THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2024-001429
Case 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 REPLY BRIEF OF APPELLANT

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INTRODUCTION

As the Court of Appeals recently stated, properly applying the rules of statutory construction is critical because "there is no surer way to reach the wrong end than to start at the wrong beginning." *Synovus Bank v. S.C. Dep't of Revenue*, 444 S.C. 30, 37, 906 S.E.2d 85, 89 (Ct. App. 2024), *reh'g denied* (Sept. 5, 2024), *cert. denied* (Jan. 14, 2025). Appellant's opening brief demonstrates how the circuit court's interpretation of the South Carolina Protection of Persons and Property Act (the "Act") violated basic principles of statutory interpretation and its dismissal of the case on this basis was not supported as a matter of law. In their initial brief, Respondents ignore the unambiguous text of the statute and argue for the impermissible expansion of the Act to include a broad grant of derivative immunity for third parties based on an individual actor's conduct.

The court's ruling and interpretation of the Act would lead to absurd results and make South Carolina the only state across the country that allows third parties to automatically attach and receive the benefit of another person's grant of immunity for use of deadly force. Respondents' brief avoids addressing the straightforward question raised by Appellant: does the text of the statute state that third parties are entitled to derivative immunity from suit based on a separate grant of immunity to an individual defendant? Respondents fail to acknowledge much less refute the clear answer to this question provided by Appellant. Instead, Respondents engage in selective statutory interpretation, emphasizing certain portions of the Act while excluding others. In short, Respondents started at the wrong beginning, and sure enough, they arrived at the wrong end. *Id.* For the reasons in Appellant's opening brief and as further explained herein, the circuit court erred in granting Respondents' motion to dismiss, and this Court should reverse.

ARGUMENT

I. Respondents' theory of derivative immunity directly contravenes the language of the Act.

Respondents assert that Act's immunity provision "requires a derivative immunity for third persons under the PPPA" alleging that immunity for use of deadly force means "no crime or tort has occurred upon which any secondary criminal or civil liability can be based." (Br. of Resp. at 12.) This is incorrect for several reasons. Respondents' theory expressly conflicts with the plain language of the Act and is unsupported by any case law or precedent. In addition, Respondents do not attempt to meaningfully engage in statutory construction of the relevant text and advance an argument misinterpreting the legislature's intent.

The South Carolina General Assembly promulgated the Act providing that "[i]t is 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 and the person's place of business." S.C. Code Ann. § 16–11–420(A). The Act also states, "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." S.C. Code Ann. § 16–11–420(B). The immunity provision of the Act provides: "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).

The language of the Act's immunity provision at section 16-11-450 further supports the contention that if the General Assembly had intended to allow third parties to obtain immunity, it would have expressly done so. Section 16-11-450 exclusively discusses immunity in the individual sense by referring to "a person" throughout. It is reasonable to assume that if the General Assembly

intended the statute to apply to both the principal actor and third parties, it would have said so either by stating that it applied to any persons or related third parties, or by expressly including third parties in the first sentence. Had the General Assembly meant to provide third parties with the right to immunity under the statute, it could have easily done so by specifically listing the same parties it did in section 16-11-420(B) (identifying the law-abiding citizens themselves, their families, and others). The fact that section 16-11-450 uses different language than section 16-11-420 leaves little doubt that section 16-14-450 was not intended to include all other parties as eligible for immunity under the Act.

Under the plain meaning rule, the Court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute. *Creswick v. Univ. of S.C.*, 434 S.C. 77, 81–82, 862 S.E.2d 706, 708 (2021). As such, to interpret section 16-11-450 to include third parties is contrary to the statute's purpose. *See e.g.*, *Byrd v. Irmo High Sch.*, 321 S.C. 426, 433-34, 468 S.E.2d 861, 865 (1996) (holding when one provision does not include a right that is included in a related provision, a right will not be implied when it does not exist), The Court has no right to add words the legislature omitted, "nor to interpolate them on conceits of symmetry and policy." *Consumer Advoc. for State v. S.C. Dep't of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012) (quoting *Kinard v. Moore*, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951)).

Throughout their brief, Respondents cite to section 16-11-420(B) and section 16-11-450 to argue the Act's immunity provision necessarily bars Appellant's civil claims against them. Respondents' analysis of the applicable statutory language emphasizes the phrases "without fear of prosecution or civil action," and "immune from criminal prosecution and civil action." Notably,

however, Respondents completely disregard the limiting language which immediately follows these phrases and acts to significantly qualify their scope.

Accordingly, a full reading of the plain language demonstrates that a person can protect themselves and others "without fear of prosecution or civil action ***for acting in defense of themselves and others***" and if that person's use of deadly force is found to be justified under the act, they are then "immune from criminal prosecution and civil action ***for the use of deadly force***." Nothing in the language of the statute extends a person's immunity to prosecutions or civil actions which are not for the use of deadly force. Significantly, Appellant's civil allegations against Respondents concerned their negligence in the management and operation of Green's Grocery. (Mot. in Opp'n at 10, R. 65.) This includes questions of whether Respondents were negligent for leaving a firearm with an unlicensed and unsupervised employee, whether they were negligent for leaving multiple weapons with an unsupervised employee experiencing trauma symptoms, and whether they negligently trained the shooter on proper ejectment of patrons on the premises. (*Id.*) Additionally, Appellant's civil claims did not solely rely on the vicarious liability of Respondents as an employer. Instead, the claims also concerned several issues related to Respondents' own independent actions and omissions constituting negligence, including: the failure to train and supervise, failure to take reasonable efforts to ensure guest safety of the premises, failure to ensure guests were not threatened with weapons on the premises, failure to ensure employees had appropriate training and permits for weapons, and failure to ensure employees were emotionally fit to be left with weapons. (*Id.* at 11, R. 66.)

Not only are Respondents ineligible for immunity under the express language of the statute, but they are also not facing criminal prosecution or civil action for the use of deadly force. Therefore, this Court should reverse.

A. Authorizing derivative immunity under the Act would lead to absurd results.

Respondents argue that the act of not extending immunity under Act to third parties would lead to absurd results. (Br. of Resp. at 14.) The opposite is true; extending immunity to third parties under the Act is what would lead to an absurd result.

The legislature's intent should be ascertained primarily from the plain language of the statute. *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005); *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction, and the Court has no right to look for or impose another meaning. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 373, 585 S.E.2d 292, 298 (2003); *see also City of Camden v. Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) ("Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language."). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989).

The Act provides two circumstances under which a person can receive immunity, the person's use of deadly force must be permitted by either: (1) the provisions of the Act, or (2) another applicable provision of law. S.C. Code Ann. § 16-11-450(A). The General Assembly set forth the circumstances justifying the use of deadly force in section 16-11-440. *State v. McCarty*, 437 S.C. 355, 366, 878 S.E.2d 902, 908 (2022). It is understood that "another applicable provision

of law" includes the common law of self-defense. *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018).

The immunity provided for in the Act is "predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court." *State v. Rosenbaum*, 438 S.C. 91, 103, 882 S.E.2d 180, 186 (Ct. App. 2022) (quoting *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013)). But, if a defendant does not demonstrate these elements by a preponderance of the evidence, then this "presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution." *Id.* Significantly, "the right to immunity does not spontaneously appear; it is a statutory right a defendant must prove he is entitled to." *State v. Sims*, 423 S.C. 397, 402, 814 S.E.2d 632, 634 (Ct. App. 2018).

Respondents' theory of derivative immunity forces a construction of the Act which would require the court to insert language extending immunity to third parties under the statute where no such language exists. This is improper and leads to a result so plainly absurd that it would defeat the plain legislative intention of granting specific protections for individuals justified in using deadly force. *See e.g.*, *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970) (observing that where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language). Accordingly, it must fail.

B. Respondents ignore Appellant's core arguments in favor of irrelevant issues and hypotheticals.

Respondents devote a significant portion of their brief to discussion of irrelevant issues unconnected to any genuine legal issue in the case, which should not distract the Court.

Respondents allege that Appellant's brief "mischaracterized" a portion of the factual narrative and "represents that Yousef began shooting at Wilson for no reason while Wilson was

standing outside the store." (Br. of Resp. at 3-4.) However, the statement that Yousef discharged a round which did not hit Wilson when Yousef was still standing in the doorway holding it open is contained in the narrative of law enforcement's search warrant, Yousef's arrest warrant, and the City of Charleston Police Case Supplement which was reviewed by the court as an exhibit during Yousef's immunity hearing. The assertion that Appellant has mischaracterized the facts is incorrect.

