

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

RECEIVED

May 12 2025

SC Court of Appeals

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.

RECORD ON APPEAL

BLAKE T. WILLIAMS
YASMEEN EBBINI
MORGAN B. THOMPSON
Nelson Mullins Riley & Scarborough LLP
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

MARK V. GENDE
DANIEL Q. ATKINSON
RYAN C. HOLT
Sweeny, Wingate and Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR APPELLANT

ATTORNEYS FOR RESPONDENTS

INDEX

Summons and Complaint, filed June 15, 2023	1
Motion to Dismiss, filed August 31, 2023.....	34
Letter Requesting Hearing on Motion to Dismiss, filed January 22, 2024.....	36
Memorandum in Support of Motion to Dismiss, filed April 15, 2024	37
Immunity Order (Filed as Exhibit A to Memorandum in Support)	46
Memorandum in Opposition to Motion to Dismiss, filed April 15, 2024	56
Reply to Memorandum in Opposition, filed April 16, 2024.....	68
Transcript of April 18, 2024 Hearing on Motion to Dismiss.....	73
Order of Dismissal, filed June 12, 2024	89
Notice of Motion and 59(e) Motion to Reconsider, filed June 17, 2024.....	100
Memorandum in Support of 59(e) Motion to Reconsider, filed June 17, 2024.....	103
Form 4 Order Denying Motion to Reconsider, filed July 23, 2024.....	119

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE 9 TH JUDICIAL CIRCUIT
	)	C/A No.
Antoinet Moore, individually and as Personal	)	
Representative of the Estate of David J.	)	
Wilson,	)	
	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	(Jury Trial Demanded)
	)	
Green's Grocery, LLC, Mahmoud A. Yousef,	)	
and Suhib Ahmed Aref Yousef,	)	
	)	
Defendants.	)	
_____	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in the above-captioned matter, a copy of which is served upon you, and to serve a copy of your Answer upon undersigned counsel for the Plaintiff at the STROM LAW FIRM, LLC, at 6923 N. Trenholm Road, Suite 200, Columbia, South Carolina 29206, within thirty (30) days of service, exclusive of the date of service. If you fail to respond to this Complaint within the time prescribed above, judgment by default will be rendered against you for the relief demanded in the complaint.

Signature included on following page

STROM LAW FIRM, LLC

s/ Mario A. Pacella

Bakari T. Sellers (Bar No. 79714)

Mario A. Pacella (Bar No. 68488)

Amy E. Willbanks (Bar No. 69331)

Matthew B. Robins (Bar No. 103685)

6923 N. Trenholm Road, Suite 200

Columbia, South Carolina 29206

Phone: (803) 252-4800

Email: bsellers@stromlaw.com

mpacella@stromlaw.com

awillbanks@stromlaw.com

mrobins@stromlaw.com

Attorneys for Plaintiff

This 15th day of June, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE 9 TH JUDICIAL CIRCUIT
	)	C/A No.
Antoinet Moore, individually and as Personal	)	
Representative of the Estate of David J.	)	
Wilson,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
	)	
Green's Grocery, LLC, Mahmoud A. Yousef,	)	
and Suhib Ahmed Aref Yousef,	)	
	)	
Defendants.	)	
	)	

NATURE OF THE CASE

Plaintiff Antoinet Moore, individually and as Personal Representative of the Estate of David J. Wilson, files this Wrongful Death and Survival Action, by and through her undersigned counsel of record against the above-named Defendants Green's Grocery, LLC, Mahmoud A. Yousef, and Suhib Ahmed Aref Yousef for the negligent and reckless conduct leading to the unjustified shooting and killing of David J. Wilson on September 28, 2020. As a direct and proximate result of Defendants' conduct, David J. Wilson sustained actual injuries and damages, including death, and in support thereof alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for money damages brought pursuant to the common law of the State of South Carolina against Defendants.

2. Plaintiff Antoinet Moore is the duly appointed personal representative of the Estate of David J. Wilson. Plaintiff was appointed the personal representative of David J. Wilson's Estate by order of the Berkeley County Probate Court, dated January 4, 2022, in estate number 2021-ES-08-705.

3. At all times relevant to this Complaint, decedent David J. Wilson (“Decedent,” “Decedent David J. Wilson,” “Mr. Wilson”) was 41 years old and a resident of Charleston County, South Carolina.

4. Upon information and belief, at all times relevant to this Complaint, Defendant Green’s Grocery, LLC (“Defendant Green’s”, “Green’s”) was a South Carolina Limited Liability Company registered to conduct business in the State of South Carolina with its principal place of business located in Charleston County, South Carolina.

5. Upon information and belief, at all times relevant to this Complaint, Defendant Mahmoud A. Yousef (“Defendant M. Yousef”, “Mr. M. Yousef”) was 30 years old, a resident of Dorchester County, South Carolina, and owned and operated Defendant Green’s. Defendant M. Yousef is Defendant S. Yousef’s uncle.

6. Upon information and belief, at all times relevant to this Complaint, Defendant Suhb Ahmed Aref Yousef (“Defendant S. Yousef”, “Mr. S. Yousef”) was 18 years old, a Jordanian citizen, a resident of Dorchester County, South Carolina, and an employee of Defendant Green’s. Defendant S. Yousef is Defendant M. Yousef’s nephew.

7. Venue is proper in Charleston County, as a substantial part of the events or omissions complained of occurred within Charleston County, Defendant Green’s is located in Charleston County, and Defendant Green’s does significant business in Charleston County.

8. Jurisdiction and venue are therefore proper before this court pursuant to S.C. Code Ann. § 15-7-30.

FACTUAL ALLEGATIONS

The Incident

9. On or about September 28, 2020, Decedent entered Defendant Green's intending to buy a charger for his cell phone.

10. At the time Decedent entered the store, Defendant S. Yousef was working as the store's clerk.

11. Upon information and belief, Defendant M. Yousef was not present at the time Decedent entered the store.

12. Decedent approached Defendant S. Yousef at the counter and attempted to purchase a cell phone charger.

13. Upon information and belief, Decedent handed Defendant S. Yousef the cell phone charger and his debit card before jokingly feigning an attempt to walk away without paying for the item.

14. Upon information and belief, other patrons of the store recognized Decedent's action to be a joke, as they laughed while Decedent smiled at Defendant S. Yousef.

15. Upon information and belief, Defendant S. Yousef became frustrated and embarrassed at being the subject of Decedent's joke and the other patrons' laughter, telling Decedent, "Don't play with me, man."

16. Upon information and belief, Decedent responded "That's what I do," while continuing to smile at Defendant S. Yousef.

17. Upon information and belief, at this point, Defendant S. Yousef immediately shouted for Decedent to get out of the store instead of processing his payment.

18. Upon information and belief, Decedent, believing that Defendant S. Yousef was joking with him, continued smiling and reached for the charger.

19. Upon information and belief, Defendant S. Yousef then pulled the charger back and screamed, “No, get out of the store. Come on, get out.”

20. Upon information and belief, Decedent and Defendant S. Yousef exchanged the following dialogue, with Decedent speaking calmly and Defendant S. Yousef screaming at him:

DEFENDANT S. YOUSEF: *Get out of the store.*

DECEDENT: *Who the f*** you - -*

DEFENDANT S. YOUSEF: *Come on. Get out of the store.*

DECEDENT: *You better watch your f***ing mouth, boy.*

DEFENDANT S. YOUSEF: *Get out of the store. Come on.*

DECEDENT: *Watch your f***ing tone. I don't know who the f*** you think you're talkin' to.*

21. Upon information and belief, after Decedent told Defendant S. Yousef to watch his tone, Defendant S. Yousef immediately retrieved a long, black taser.

22. Upon information and belief, Decedent then asked Defendant S. Yousef, “What the f*** you gonna do?”, to which Defendant S. Yousef responded by activating the electric arc on the taser.

23. Upon information and belief, the dispute continued with Decedent continuing to ask Defendant S. Yousef who he thought he was talking to and Defendant S. Yousef continuing to scream for Decedent to get out.

24. Upon information and belief, Decedent eventually told Defendant S. Yousef, “Come over here and say that s***,” and Defendant S. Yousef responded by retrieving a machete.

25. Upon information and belief, Defendant S. Yousef held the machete up near his head in a threatening posture, poised to strike Decedent.

26. Upon information and belief, Decedent and Defendant S. Yousef continued shouting over each other until Defendant S. Yousef, while still holding the machete, challenged Decedent, “Touch me. Come on, touch me.”

27. Upon information and belief, Decedent then knocked over some items on the register.

28. Upon information and belief, Defendant S. Yousef responded to Decedent pushing items off the register by swinging the machete at Decedent, and Decedent spit at Defendant S. Yousef before beginning to exit the store.

29. Upon information and belief, Decedent walked toward the front door to exit the store but kept a watchful eye on Defendant S. Yousef.

30. Upon information and belief, Decedent witnessed Defendant S. Yousef put down the machete and retrieve a handgun.

31. Upon information and belief, Defendant S. Yousef did not possess a South Carolina Concealed Weapons Permit (“CWP”), as a South Carolina resident must be twenty-one (21) years old to obtain a CWP.¹

32. Upon information and belief, Decedent then mumbled, “What you gonna do?”, and Defendant S. Yousef, who was still behind the counter, racked the handgun and chambered a round.

33. Upon information and belief, Defendant S. Yousef then came from behind the counter and pursued Decedent through the store while he pointed the gun at his back.

¹ See S.C. Code Ann. § 23-31-215 (“Notwithstanding any other provision of law, . . . SLED must issue a permit . . . to carry a concealable weapon to a resident or qualified nonresident *who is at least twenty-one years of age*” (emphasis added))

34. Upon information and belief, when Decedent saw that Defendant S. Yousef had a gun pointed at his head, Decedent exited the store.

35. Upon information and belief, at this point, Defendant S. Yousef had the opportunity to lock the front door, call for law enforcement, and/or otherwise end the interaction between himself and Decedent.

36. However, upon information and belief, after 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.

37. Upon information and belief, Decedent then turned and unsuccessfully tried to swat the gun out of Defendant S. Yousef's hand.

38. 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:

DEFENDANT S. YOUSEF: *Get out of the store. Come on.*

DECEDENT: *You better back the f*** up my n****. You better back the f*** up.*

DEFENDANT S. YOUSEF: *Come on.*

DECEDENT: *Put that b***** down boy.*

DEFENDANT S. YOUSEF: *Get out of the store.*

DECEDENT: *Put that b***** down.*

DEFENDANT S. YOUSEF: *Get out of the store.*

DECEDENT: *Put that b***** down.*

39. Upon information and belief, Decedent then rushed Defendant S. Yousef in an attempt to disarm him.

40. Upon information and belief, Defendant S. Yousef stepped aside and began shooting Decedent.

41. Upon information and belief, as Defendant S. Yousef kept firing, Decedent fell to the ground motionless in a spreading pool of blood. The following day, the victim died from two gunshot wounds to the head.

42. Decedent was unarmed throughout his presence in the store and his interaction with Defendant S. Yousef.

43. Upon information and belief, Decedent never threatened Defendant S. Yousef during their interaction, including the periods before, during, and after Defendant S. Yousef produced multiple weapons.

44. Upon information and belief, Defendant S. Yousef never attempted to call 911, activate the store's silent alarm, or otherwise obtain assistance from law enforcement prior to the shooting despite having a cell phone in his possession and immediate access to the silent alarm.

45. Upon information and belief, after the shooting but prior to officers arriving on scene, Defendant S. Yousef phoned Defendant M. Yousef and made the following comments in Arabic which were captured on Defendant Green's surveillance cameras:

Mahmoud! The guy attacked me and I shot him!

He attacked me and the store, he tried to hit me. I shot him! He died. HE DIED!

He attacked me Salameh.

He attacked me, he hit me, he wanted to go in and get all the cash, I had all the cash on me.

46. Upon information and belief, after officers arrived on scene, Defendant S. Yousef made two additional phone calls, speaking in Arabic, which were captured on the officers' body-

worn cameras. Upon information and belief, Defendant S. Yousef made the following comments during these phone calls:

*He didn't attack me, listen to what happened. He threw his credit card at me. Then he tried to take a charger for free and leave. I tried to take it away from him. I took it away from him. Then I pointed the taser at him. When I went to taser him. He "what's it called" started beat, beating. He wouldn't leave. He didn't want to leave. I pointed the gun and thought if I scared him, he would leave. Then I came back behind the counter to scare him to leave. He tried to grab the gun from me. Would he grabbing it and shooting me have been better? Then I shot this son of a b****. Please come now! Where are you? They are going to arrest me man, they are going to arrest me. Please come now! There are African Americans outside. Come on, come on.*

Prior incident and the effect on Defendant S. Yousef

47. Upon information and belief, Defendant M. Yousef spoke with officers from the Charleston County Police Department following the incident involving Decedent.

48. Upon information and belief, Defendant M. Yousef indicated that he had last seen Defendant S. Yousef several hours before the incident.

49. Upon information and belief, Defendant M. Yousef told officers he planned to come to the store on the day of the incident, but wanted to grab something to eat.

50. Upon information and belief, Defendant M. Yousef informed officers that when Defendant S. Yousef called him about the incident, he was at his brother's mechanic shop because he had a problem with his vehicle.

51. Upon information and belief, Defendant M. Yousef reported that Defendant S. Yousef was his brother's son from Jordan who came to visit before COVID and got locked down in Charleston.

52. Upon information and belief, Defendant M. Yousef explained that Defendant S. Yousef began coming to the store with him and working.

53. Upon information and belief, Defendant M. Yousef explained that the store had been robbed approximately two months before the incident involving Decedent. Defendant M. Yousef further explained that Defendant S. Yousef was there at the time of the robbery, that the robbery was the first time Defendant S. Yousef saw a gun, and that Defendant Green's and Defendant M. Yousef did not keep a gun in the store beforehand.

54. Upon information and belief, Defendant M. Yousef told the officers that following the robbery, Defendant S. Yousef got "so scared" and started acting weird.

55. Upon information and belief, Defendant M. Yousef explained that he took Defendant S. Yousef to a therapist because Defendant S. Yousef was "scared of everybody" and would wake up in the middle of the night to make sure all of the doors were locked.

56. Upon information and belief, Defendant M. Yousef indicated that he took Defendant S. Yousef to see the therapist only one time.

57. Upon information and belief, Defendant M. Yousef reported that the therapist encouraged him to introduce Defendant S. Yousef to guns, so Defendant M. Yousef took Defendant S. Yousef to the gun range, showed him how to use a gun, and obtained a gun for the store.

58. Upon information and belief, Defendant M. Yousef explained to officers that prior to the robbery, Defendant S. Yousef would come to the store to work "sometimes," but after the robbery he no longer came to the store.

59. Upon information and belief, Defendant M. Yousef claimed he started making Defendant S. Yousef come to the store again.

60. Upon information and belief, Defendant M. Yousef explained that after making him come back, Defendant S. Yousef would jump every time a customer entered the store.

61. Upon information and belief, Defendant M. Yousef claimed that Defendant S. Yousef eventually started acting normally and that the incident involving Decedent occurred once Defendant S. Yousef “got normal again.”

JOINT AND SEVERAL LIABILITY

62. Defendants are jointly and severally liable for the damages and injuries sustained by Mr. Wilson, as Defendants’ individual and collective actions and omissions actually and proximately caused him harm. The Estate of the Decedent is entitled to damages pursuant to the laws of the State of South Carolina, including but not limited to the following:

- a. Compensatory, actual, and consequential damages;
- b. Loss of past and future support and services, companionship, society and support and the cost of past medical care;
- c. Loss of future earnings;
- d. Costs of this action;
- e. Reasonable attorneys’ fees and costs;
- f. Punitive damages; and
- g. Any and all other and further relief as this Court may deem appropriate including pre- and post-judgment interest.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE
(DEFENDANT GREEN’S & DEFENDANT M. YOUSEF)

63. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61 as if repeated verbatim herein.

64. At all times relevant to this complaint, Defendant S. Yousef was an employee of Defendant Green’s and Defendant M. Yousef, and was acting within the course and scope of his

employment, in furtherance of the interests of Defendant Green's and Defendant M. Yousef, and with Defendant Green's and Defendant M. Yousef's knowledge and consent.

65. Defendant Green's and Defendant M. Yousef are liable for the actions and omissions of their employees and/or agents that gave rise to this action, including the actions of Defendant S. Yousef.

66. Defendant Green's and Defendant M. Yousef, by and through their employees and agents, owed a duty to Mr. Wilson, including the duty to him as an invitee of Defendant Green's, to act in a prudent and reasonable manner with regard to his safety in the following particulars to wit:

- a. to ensure Mr. Wilson's safety on their premises;
- b. to properly supervise their employees;
- c. to ensure that employees were mentally and emotionally competent to deal with invitees on their premises;
- d. to ensure that invitees were not threatened by employees, particularly with weapons, while on their premises;
- e. to ensure that employees were mentally and emotionally competent to be left alone with weapons on the premises;
- f. to ensure that employees with weapons on the premises were legally permitted to possess such weapons;
- g. to ensure that employees were properly trained to call law enforcement if they perceived a patron was attempting to remove merchandise from the premises without paying;

- h. to ensure that employees were not using or threatening to use deadly force against unarmed patrons;
 - i. to ensure that employees were not using or threatening to use deadly force against patrons in defense of a piece of merchandise; and
 - j. to properly train its employees on the appropriate level of force needed to eject patrons from the premises.
67. Upon information and belief, Defendant Green's and Defendant M. Yousef violated these duties in the following ways:
- a. by requiring Defendant S. Yousef to work despite suffering from unresolved mental and emotional trauma associated with a prior robbery;
 - b. by failing to supervise Defendant S. Yousef despite knowledge that Defendant S. Yousef was "jumpy" around invitees on the premises;
 - c. by entrusting Defendant S. Yousef with a taser, a machete, and a firearm despite knowledge of his unresolved mental and emotional trauma;
 - d. by entrusting Defendant S. Yousef with a handgun despite the fact that Defendant S. Yousef did not possess a South Carolina Concealed Weapons Permit;
 - e. by failing to supervise Defendant S. Yousef while such weapons were available on the premises;
 - f. by failing to train Defendant S. Yousef against using or threatening to use deadly force in defense of property;
 - g. by failing to train Defendant S. Yousef on the proper use of force to eject patrons from the premises; and

- h. by failing to train Defendant S. Yousef on alternate resolutions for perceived incidents on the premises, such as calling law enforcement or locking the front door of the store.

68. Defendant Green's and Defendant M. Yousef knew or should have known of the dangers posed by their failures illustrated in this complaint, including the failures to adequately train or supervise its employees, and that these said actions constituted the absence of care likely to result in injury, and as such were reasonably foreseeable.

69. Defendant Green's and Defendant M. Yousef, by and through their authorized employees, owed a duty to Mr. Wilson to be reasonable in the management of their premises. Defendant Green's and Defendant M. Yousef, by and through its employees, breached duties owed to the Decedent by failing to supervise Defendant S. Yousef and allowing him to access deadly weapons on the premises, despite their knowledge that Defendant S. Yousef suffered from unresolved mental and emotional trauma and was "jumpy" around invitees.

70. Defendant Green's and Defendant M. Yousef's actions and omissions, by and through their authorized agents, were unreasonable, constituted the absence of care, and breached duties owed to Mr. Wilson, and actually and proximately contributed to and/or caused Mr. Wilson's death.

71. Plaintiff is entitled to damages pursuant to the laws of the State of South Carolina, including but not limited to the following:

- a. Compensatory, actual, and consequential damages;
- b. Loss of past and future support and services, companionship, society and support and the cost of past medical care;
- c. Loss of future earnings;

- d. Punitive damages; and
- e. Any and all other and further relief as this Court may deem appropriate including pre- and post-judgment interest.

FOR A SECOND CAUSE OF ACTION
WRONGFUL DEATH PURSUANT TO S.C. CODE ANN. § 15-51-10
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

72. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 63 through 71 as though repeated herein.

73. Plaintiff brings this action pursuant to S.C. Code Ann. § 15-51-10, *et seq.* on behalf of the statutory heirs of David Wilson, for the wrongful death of Mr. Wilson, who died on September 29, 2020.

74. The death of Mr. Wilson was caused directly and proximately by Defendant Green's and Defendant M. Yousef's negligent conduct, set forth more fully herein.

75. As a direct and proximate result of Defendant Green's and Defendant M. Yousef's conduct, the beneficiaries of David Wilson have been damaged, and suffered the loss of Mr. Wilson's services, support, income, society, companionship, love, and/or affection.

76. Plaintiff is therefore entitled to a judgment against Defendant Green's and Defendant M. Yousef, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR A THIRD CAUSE OF ACTION
SURVIVAL PURSUANT TO S.C. CODE ANN. § 15-5-90
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

77. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 63 through 76 as though repeated herein.

78. David Wilson's estate has incurred funeral and related expenses as a direct and proximate result of the negligent conduct of Defendant Green's and Defendant M. Yousef, set forth more fully herein.

79. As a direct and proximate result of Defendant Green's and Defendant M. Yousef's conduct, set forth more expressly above, David Wilson suffered grievous bodily injuries, physical pain and suffering, and incurred medical expenses prior to his death, and his estate is entitled to an award of actual damages in an amount to be determined through a trial of this matter.

FOR A FOURTH CAUSE OF ACTION
NEGLIGENCE
(DEFENDANT S. YOUSEF)

80. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61 as if repeated verbatim herein.

81. Defendant S. