing, the Court of Appeals held oral argument in this case on December 3, 2024. By way of an unpublished opinion, the Court of Appeals affirmed the PCR court. Thompson v. State, Op. No. 2025-UP-17, (S.C. Ct. App. filed January 23, 2025). Petitioner timely filed a petition for rehearing on February 2, 2025. The Court of Appeals denied the petition for rehearing on March 6, 2025. This Petition for a Writ of Certiorari to the Court of Appeals follows.

ARGUMENT

The Court of Appeals erred in finding that trial counsel was not ineffective for failing to pursue immunity under the Protection of Persons and Property Act where the Court determined that an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home.

In affirming the denial of Petitioner's PCR application the Court of Appeals held,

> [T]rial counsel's performance was not deficient because at the time of the trial, and even now, an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home. Trial counsel cannot be deficient for failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law. Thompson v. State, Op. No. 2025-UP-17, (S.C. Ct. App. filed January 23, 2025).

Respectfully, as evidenced by the plain language of the statute the Act contemplates the possibility of immunity for an invited guest. Further, an examination of the case law interpreting the common law Castle Doctrine and the Act supports a finding that at the time of Petitioner's trial the Act was applicable to an invited guest fending off an attacker, even when the attacker is the homeowner. A review of the entire record reveals that Petitioner had a valid claim for immunity from prosecution under the Act, that the claim was not pursued, and that trial counsel did not have a valid strategy for failing to purse the immunity claim, which resulted in Petitioner receiving ineffective assistance of counsel.

Applicability of the Protection of Persons and Property Act

The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the

intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Additionally, statutes are not intended to be read in a piecemeal fashion, taking only those parts which best serve a particular position. Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission, 426 S.C. 97, 825 S.E.2d 721 (2019) (The intention of the legislature when enacting a statute must be gleaned from the entire section and not simply clauses taken out of context). Courts, when interpreting a statute, should not concentrate on isolated phrases within the statute; a statute must be read as a whole and sections that are part of the same general statutory law must be construed together and each one given effect. Id. "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

"Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal citation omitted). "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993).

The South Carolina General Assembly adopted the Act, S.C. Code Ann. § 16-11-410, et seq, in 2006. In the preamble to the Act the General Assembly stated its intent was 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 and the person's place of business." S.C. Code Ann. § 16-11-420(A) (emphasis added). The General Assembly found it "proper for *law-abiding citizens to protect themselves*, their families, and others *from intruders and attackers* without fear of prosecution or civil action for acting in defense of themselves and others." S.C. Code Ann. § 16-11-420(B) (emphasis added). The General Assembly recognized "*that persons residing in or visiting this State* have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles." S.C. Code Ann. § 16-11-420(D) (emphasis added). Finally, the General Assembly explained "*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) (emphasis added).

The legislative intent was set forth with plain language in the preamble of the Act. S.C. Code Ann. § 16-11-420. The intent of the General Assembly in codifying the common law Castle Doctrine was to create "substantive rights for citizens…to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action." State v. Dickey, 380 S.C 384, 404-405, 669 S.E.2d 917, 928 (Ct. App. 2008), rev'd on other grounds, 394 S.C. 491, 716 S.E.2d 97 (2011). Taken as a whole, the preamble states that law abiding citizens whether they be residing in or visiting South Carolina have a right to protect themselves and others from intruders and attackers without fear of prosecution, without surrendering their personal safety to a criminal, and without being required to needlessly retreat. The statute plainly states that "*no person or victim* should be required to surrender their personal

safety to a criminal" and does not mention restricting the Act based on the geographical location of the incident. S.C. Code Ann. § 16-11-420(E).

The General Assembly included a definition section in the Act to assist courts with interpretation. The Act states that "'dwelling' means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary, permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night." S.C. Code Ann. § 16-11-430(1). It further states that "*'residence' means a dwelling in which a person* resides either temporarily or permanently or *is visiting as an invited guest*." S.C. Code Ann. § 16-11-430(3) (emphasis added).

Applying the plain meaning rule to the definition section, a "residence" for the purposes of the Act encompasses a dwelling in which a person is visiting as an invited guest. Critically, under the common law Castle Doctrine an invited guest had standing to assert immunity, even against the homeowner. See State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996) (applying the common law and holding that "a lawful guest attacked in the owner's home has no duty to retreat where the attacker is an intruder" but "where the attacker is the homeowner, a lawful guest has a duty to retreat") and State v. Curry, 406 S.C. 364, 374, 752 S.E.2d 263, 267-268 (2013) ("Under the Castle Doctrine, the absence of a duty to retreat does not extend to a visitor or social guest in the home of another unless the attacker is an intruder.") It follows that in codifying and extending the Castle Doctrine by promulgating the Act, that an invited guest would be entitled to assert immunity under the Act the same way an invited guest person could have asserted self-defense under the common law. Regardless, the definitional section clearly sets forth that the General Assembly intended that the Act would apply to an invited guest.

S.C. Code Ann. § 16-11-440(A) provides for the presumption of reasonable fear of imminent peril of death or great bodily injury when using deadly force against another under the Act. Subsection (B) removes the legal presumption of reasonable fear if "the person against whom the deadly force is used has the right to be in or *is a lawful resident of the dwelling, residence*, or occupied vehicle including, but not limited to, an owner, lessee, or title holder." S.C. Code Ann. § 16-11-440(B)(1) (emphasis added). Again, the language used by the Legislature was plain and straight forward. A person claiming immunity under the Act is presumed to have a reasonable fear of the person against whom force is used *unless* the person against whom the force is used is the lawful resident, which can also be read to mean the homeowner. In those cases, when the presumption of reasonable fear is removed, the immunity claim falls under S.C. Code Ann. § 16-11-440 (C) which states,

> A person who is not engaged in an unlawful activity and *who is attacked in another place where he has a right to be*, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60 (emphasis added).

In State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014), the Court of Appeals analyzed the meaning of "another place" in subsection (C), writing

> The primary definition of "another" is "different or distinct from the one first considered." Merriam Webster's Collegiate Dictionary 51 (11th ed. 2003). This definition would arguably modify "place," as used in section 16–11–440(C), in such a way as to make "dwelling, residence, or occupied vehicle" and "another place" mutually exclusive. This is the interpretation the State proposes. On the other hand, the second and third definitions of "another" are "some other" and "being one more in addition to one or more of the same kind," respectively. Id. The third definition is more inclusive and arguably would *not* eliminate "dwelling, residence, or occupied vehicle" as a possible "place" where the person using deadly force has a right to be pursuant to section 16–11–440(C).

Id. at 330, 768 S.E.2d at 245 (emphasis in original). The Court of Appeals ultimately concluded that "the more inclusive definition of "another" is the proper definition to employ in interpreting section 16–11–440(C)." Id., at 331, 768 S.E.2d at 245. Later, in State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016) this Court affirmed the more inclusive definition of "another place" writing "[w]e agree with the Court of Appeals that the phrase "another place" in subsection (C) *encompasses a residence*." Id. at 295, 786 S.E.2d at 138 (emphasis added). This Court continued, "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*." Id., at 297, 786 S.E.2d at 139 (emphasis added). Furthermore, this Court stated that "to interpret 16–11–440(C) as the State proposes would *improperly limit the protection of the Act based on the geography of the incident and the identity of the assailant*." Id. at 297, 786 S.E.2d at 140 (emphasis added).

The immunity provision of the Act, provides that

> A person who uses deadly force as permitted by the provisions of this article *or another applicable provision of law* is justified in using deadly force and *is immune from criminal prosecution* and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450 (emphasis added). This Court has acknowledged that "another applicable provision of law" includes the common law of self-defense. See State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018); State v. Glenn, 429 S.C. 108, 17, 838 S.E.2d 491, 496 (2019). This Court has also explained that the immunity provided by the Act is a true immunity to prosecution, not merely an affirmative defense. See State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Accordingly, a person who is permitted to use deadly force

under the Act, or under another applicable provision of law such as self-defense, is justified in using deadly force and is immune from prosecution.

Applying the law to the facts of this case, Petitioner was an invited guest in the home of the Decedent when she was attacked. Because the attacker was the homeowner, Petitioner was not entitled to the reasonable fear presumption in 16-11-440(A). Petitioner would have been defaulted into subsection (C). Under the Act she was in a residence (a place she was visiting as an invited guest pursuant to S.C. Code Ann. § 16-11-430(3)) in which she had a right to be when she was attacked. Had she asserted immunity under the old common law, she would have had to show a duty to retreat from her attacker. However, subsection (C) removed the duty to retreat provision. See Curry at 266, 752 S.E.2d at 371 (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.) Petitioner was not required to surrender her personal safety or life to the Decedent merely because he attacked her inside of his home. To find otherwise would improperly limit the protections of the Act based on the geography of the incident and the identity of the assailant and would also lead to plainly absurd results that the Legislature could not have intended.

