THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
George M. McFadden, Jr., Circuit Court Judge

Appellate Case No. 2024-001429
Civil Action No. 2023-CP-10-02924

Antoinet Moore, Individually and as Personal Representative of the Estate of David J. Wilson,

Appellant,

v.

Green's Grocery, LLC and Mahmoud A. Yousef,

Respondents.

FINAL BRIEF OF RESPONDENTS

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Was the circuit court correct in determining that the Protection of Persons and Property Act can provide a derivative immunity to the family members and employer of a person who lawfully defends himself from an attacker?

II. Was the circuit court correct in relying on the prior grant of criminal and civil immunity, which found the subject individual was justified in using lethal force to defend himself against attack, to dismiss Appellant's claims?

COUNTER-STATEMENT OF THE CASE AND FACTS

The Shooting

The shooting that gave rise to this case occurred on September 28, 2020, at a convenience store in Charleston, South Carolina. (Complaint p. 1 (R. p. 1)). On that day, Suhib Yousef ("Yousef") was managing Respondent Green's Grocery convenience store for his uncle, Respondent Mahmoud Yousef, who owned the store. (Compl. p. 2 (R. p. 4)).

As alleged in Appellant's Complaint, Appellant's decedent, David Wilson ("Wilson"), entered the store and was in the process of purchasing a cell phone charger from Yousef when it is alleged that he pretended to steal the charger as a joke by feigning walking away with it without paying. (Complaint p. 3, ¶¶ 12–13 (R. p. 5)). The alleged joke led to an argument between Yousef and Wilson, with Yousef refusing to process the payment and ordering Wilson to leave the store. (*Id*. at 3, ¶¶ 14–17 (R. p. 5)). Wilson did not comply, but continued to taunt Yousef, again grabbing at and tugging on the charger in Yousef's hand. (*Id*. at 3, ¶ 18 (R. p. 5)). Yousef repeated his demand for Wilson to leave the store with increasing volume, while Wilson began challenging Yousef: "You better watch your f***ing mouth, boy… Watch you f***ing tone. I don't know who the f*** you think you are." (*Id*. at 4, ¶¶ 19–20 (R. p. 6)).

This pattern continued as Yousef retrieved and brandished a taser at Wilson, who still refused to leave and instead challenged Yousef, "What the f*** you gonna do?" (*Id*. at 4, ¶¶ 21–22 (R. p. 6)). Activating the electrical arc on the taser availed Yousef little—with Wilson only becoming more aggressive and responding to Yousef's continued demands that he leave by daring Yousef to "Come over here and say that s***." (*Id*. at 4, ¶¶ 22–24 (R. p. 6)). Yousef then retrieved and brandished a machete as he continued to demand that Wilson leave the store. (*Id*. at 4–5, ¶¶

25–26 (R. pp. 6–7)). The increasingly aggressive Wilson dared Yousef to make the confrontation physical, telling Yousef, "Touch me. Come on, touch me." *Id*.

The confrontation did become physical, with Wilson suddenly pushing items over on the counter toward Yousef, which prompted Yousef to react by swinging the machete—without making contact with Wilson. (*Id*. at 5, ¶¶ 27–28 (R. p. 7)). Wilson then spit at Yousef and walked toward the door of the store, but he did not exit the building. (*Id*. at 5, ¶¶ 28–29 (R. p. 7)). Yousef put down the machete and retrieved a handgun, racking it while Wilson watched and continued issuing verbal challenges to Yousef. (*Id*. at 5, ¶¶ 30, 32 (R. p. 7)). Yousef then walked out from behind the counter with the loaded gun pointed at Wilson, at which point Wilson finally complied with Yousef's repeated demands and left the store. (*Id*. at 5–6, ¶¶ 33–34 (R. pp. 7–8)). Yousef followed him to the door and stood just inside the threshold, holding the door open with the gun still pointed at Wilson, who was now outside the store. (*Id*. at 6, ¶ 36 (R. p. 8)).

At this critical point in the narrative, Appellant's Statement of the Case and Facts materially departs from the allegations of Appellant's Complaint. This mischaracterization casts doubt on the propriety of the later determination at the immunity hearing that Yousef was justified in his actions, and so must be corrected. Appellant's Statement of the Case and Facts states that at this point, while Yousef was standing inside the doorway pointing the gun out at Wilson "after Wilson had exited," "Yousef screamed at Wilson to get out of the store and discharged a round in Wilson's direction, missing him[;] Wilson then rushed Yousef in an attempt to disarm him." (Appellant's Brief at 3). This narrative is in stark contrast to the allegations of Appellant's Complaint, which instead alleges that:

> [A]fter Decedent exited the store, Defendant S. Yousef followed to the front door, where he held the door open with his right foot and continued pointing the gun at Decedent. Upon information and belief, Decedent then turned and unsuccessfully tried to swat the gun out of Defendant S. Yousef's hand. Upon information and

> belief, over the next few moments, Decedent was outside the store and Defendant S. Yousef continued to hold the door open with his right foot while pointing the gun at Decedent and the following conversation took place…. Upon information and belief, Decedent then rushed Defendant S. Yousef in an attempt to disarm him. Upon information and belief, Defendant S. Yousef stepped aside and began shooting Decedent.