Respondents also incorrectly argue that Appellant's "reliance" on cases discussing Tort Claims Act immunity is misplaced because Respondents do not believe the reasoning from those cases applies to the PPPA. (*Id.* at 13-14.) Appellant's initial brief discusses the relevance of these cases in presenting examples of the court's treatment of analogous circumstances containing similar triangles of conflict between the principal actor, a negligent third party, and the existence of immunity. (*See* Br. of Appellant at 23–25.) Contrary to Respondents' beliefs, whether immunity applies to a third party when the third party's own negligence increased the risk of the harmful conduct occurring is not inapposite to this case.

Next, Respondents raise several unsupported statements, hypothetical scenarios, and rhetorical questions that have no bearing on the reality of the law here. Examples include:

- Stating that when an employee of a business is a family member "they are 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' unless the PPPA protects not just them, but also their family and their business, from liability." (Br. of Resp. at 11.)

- Stating that if the Act protects the principal "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 then "those individuals are far less likely to stand their ground … in order to protect their family from the threat of criminal charges and civil claims, and their family business form potentially ruinous civil liability." (*Id.*)

- "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?" (*Id.* at 15.)

- "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?" (*Id.*)

- "Consider a possible scenario in which two persons are charged in connection with a homicide … 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?" (*Id.*)

- "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*?" (*Id.* at 16.)

Several of Respondents' unsupported statements indicate their misunderstanding of the law in several regards. First, the assertion that "where a use of deadly force has been immunized, no crime or tort has occurred" upon which any secondary criminal or civil liability can be based because "[a] person cannot be an accessory to a crime that was not a crime," (*id.* at 12), is simply incorrect. Respondents misapprehend the distinction between the crime and the conduct. "Use of deadly force" is not a criminal offense, it is a ***manner*** in which a criminal offense, traditionally homicide, can occur. A court finding that use of deadly force was justified does not mean that the result of that force (the homicide) has not occurred and is longer a criminal offense.

Moreover, many of Respondents' pontifications are already substantively addressed in the law. Contrary to Respondents' claim that unless the Act's immunity is extended, individuals cannot protect themselves and others without fear of liability, is a well-established legal principle that an individual has the right to act in defense of another person if the person being protected would have had the right to kill the assailant in self-defense. *See McCarty*, 437 S.C. at 370–71, 878 S.E.2d at 910; *State v. Long*, 325 S.C. 59, 64, 480 S.E.2d 62, 64 (1997) ("Under the theory of

defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense."). Therefore, sufficient legal protections outside the Act already exist to quell Respondents' concerns.

The rhetorical questions attempting to compare the present circumstance to situations involving an accessory after the fact are likewise addressed after a cursory review of the law, regardless of whether Respondents agree with the outcome. "Today, the accessory's culpability no longer shadows that of the principal. . . . an accessory may be convicted even if the principal is not charged, is acquitted, or is not yet prosecuted." *State v. Blakely*, 402 S.C. 650, 656, 742 S.E.2d 29, 32 (Ct. App. 2013) (citing *State v. Massey*, 267 S.C. 432, 444, 229 S.E.2d 332, 338 (1976)). "There are a variety of reasons why a jury trying only a principal might fail to convict the principal, but to permit a guilty accessory to interpose the fact of the principal's acquittal as a bar to his own trial is a rule which would effectively constitute an obstruction of justice." *Massey*, 267 S.C. at 446, 229 S.E.2d at 339. "We cannot accept a doctrine which could exempt a perpetrator from any punishment." *State v. Price*, 278 S.C. 266, 269, 294 S.E.2d 426, 428 (1982).

In *Butler v. State*, Butler asked the South Carolina Supreme Court in its original jurisdiction to vacate his murder conviction because his two codefendants were found not guilty at their trials, claiming "there, by law, is no crime with which he could have been involved." 435 S.C. 96, 97, 866 S.E.2d 347, 348 (2021). In reviewing Butler's conviction, the Court held that "the disposition of the indictments of his codefendants—or even whether they were charged or indicted in the first place—is not dispositive." *Id.* at 98, 866 S.E.2d at 348. Instead, what mattered was whether the State proved what was necessary to convict Butler at *Butler's* trial. *Id.* at 98, 866 S.E.2d at 349, n.2 ("There are many reasons a jury may have acquitted Donavon. It is unnecessary to consider

them, however, because Butler's guilt is based on what was proven in *his own trial*.") (emphasis in original).

The distinction that Respondents fail to acknowledge is that both the perpetrator and the accessory are principals of their own separate, substantive offenses. Even though the offenses may be interrelated, that does not alleviate the State's burden to prove the independent elements of guilt attributable to each, nor does it automatically attach any benefits or legal defenses from one defendant to the other. *See e.g.*, *Price*, 278 S.C. at 268, 294 S.E.2d at 428 ("It is easy to conceive of a case in which the person who actually committed a homicide could not or might not be convicted by reason of incapacity or some other valid defense, but where the person who procured the commission of the crime and/or, the accessory's culpability is clear."). The same logic extends to liability for conduct.

The Court should reject Respondents' irrelevant arguments which have no bearing on the important questions raised by Appellant in this appeal.

II. The issues on appeal were properly preserved.

Respondents assert that Appellant's brief raised three arguments that were not presented to the circuit court. (1) that the language of the Act demonstrates the General Assembly only contemplated natural persons to qualify for immunity; (2) that dismissal of the circuit court action at the 12(b)(6) stage was improper, Appellant should have been afforded the opportunity of discovery, and applying derivative immunity under the Act is a novel issue of law; and (3) that if derivative immunity does exist, whether it should have applied to Respondents with regards to Appellant's allegations was a separate factual determination for the jury. (Br. of Resp. at 22-24.) Each of these arguments were properly preserved for this Court's consideration.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). "Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue." *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (citing *State v. Russell*, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (finding issue was preserved even though defendant did not use exact words "corpus delicti" in his request for a directed verdict).

Nonetheless, the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge. *Id*.; *see also S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007) (finding that although SCDOT did not phrase objection in the exact terms used in the issues on appeal, the objection was sufficiently specific to allow the trial court to rule on the issue). Appellate courts should not apply preservation rules "in a technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue." *Cone v. State*, 443 S.C. 487, 494, 905 S.E.2d 368, 372 (2024), *reh'g denied* (Sept. 17, 2024) (quoting *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023)).

Respondents' issue preservation arguments are without merit. Each of the issues associated with Appellant's arguments are properly preserved. First, issues relating to the plain statutory language, interpretation of the Act, and whether the Act applies to shield Respondents were squarely before the circuit court. Appellant's arguments as to the construction, interpretation, and application of the Act in consideration of derivative immunity were raised in Appellant's

Memorandum in Opposition to the Motion to Dismiss, during the hearing on the Motion to Dismiss, and repeated in Appellant's Rule 59(e) Motion to Reconsider and Memorandum in Support. (R. at 56, 100.)

In the memorandum in opposition to dismissal, Appellant argued that "[p]ursuant to a plain reading of the Act, civil immunity does not extend to anyone other than the party who employed deadly force" and, therefore, the plain language of the Act "does not provide civil immunity to third-parties for another's use of deadly force." (Mem. in Opp'n at 5, R. 60.) Appellant's memorandum further argued that Respondents' theory that the Act "requires barring derivative claims against an immunized party's employers, companions, and family members" was not supported by South Carolina law, and that Respondents failed to cite any law supporting the claim that civil immunity is extended to third parties even if they had engaged in culpable conduct. (*Id.* at 6, R. 61.)

The circuit court's Order stated that the court "treats the issue of derivative immunity and the questions of its existence and application as matters of first impression" (*Id.* at 5, R. 93), and in issuing its ruling, "based its analysis on the language of S.C. Code §§ 16-11-410 to -450 and on published case precedent construing this statutory language." (*Id.* at 6, R. 94.) The Order further held that the language of the Act must be interpreted to provide immunity to exposed third parties so as not to defeat the intent of the General Assembly. (*Id.* 6-7, R. 94-95.)

Respondents contend Appellant's argument interpreting the express language of the Act is a "misdirection" of the issue. (Br. of Resp. at 22.) On the contrary, continued interpretation and construction of the Act's language is entirely consistent with Appellant's position that derivative immunity does not exist nor apply in this case.

Respondents then conceded that only a natural person could engage in the conduct of justified use deadly force, which is immunized under the Act, before immediately claiming, "[t]hat does not mean that a company is not derivatively immune under the Act when an employee's use of force is found to have been justified." (*Id.*) Respondent provides no explanation or justification for this inconsistent position. By Respondents' own admission, only natural persons can engage in the conduct required to seek immunity under the Act. The assertion that a company would not be precluded from claiming it was derivatively immune contradicts the entire premise of personhood being an eligibility requirement for immunity. Notwithstanding Respondents' illogical position, the record supports that statutory interpretation of the Act regarding whether derivative immunity applies was raised to and ruled upon by the circuit court and is preserved for appellate review.

Respondents then claim that Appellant's arguments concerning the premature dismissal of the action at the 12(b)(6) without permitting discovery and the fact that the application of derivative immunity to third parties was a novel issue of law are not preserved. (Br. of Resp. at 23.) This is also incorrect. A review of the record in this case demonstrates that Appellant's various arguments on appeal were raised in its briefings and during the hearing before the circuit court. At the hearing, Appellant's counsel summarized several general disputes about Respondents' case theory, the existence of derivative immunity, and the impact of collateral estoppel on Appellant's claims. (Hr'g Tr. 8–12, R. 80–84.) Appellant's counsel additionally argued that "nothing in our appellate courts says that you can have immunity, in fact, and [] that's a question of first impression for you today." (*Id.* 9:5-8, R. 81.) The circuit court's order also confirmed that finding derivative immunity under the Act is a novel question under South Carolina law, explaining "the question of whether PPPA immunity can extend to persons beyond the individual granted immunity for his use of lethal force is a matter of first impression for this Court." (Order at 3, R. 91.)

Finally, Respondents' summary of Appellant's arguments at pages 19-21 of the brief is inaccurate. Respondents essentially combined several different arguments by Appellant into an incorrect synthesis which Respondents then argue was not preserved on appeal. The circuit court record demonstrates that Appellant's substantive issues discussed on appeal were properly preserved below.

III. Respondents' additional sustaining grounds raise jury arguments and do not act to bar Appellant's claims in their entirety.

The additional sustaining grounds in the circuit court's ruling does not "preclude all of" Appellant's claims as Respondents suggest. (Br. of Resp. at 17.) At most, Respondents have presented jury arguments, not a bar to Appellant's claims.

"While the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000). This is because the appellate court would likely perceive it as unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal. *Id.* "Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it." *Id.*

Respondents' additional sustaining grounds discuss the altercation between Yousef and Wilson, arguing that Wilson was comparatively negligent in bringing on the difficulty which "necessarily exceeds any alleged negligence on the part of Respondents in employing Yousef and giving him access to a weapon." (Br. of Resp. at 20.) Generally, comparative negligence is a question of fact for the jury to decide. *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000); *Creech v. South Carolina Wildlife and Marine Res. Dep't*, 328 S.C. 24, 32, 491 S.E.2d

571, 575 (1997)) ("Because the term is relative and dependent on the facts of a particular case, comparing the negligence of two parties is ordinarily a question of fact for the jury."). Respondents cannot raise an argument reserved for the jury's consideration as an additional sustaining ground when no jury heard or weighed the evidence in this case.

Additionally, Respondents contend that Appellant's wrongful death claim is not viable because the damages "have already been found by the Charleston County Court to have resulted not from a breach by Respondents," but this statement is inaccurate. (*Id.* at 18.) The immunity hearing only addressed the actions of Yousef. The court's immunity Order, which is quoted in part in Respondents' brief, also only addressed Yousef's action in using deadly force. The Order does not consider or discuss Respondents, their independent negligent conduct, or their potential breach whatsoever. The immunity court did not "already find" that Respondents committed no independent breach, and therefore, Appellant's claim is viable.

CONCLUSION

Based on the foregoing as well as the reasons presented in Appellant's initial brief, the circuit court's decision should be reversed.

Respectfully submitted,

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This 12th day of May 2025.