An examination of the plain language of the Act along with a review of the case law surrounding the common law Castle Doctrine and the Act reveal that there was not an open question at the time of Petitioner's trial regarding the applicability of the Act. At its core the Act was designed to protect lawful citizens from criminal assaults, regardless of geographical location or the identity of the assailant, so long as the person asserting immunity was in a place they had a right to be and had a valid claim of self-defense. Petitioner had a lawful, statutory

claim under the Act. Trial counsel was deficient in failing to move for pre-trial immunity under the Act and this failure prejudiced Petitioner in that she could have been found immune from prosecution as a matter of law under the lesser standard of preponderance of the evidence. Further, if she had been denied immunity, the appellate courts of our State could have reviewed that decision for errors or abuses of discretion.

Ineffective Assistance of Counsel

The PCR court incorrectly found that trial counsel provided effective assistance of counsel. At no point during the PCR hearing did counsel articulate a valid strategy for failing to pursue immunity under the Act. In the order of dismissal the PCR court misconstrued Counsel Bank's testimony taking his statements of what he *should have done* as what he did do. The testimony of Counsel Bank, Counsel Bailey, and Petitioner made it evident that an immunity hearing under the Act was neither fully considered nor discussed, and there was no valid strategy offered to excuse such a failure.

"The Sixth Amendment guarantees every criminal defendant the reasonably effective assistance of counsel." Stone v. State, 419 S.C. 370, 379, 798 S.E.2d 561, 566 (2017) citing U.S. CONST. amend. VI; Strickland v. Washington, 466 U.S. 668, 683, (1984). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland at 686 (1984). To prove ineffective assistance of counsel, "the defendant must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Id. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-688. "[T]he performance inquiry

must be whether counsel's assistance was reasonable considering all the circumstances." Id. at 688. Concerning prejudice, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Rather, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

This Court has held that trial counsel's decision to employ a certain strategy will not be found to be deficient performance *if counsel articulates a valid reason for employing the strategy*. Stone v. State, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017) (emphasis added). "The necessary converse of this principle is that counsel's decision to employ a certain strategy will be deemed unreasonable under the Sixth Amendment if the reasons given for the strategy are not sound." Id.

The PCR court found that counsel for Petitioner was not ineffective in failing to pursue an immunity hearing because Counsel Bank considered the relevant factors of the Act and decided to instead focus on asserting self-defense at trial. There was no testimony or evidence in the record to support that finding. What Counsel Bank testified to was that he did not recall having discussions with Petitioner or his co-counsel about an immunity hearing, that he had *no notes* regarding discussions about an immunity hearing, and that his first concern *if he would have considered a hearing* probably would have been whether the Decedent's home was a place Petitioner had the right to be. App. 816, ll. 4-19. Further, neither Counsel Bailey nor Petitioner had any recollection of discussing pursuing immunity from prosecution under the Act.

The PCR court further found Counsel Bank's failure to file for immunity pursuant to the Act was not deficient performance by ruling that he had articulated a valid strategy of focusing

on self-defense. However, again, there was no evidence or testimony in the record to support that finding. Notably, Counsel Bank testified that a hearing under the Act was "something that *could* have been explored." He confirmed that he understood he could have pursued immunity from prosecution under the Act and *still asserted self-defense at trial.* App. 816, ll. 20-22. At no point did he, or anyone else, testify that there was an affirmative decision to forgo a hearing under the Act to focus on self-defense at trial.

Even if there had been some affirmative decision to forgo a hearing and focus on self-defense, Counsel Bank was still required to articulate a valid reason for *not* pursuing immunity under the Act. While there are no appellate court decisions on this matter in South Carolina, the Supreme Court of Georgia has found that counsel was not ineffective for failing to file for immunity when counsel *explicitly stated* that the reason for not pursuing pretrial immunity was to avoid exposing the defendant to pre-trial cross examination from the State. Dent v. State, 810 S.E.2d 527 (Ga. 2018). Unlike the clear reasoning stated in Dent, the record in the present matter is utterly devoid of any strategic reasoning for failing to file for a hearing under the Act.

As discussed above, the intent of the Act was 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 and the person's place of business" because the Legislature concluded 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(A)-(E).

To effectuate this intent, the General Assembly created a statute providing for immunity from prosecution to "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law." S.C. Code Ann. § 16-11-450(A). This Court

explained that "another applicable provision of law" found within the Act "includes the common law of self-defense." State v. Glenn, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019). Further, this Court held that "[a] claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013).

"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." Glenn, 429 S.C. at 18, 838 S.E.2d at 496 (internal quotation omitted). "Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable." Id.

The Act provides:

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). Thus, "in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(C) is applicable because the provision was enacted to extend the protections of the Castle Doctrine to other places where he has a right to be." Id. at 118-119, 838 S.E.2d at 496. "Where this section is applicable, it replaces the duty to retreat element required to establish self-defense." Id. at 119, 838 S.E.2d at 497. "In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident,

he was engaged in an unlawful activity and was attacked in another place where he had a right to be." Id.

The bare assertion that the accused was engaged in an unlawful activity at the time of the incident does not automatically bar an individual from raising a claim of immunity under the Act. This Court has held that the trial court must perform a proximate cause analysis on the unlawful activity element to determine whether the unlawful activity was the cause of the incident. Further, the burden is on the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide. See Glenn at 121, 838 S.E.2d at 497-498 (2019) citing State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994).

Additionally, the fact that there are conflicts in the evidence is not grounds alone to deny immunity. As this Court has stated, "just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court must sit as the factfinder at this hearing, weigh the evidence presented, and reach a conclusion under the Act." State v. Andrews, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019) citing State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019). The relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence. Id.

A defendant must establish four elements to justify the use of deadly force under the common law 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.

Glenn at 116, 838 S.E.2d at 495 (2019) (internal citations omitted).

Applying the law to the facts of the case *sub judice* supports that Petitioner had a valid claim for immunity that should have been presented to the circuit court prior to trial. Petitioner was an invited guest who had a right to be present in Decedent's home at the time of the incident. She was not engaged in any unlawful activity that proximately caused the incident. She was not at fault in bringing on the difficulty as she was merely trying to leave the Decedent's home when he attacked her with a knife placing her at imminent danger of death or great bodily injury. The Decedent was physically larger and stronger than Petitioner and he was high, paranoid, and upset that he could not perform sexually. These circumstances were such as would warrant a person of ordinary prudence, firmness and courage to strike the fatal blow in order to save themselves from serious bodily harm or losing their own life. Therefore, her actions of striking back with whatever she could find, in this case a vase filled with urine, were reasonable and justified.

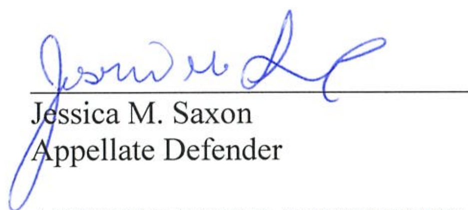
Counsel Bank's failure to even consider, much less pursue, immunity under the Act was deficient performance. Considering Petitioner's unwavering claim of self-defense and the facts of the case it was unreasonable under prevailing professional norms to not move for immunity under the Act. Petitioner was prejudiced, in that she could have been found immune from prosecution under the lesser standard of preponderance of the evidence. Further, if she had been denied immunity, the appellate courts of our State could have reviewed that decision for errors or abuses of discretion. Finally, despite the finding in the order of dismissal Counsel Bank

articulated no reason for failing to move for immunity under the Act. The failure to move for immunity under the Act was ineffective assistance of counsel.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to the Court of Appeals and order further briefing on the issue presented.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of April, 2025

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Apr 07 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2025-UP-017 (S.C. Ct. App. Filed January 23, 2025)

Lower Court Case No. 2018-CP-40-04637

HOLLY JO THOMPSON,

PETITIONER

V.

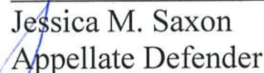
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000846

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the petition for writ of certiorari to the Court of Appeals and appendix in the above-referenced case has been served upon Danielle E. Dixon, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Holly Jo Thompson, #299956, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 7th day of April, 2025.



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