(Complaint p. 6–7, at ¶¶ 36–40 (R. pp. 8–9)). Thus, although Appellant's Brief represents that Yousef began shooting at Wilson for no reason while Wilson was standing outside the store, Appellant's own Complaint alleges—in accordance with the surveillance footage that clearly captured the entire incident—that Yousef only fired the weapon after Wilson charged back into the store and attacked Yousef. Given these actual facts, it is not surprising that the Yousef was later found to have been justified in his actions and immune from criminal or civil prosecution with respect to the shooting.

The Immunity Hearing

On June 3, 2021, a hearing was held to determine whether Yousef was entitled to immunity from criminal and civil prosecution with regard to the subject shooting under South Carolina's Stand Your Ground law. (Immunity Order at pp. 1–2 (R. pp. 47–48)). The Honorable R. Markley Dennis, Jr., presided, and after carefully reviewing almost thirty items of evidence including numerous security videos, transcripts of those videos, transcripts of Yousef's phone calls following the incident, and incident and autopsy reports, he issued an Order dated June 23, 2021 finding "by a preponderance of the evidence" that Yousef "is entitled to immunity under the provisions of the Protection of Persons an Property Act, South Carolina Code Section 16-11-440(C)." (Immunity Order at pp. 8, 9 (R. pp. 55–56)).

In reaching this ruling, the court found that Yousef "was not at fault in bringing on the difficulty, rather he was acting lawfully in his place of business when Wilson initially approached him;" that Yousef under the circumstances "had the right to demand that Wilson leave;" that

"Wilson's continuous refusal to leave coupled with his aggressive actions, gave Yousef a legitimate reason to threaten the use of force;" that "Wilson, after temporarily leaving, re-entered the store, displaying a clear intent to commit an Assault and Battery upon Yousef;" and that "[w]hen Wilson physically attacked Yousef, he placed Yousef in reasonable fear of imminent serious injury," "g[i]v[ing] Yousef the statutory right to use lethal force." (*Id.*).

The Dismissal of Appellant's Claims

On June 15, 2023, Appellant filed a Complaint in Charleston County against Yousef, Yousef's uncle (Respondent Mahmoud Yousef), and Yousef's uncle's store (Respondent Green's Grocery), seeking to impose joint and several liability for the death of Wilson on those parties, although Appellant later voluntarily dismissed Yousef as a defendant. (Compl. p. 10, at ¶ 62 (R. p. 12)). The Complaint alleged that Yousef's actions were tortious, and it asserted numerous claims against Respondents on that basis, including vicarious liability for Yousef's actions under respondeat superior (*id*. at p. 11, ¶ 65 (R. p. 13)), wrongful death, survival, negligent supervision, and negligent entrustment. (*Id*.). Respondents moved to dismiss Plaintiff's claims under Rule 12(b)(6) given the Charleston County court's prior findings that Yousef's actions were reasonable, that Wilson's death was not wrongful but rather resulted from his own unlawful aggression, and that the Protection of Persons and Property Act provided civil immunity with respect to the shooting. (R. pp. 34–35). After further briefing (R. pp. 37–72), the Honorable George McFaddin, Jr., held a hearing on the motion on April 28, 2024 (R. pp. 73–88). By Order dated June 12, 2024, Judge McFaddin dismissed the case. (R. pp. 89–99). On June 17, 2024, Appellant filed a Rule 59(e) motion (R. pp. 100–118), which the Court denied via Order dated July 23, 2024 (R. pp. 119–121). Appellant has appealed the dismissal.

STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the circuit court." *Kelaher, Connell & Connor, P.C. v. S.C. Workers' Comp. Comm'n*, 435 S.C. 55, 60, 863 S.E.2d 842, 844 (Ct. App. 2021) (quoting *Grimsley v. S.C. Law Enf't Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012)). "That standard requires the court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id*. (citation omitted). "If the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b)(6) is improper." *Id.* (citation omitted).

ARGUMENT

The South Carolina Protection of Persons and Property Act ("PPPA"), also commonly known as the "Stand Your Ground Law," was enacted based on the South Carolina General Assembly's "find[ing] that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders or attackers *without fear of prosecution or civil action* for acting in defense of themselves and others." S.C. Code § 16-11-420(B) (emphasis added). As this Court has previously explained:

> The Act codifies the common law Castle Doctrine and states the General Assembly finds it 'proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers *without fear of ... civil action ....*' Further, the Act provides immunity from civil action for law-abiding citizens who justifiably acted in self-defense, stating, 'A person who uses deadly force as permitted by the provisions of this article ... **is justified in using deadly force** and *is immune from ... civil action* for the use of deadly force ....'

Singletary v. Shuler, 433 S.C. 600, 607–608 861 S.E.2d 591, 595 (Ct. App. 2021) (italics in original) (bolded emphasis added) (quoting S.C. Code § 16-11-420(A), (B); § 16-11-450(A)).

The Act thus grants immunity from criminal prosecution and civil action, declaring such use of deadly force to be legally justified for purposes of both criminal and civil law: "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…" S.C. Code § 16-11-440(C) (emphases added). As the *Shuler* court went on to explain, this immunity serves as an "absolute bar" to any suit:

> [T]he legislature intended to create a *true immunity*, not merely an affirmative defense... Relying on the legislature's use of the words 'immune from criminal prosecution' and 'proper for law-abiding citizens to protect themselves[ ] ... from

> intruders and attackers without fear of prosecution or civil action' the court found that immunity under the Act is an *absolute bar* to criminal prosecution…

Shuler, 433 S.C. at 608 (citing *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011) (citations omitted) (emphases added). *See also Duncan*, 392 S.C. at 410 ("We also look to the language of the statute that provides, 'the General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers *without fear of prosecution* or civil action for acting in defense of themselves and others.' We agree with the circuit court that the legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act.") (citations omitted) (emphasis in original)).

Applying the Act to Appellant's claims in the present case, the circuit court below correctly ruled that "if the legislative intent of the PPPA is to be upheld in this case, Suhib Yousef's grant of absolute immunity under the Act must also bar any civil prosecution of his uncle and his uncle's store on the basis of Yousef's lawful exercise of reasonable force." (Order of Dismissal p. 7). "If the shield provided by the PPPA protects only the person exercising reasonable force and leaves that person's family, employer, and companions exposed to civil and criminal liability, then the legislature's stated intent that 'law-abiding citizens… protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action' would plainly be defeated." *Id*. The circuit court also found that "Plaintiff's claims against Defendants in this case are not viable" because "[t]he Charleston County Court's… factual findings, which were based on a preponderance of the evidence, … established, among other things, that Yousef was not at fault with respect to the shooting" and that "Yousef's actions [were] *reasonable* and therefore not in breach of any duty." *Id*. at 9. Appellant's claims were dismissed because "the entirety of Plaintiff's alleged damages directly resulted from reasonable conduct on the part of Yousef." *Id*.

I. The Circuit Court Properly Dismissed Appellant's Claims Because the Protection of Persons and Property Act Provides a Derivative Immunity to Third Parties.

a. Extending a derivative immunity to third parties is required to fulfill the legislative intent of the statute.

The Supreme Court of South Carolina has long held that the "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)); *see also Enos v. Doe*, 380 S.C. 295, 303, 669 S.E.2d 619, 622 (Ct. App. 2008) ("The legislature's intent should be ascertained primarily from the plain language of the statute."). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 599, 654 S.E.2d 284, 289 (Ct. App. 2007) (quoting *Collins Music Co., Inc. v. IGT*, 365 S.C. 544, 550, 619 S.E.2d 1, 3 (Ct. App. 2005)). "A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law." *Id.* at 599, 654 S.E.2d at 290 (citing *Hinton v. S.C. Dep't of Prob., Parole, and Pardon Servs.*, 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004)). "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 the light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Com'n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000).

Applying this cardinal rule of statutory construction, the Supreme Court of South Carolina has previously found that "[t]he Legislature adopted the [PPPA] based on its finding 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.'" *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019) (quoting S.C. Code § 16-11-420(E)). When drafting the PPPA, the South Carolina General Assembly took great care to provide its reasoning, explaining its findings that the South Carolina Constitution "guarantees the right of the people to bear arms;" that "persons residing in or visiting this State have a right to expect to remain unmolested and safe within their… businesses;" and "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;" and that "it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others." S.C. Code § 16-11-420. Based on this plain language in the statute, South Carolina courts have consistently found that the Legislature's intent in enacting the PPPA was to remove the threat of criminal charges or civil litigation as potential impediments to a person's use of reasonable force in the face of a wrongful attack. *See, e.g*, *Shuler*, 433 S.C. at 607–608 ("The Act… states the General Assembly finds it "proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers *without fear of ... civil action* ...." (quoting S.C. Code § 16-11-420(A) (emphasis in original)).

The instant case involves a young man who was managing the counter at his uncle's store. This kind of employment is typical across South Carolina, where a large percentage of the state's hundreds of thousands of businesses are family-owned small businesses.[1] In such establishments, where the main employees of the business are often family members of the owner or indeed the

[1] "South Carolina Small Business Economic Profile," U.S. SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://advocacy.sba.gov/wp-content/uploads/2022/08/Small-Business-Economic-Profile-SC.pdf (accessed January 27, 2025).

owner herself, the person standing behind the counter is deeply invested in the welfare of the business and/or their family member supervisors. Under these circumstances, an employee faced with an unlawful attack *cannot* "protect themselves, their families, and others from intruders and attackers without fear of civil action" (*Shuler*, 433 S.C. at 608) unless the PPPA protects not just them, but also their family and their business, from liability.

If the PPPA protects the family member behind the counter but offers no protection at all against criminal charges brought against other family members in the store as accessories to a purported crime, or against civil claims brought against family members and the family business based on theories like vicarious liability or negligent supervision, those individuals are far less likely to lawfully stand their ground. Instead, many conscientious persons will likely "surrender their personal safety to [] criminal[s]" and "needlessly retreat in the face of intrusion or attack" in order to protect their family from the threat of criminal charges and civil claims, and their family business from potentially ruinous civil liability. This analysis is straightforward: the Legislature has found it proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of civil action and enacted the PPPA to safeguard that result. If claims like the Appellant's are allowed to proceed in the face of a grant of PPPA immunity, then the legislative intent of the Act will have been subverted.

b. Under the plain text of the statute, the reasonable use of deadly force is not only immunized but also declared a legally justified action.

Not only does the plain language of the PPPA clearly express a clear legislative intent that the threat of legal action not inhibit the right to act in defense of oneself and others, but it also declares that where reasonable deadly force is used as described by the Act, that use of force is both immunized *and* legally justified. "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 § 16-11-450(A) (emphasis added). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (quoting *In re Decker,* 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)).

The PPPA's provision in the first part of subsection -450(A) that reasonable use of deadly force "is justified" is not mere surplusage as compared with the legal immunity granted in the second part of the subsection. Rather, subsection -450(A) goes beyond merely stating that a person using reasonable deadly force is immune from legal consequences and additionally provides that a person using reasonable deadly force has not acted wrongfully. Legally justified conduct is neither a crime nor a tort. Therefore this provision, too, requires a derivative immunity for third persons under the PPPA, because where a use of deadly force has been immunized, no crime or tort has occurred upon which any secondary criminal or civil liability could be based. A person cannot be an accessory to a crime that was not a crime, and a person cannot face vicarious tort liability for actions that were not tortious.

i. Appellant's reliance on Tort Claims Act jurisprudence is misplaced.

The combination of immunization *plus* justification of use of force under the PPPA also renders Appellant's arguments by analogy to the South Carolina Tort Claims Act inapposite. (*See* Appellant's Brief at 22–26). In the Tort Claims Act immunity context, the Supreme Court of South Carolina has indeed allowed claims of negligent supervision or negligent security to proceed where a plaintiff's "injuries were caused by the criminal acts of a third person." *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 246, 391 S.E.2d 546, 548 (1990). It has done so, however, in the context of a statute that merely "provides that a governmental entity is not liable for a loss

resulting from… the criminal acts of third persons," finding that a government entity "cannot successfully defend that [the plaintiff's] injuries were caused by the wrongful criminal act of third party, where the very basis upon which [the government entity] is claimed to be negligent is that the [government entity] created a reasonably foreseeable risk of such third party conduct." *Id*. at 246–247. In other words, if a plaintiff is injured by a third party's wrongful conduct and the government entity's own negligence created a risk of that wrongful conduct, the Tort Claims Act does not immunize the government entity. This reasoning simply does not apply where the PPPA also declares the allegedly wrongful conduct itself to be justified under the law.

It should also be noted that Appellant's analysis of the South Carolina Court of Appeals' decision in *Woodell* fails to mention the court's finding in that case that the Tort Claims Act actually contained a relevant exception to the subject immunity provision: "A governmental entity may be liable to a student for a loss when the entity's responsibility to supervise, protect, or control a student 'is exercised in a grossly negligent manner.'" *Woodell by Allen v. Marion Sch. Dist. One*, 307 S.C. 297, 298, 414 S.E.2d 794, 795 (Ct. App. 1992) (citing S.C. Code § 15-78-60(25) ("The governmental entity is not liable for a loss resulting from… (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, *except when the responsibility or duty is exercised in a grossly negligent manner*.") (emphasis added)). The PPPA has no such exception for allegations of gross negligence.

Additionally, the legislative intent behind Tort Claims Act immunity for government entities has little in common with the Legislature's grant of immunity plus justification for use of force in the PPPA, with its clearly expressed goal of encouraging citizens to lawfully stand their

ground without fear of legal consequences. For both of these reasons, Appellant's arguments by analogy to Tort Claims Act immunity are inapposite and unavailing.

c. Not extending a derivative immunity to third parties would lead to absurd results.

"However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *Broadhurst*, 342 S.C. at 380. Assuming no ambiguity, "[i]t is only when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it that we look beyond the statute's plain language." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 695–96 (2012).

i. Absurd results in the civil context.

Even if the legislative intent and the plain provisions of the PPPA did not independently require and assume that no criminal charge or civil action can be maintained on the basis of an immunized use of force, not recognizing that the Act's immunity extends to third parties would lead to absurd results. In the instant case, the court below rightly pointed out the problems inherent in such a scheme of civil liability:

> The Charleston County Court's immunization of Suhib Yousef's actions and its related factual findings, which were based on a preponderance of the evidence, foreclose Plaintiff's claims against Defendants in this case. The Immunity Order established, among other things, that Yousef was not at fault with respect to the shooting, that he had the right to demand that Wilson leave the store, that he had a legitimate reason to threaten the use of force, that he was placed in reasonable fear of imminent serious injury, and that he had the statutory right to use lethal force…. Plaintiff alleges that Defendants were negligent because they are vicariously "liable for the actions and omissions of… Yousef," but Yousef's actions have been expressly found to have been *reasonable* and therefore not in breach of any duty. In South Carolina, a place of business "is not the insurer of the safety of its guests," but rather "is under a duty to take reasonable action to protect them against

> unreasonable risk of physical harm." *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 913 (2011).
>
> Plaintiff's numerous allegations to the effect that Defendants failed to adequately train or supervise Yousef or erred in entrusting him with the weapons he used to defend himself fail for the same reason.

(Order of Dismissal p. 9 (R. p. 97)) (citations omitted). The circuit court's holding below was the only reasonable application of the Act to Appellant's claims. How can an employer be held vicariously liable under respondeat superior for his employee's use of force where that use of force has been immunized and declared reasonable and justified? Can an uncle be sued for wrongful death under a negligent entrustment theory where a court has determined that his nephew used the weapon in question reasonably and lawfully to defend himself against a wrongful physical attack? Allowing such claims to proceed to recovery would not merely defeat the purpose of the Legislature and ignore the plain provisions of the statute, it would also be absurd. Such creative attempts to plead claims around the statute should not be permitted by the courts.

ii. Absurd results in the criminal context.

The implications of Appellant's reading of the statute would be equally absurd in the criminal context. Consider a possible scenario in which two persons are charged in connection with a homicide. The first person has shot and killed someone, and the second person has, after seeing the shooting occur, driven the shooter away from the scene. The shooter is charged with murder, and the driver is charged with accessory after the fact to murder. But at an immunity hearing prior to the shooter's prosecution, the shooter is found to have been acting justifiably in self-defense, and he is immunized. Does the immunization of the principal's use of force have no effect on the charges against the accessory? Even more importantly, can a person be convicted and sentenced as an accessory after the fact to a crime where a court has already applied the PPPA and affirmatively found that the principal's actions *were not criminal*?

Absent an application of a derivative immunity, this absurd outcome would become a real possibility under the current state of our criminal law. In *State v. Massey*, the Supreme Court of South Carolina held that in the case of a defendant charged as an accessory after the fact to a crime, the defendant can be convicted as an accessory so long as there is evidence sufficient to support a jury finding that the principal committed the crime—even if the principal himself has been acquitted. *See State v. Massey*, 267 S.C. 432, 445, 229 S.E.2d 332, 339 (1976) ("We are of the opinion that the Legislature intended that, as to accessories before the fact as well as accessories after the fact, the State should not be barred from prosecuting and convicting the accessory, even though the principal has been acquitted."). *Massey*, which pre-dates the PPPA, thus stands for the proposition that so long as a crime occurred, a person can be convicted as an accessory to it, regardless of how the prosecution fares against the principal.

The PPPA, enacted in 2006, fits easily into this framework, but only if a grant of PPPA immunity extends derivatively to putative accessories on the basis that the immunized act which the accessory assisted was not a crime. If instead, as Appellant argues, the PPPA can offer no protection to third parties, then even where a PPPA immunity hearing has found by a preponderance of the evidence that the underlying use of force by the principal actor was not criminal, charges against an alleged accessory could still result in the criminal conviction of the alleged accessory. In such a circumstance, the State would be punishing a person for assisting with conduct that a competent court has affirmatively found was legally justified, or for harboring a person who did not commit any crime. Such an outcome would be unreasonable.

Similarly, if—as Appellant suggests in the absence of dispositive case precedent (*see* Appellant's Brief at 16–20)—a new immunity hearing should be held each time a new criminal charge or civil claim is brought with respect to a use of force that has already been immunized, the

possibility of differing conclusions by different judges at different hearings would raise the possibility of the same inconsistent results. A person who lawfully uses force might himself be immunized with his actions declared justified, while his friend is later convicted as an accessory after the fact to murder due to a different outcome in a new immunity hearing before a different judge. A person who has been immunized for lawful use of force in an immunity hearing at the outset of a civil suit might subsequently be subjected to repeated suits on varying theories from other similarly situated parties who hope for better luck with a different judge. None of these possibilities would be consistent with "[t]he legislature['s] inten[tion] to create *a true immunity*" and "an a*bsolute bar*" to prosecution (*See Shuler*, 433 S.C. at 608), nor would they be reasonable outcomes.

Thus, a derivative immunity is necessary under the PPPA in order to fulfill the legislative intent of the statute, to give plain meaning to all of its provisions, and to avoid absurd results.

II. The Circuit Court Properly Dismissed Appellant's Claims Because Appellant Has Not Suffered Actionable Damages.

As an additional sustaining ground for its ruling, the circuit court below properly found that "because Wilson was found to be entirely at fault for this incident and Yousef has been immunized with respect to it, Wilson suffered no damages upon which he or his beneficiaries can maintain an action against Defendants." (Order of Dismissal p. 10 (R. p. 98)). This logic precludes all of Appellant's claims against Respondents, but for the sake of brevity, we will focus this analysis on the wrongful death cause of action, since it is based on the other negligence causes of action contained in Appellant's Complaint.

South Carolina's wrongful death statute provides a mechanism by which a decedent's beneficiaries can recover against a tortfeasor when the death of the decedent is "caused by the wrongful act, neglect, or default of another." S.C. Code §§ 15-51-10, 15-51-20. *See also Fowler*

v. Woodward, 244 S.C. 608, 612, 138 S.E.2d 42, 44 (1964) ("An action for wrongful death will lie, under the terms of the statute, when the death of a person is caused by the act, neglect or default of another and the act is such as would, if death had not ensued, have entitled the party injured to maintain an action." (emphases removed)). Where, as in this case, a wrongful death claim seeks to recover on the basis of a negligence action, "a plaintiff must demonstrate: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 386, 684 S.E.2d 566, 569 (Ct. App. 2009).

In this case, Appellant's claims are not viable because the damages for which Appellant seeks to recover, the death of David Wilson and harm resulting therefrom, have already been found by the Charleston County Court to have resulted not from a breach by Respondents, but rather from Wilson's own wrongful aggression:

> Wilson violently rushed back into the store and physically attacked Yousef. Wilson was 5'11" tall and weighed 208 pounds; Yousef was 5'7" tall and weighed 155 pounds. By his actions, Wilson expressed a clear intent to commit an Assault and Battery against Yousef, a violent crime as defined by South Carolina Code Section 16-1-60….
> Yousef was not at fault in bringing on the difficulty, rather he was acting lawfully in his place of business…. Wilson's continuous refusal to leave, coupled with his aggressive actions, gave Yousef a legitimate reason to threaten the use of force. Wilson, after temporarily leaving, re-entered the store, displaying a clear intent to commit an Assault and Battery upon Yousef. When Wilson physically attacked Yousef, he placed Yousef in a reasonable fear of imminent serious injury. Accordingly, Wilson's actions gave Yousef the statutory right to use lethal force.

(Immunity Order p. 8–9 (R. p. 54–55)). Because Suhib Yousef breached no duty but instead acted reasonably, with David Wilson's death resulting from his own criminal conduct, Appellant lacks actionable damages upon which to bring her claims. A negligence claim cannot survive where the plaintiff cannot prove breach of duty or causation of damages, neither can a wrongful death claim succeed where the subject death, while tragic, was not wrongful.

III. The Circuit Court Properly Dismissed Appellant's Claims Because on the Face of the Complaint, Appellant's Damages Resulted from Reasonable Conduct by Suhib Yousef.

"Under the present rules, a respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). The rationale for this rule is that "[i]t would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review," and "[i]t also could violate the principle that a court usually should refrain from deciding unnecessary questions." *Id*. "The basis for respondent's additional sustaining grounds," however, "must appear in the record on appeal." *Id*. at 420. Thus, within its discretion, "an appellate court may affirm the court's judgment for any reason appearing in the record on appeal." *Id*. *See also K.S. by & through Seeger v. Richland Sch. Dist. Two*, No. 2022-001408, 2025 WL 274844, at *5 (S.C. Jan. 23, 2025) ("It is within our discretion to address any additional sustaining ground."); Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

As an additional sustaining ground in this case, Appellant's claims were properly dismissed because the facts alleged in the Complaint and the inferences deducible therefrom would not entitle the plaintiff to any relief. *See Kelaher, Connell & Connor, P.C.*, 435 S.C. at 60. Appellant's Complaint admits in its allegations that the subject altercation began when Wilson pretended to steal a cell phone charger (R. p. 5, ¶ 13) and that it continued while Wilson refused to comply with Yousef's demands that he leave the store (*id*. at ¶ 17), kept reaching for and pulling on the charger after Yousef gained possession of it (R. pp. 5–6, ¶¶ 18–19), verbally threatened Yousef in response

to Yousef's demands that he leave (R. p. 6, ¶ 20), pushed items off the register and spit at Yousef (R. p. 7, ¶¶ 27–28), and refused to leave the store until Yousef retrieved a gun and pointed it at him (R. p. 8, ¶ 34). More critically, as already noted in Respondents' Counter-Statement of the Case and Facts (*see supra* at 3–4), Appellant's Complaint alleges, in accordance with the findings contained in the Charleston County Court's Immunity Order, that after the leaving the store, Wilson—who had already once swatted at the gun in Yousef's hand—continued arguing with and threatening Yousef, and eventually rushed back inside at Yousef, at which point Yousef stepped aside and began shooting at Wilson. (R. pp. 8–9, ¶¶ 36–41).

Under these facts and the inferences deducible therefrom, the negligence of Wilson in bringing on the difficulty by forcing Yousef to resort to brandishing a firearm in response to Wilson's threats and Wilson's refusal to leave the store—and especially in charging back inside at Yousef after initially exiting the store—necessarily exceeds any alleged negligence on the part of Respondents in employing Yousef and giving him access to a weapon. "[U]nder South Carolina's comparative negligence doctrine, a plaintiff may only recover damages if his own negligence is not greater than that of the defendant." *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 394, 665 S.E.2d 222, 226 (Ct. App. 2008). Appellant's Complaint attempts to hold Respondents liable for Wilson's death but admits that Wilson started the altercation, that Wilson verbally and physically threatened Respondents' employee, and finally that after leaving the store Wilson charged back in and rushed Respondents' employee despite Wilson's full awareness that Respondents' employee was prepared to use the gun to defend himself. Even taking Appellant's alleged facts as true and drawing all reasonable inferences in a light most favorable to her, Appellant would not be entitled to relief, and dismissal of the Complaint was proper under Rule 12(b)(6), SCRCP.

Alternatively, the circuit court's finding, based on the evidence contained in the Immunity Order and following the hearing on Respondents' Motion to Dismiss, that "the entirety of Plaintiff's alleged damages directly resulted from reasonable conduct on the part of Yousef" (Order of Dismissal p. 9 (R. p. 97)) entitled Respondents to dismissal of Appellant's claims.

IV. Appellant Has Improperly Raised Arguments on Appeal that She Never Presented to the Court Below.

"An appellate court may not, of course, reverse for any reason appearing in the record." *I'On*, 338 S.C. at 421 (emphasis omitted). Rather,

> The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.
> . . . .
> Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.

Id. at 421–22. Therefore, "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). "There are four basic requirements to preserving issues at trial for appellate review[:] [t]he issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912–13 (Ct. App. 2004) (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003).

Appellant attempts to raise numerous arguments on appeal that she never presented to the lower court. The following arguments raised by Appellant are not properly before this Court because they were raised for the first time on appeal:

(1) Appellant's argument that "[o]nly a natural person can be entitled to immunity under the Act" because "[t]he language used by the legislature is rooted in the human experience and explicitly includes human nouns and pronouns," such as when the Act provides that "[T]he General Assembly found that it is proper for 'law abiding citizens to protect *themselves*, *their families*, and others from intruders or attackers without fear of prosecution or civil action for acting in defense of *themselves* and others.'" (Appellant's Brief at 11, 12).

This argument is a misdirection. Respondents agree that only a natural person can engage in the reasonable use of deadly force which is justified and immunized by the Act. That does not mean that a company is not derivatively immune under the Act when its employee's reasonable use of force is found to have been justified. "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers," and "[a] court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law." *Peake*, 375 S.C. at 599. The Legislature has framed a statute designed to enable persons at their place of business, among other locations, to stand their ground in the face of attack without fear of civil action. That purpose is frustrated if a person's business remains vulnerable to civil action following their justified use of reasonable force.

(2) Appellant's argument that "[e]ven assuming, *arguendo*, that the Act permits application of derivative immunity, dismissal of the action at the Rule 12(b)(6) stage was error" and "Appellant should have been afforded the opportunity of discovery" "[b]ecause application

of derivative immunity to third parties and non-actors under the Act is a novel issue under South Carolina law." (*See* Appellant's Brief at 14–16).

The issues which Appellant argues it should have been able to explore in discovery, however, are variously: (a) *already determined* by the Charleston County Court's immunity hearing as summarized in the Immunity Order (e.g., whether Yousef acted wrongfully when he retrieved the gun (*see* Appellant's Brief at 19));[2] (b) *immaterial* to the question of whether the subject use of force satisfied the presumption of reasonable fear requirements of the PPPA (e.g., whether Respondents should have employed Yousef or provided him access to a gun (*see* Appellant's Brief at 19)); or (c) *nonsensical* in the context of the PPPA (e.g., whether "any of the elements of self-defense [were met] as related to Respondent Green's and Respondent [Mahmoud] Yousef" (*see id*. at 18)). This argument overlooks settled jurisprudence regarding what facts are relevant to whether 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," such that the use of force is justified under the PPPA. *Duncan*, 392 S.C. at 408, 411 (quoting S.C. Code § 16-11-440).

(3) Appellant's argument that "[e]ven if the Act permits granting derivative immunity to [] third parties generally, whether derivative immunity *should have applied* to Respondents in this case is a separate, factual determination that should have been made by the jury." (*See* Appellant's Brief at 19–21).

[2] Appellant's Brief alleges that Yousef was "carrying a concealed weapon" (Appellant's Brief at 19), but Appellant's Complaint never alleges that the gun was concealed on Yousef's person or that it was concealed somewhere else, instead stating that "Decedent witnessed Defendant S. Yousef put down the machete and retrieve a handgun" (R. p. 7, ¶ 30), as indeed the Immunity Order similarly noted that Yousef "pick[ed] up a pistol" (R. p. 53).

This argument completely ignores the Court of Appeals' prior determination that in enacting the PPPA, "the legislature intended to create a true immunity, not merely an affirmative defense," and that "immunity under the Act is an absolute bar to… prosecution and must be decided prior to trial." *Shuler*, 433 S.C. at 608. Ignoring this, Appellant contends that this case should have proceeded through trial all the way to a jury verdict on whether Respondents are entitled to PPPA immunity, on the logic that "the specific causes of action brought by Appellant for negligence, gross negligence, negligent supervision, and negligent entrustment are centered on questions of fact which must be resolved by a jury." (Appellant's Brief at 21). But PPPA immunity is not an affirmative defense to be presented to a jury; rather it is a true immunity and an absolute bar to prosecution, the protections of which must be decided prior to trial. (*See Shuler*, 433 S.C. at 608). Appellant's position on this issue not only subverts the intent of the Legislature in justifying and immunizing the reasonable use of force so that an individual can stand his ground in the face of unlawful attack without fear of civil action, but it also turns on its head settled jurisprudence applying this legislative intent as to the timing of PPPA protections.

While these arguments are all unpersuasive, as shown above, none of them are properly before this Court on appeal because Appellant never raised them to the trial court below. An appeal is not designed to provide an appellant with an opportunity to abandon her former arguments and try new ones. The circuit court correctly ruled on the arguments that were presented to it by Appellant in her Memorandum in Opposition to Respondents' Motion to Dismiss (R. pp. 56–67), in her oral arguments at the hearing (R. pp. 73–88), and in her Rule 59(e) motion (R. pp. 100–118). "A party may not argue one ground at trial and an alternate ground on appeal." *Dunbar*, 356 S.C. at 142.

CONCLUSION

For the reasons stated above, Respondents respectfully request that this Court affirm the ruling of the circuit court below.

Respectfully submitted,

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This 25th day of April, 2025.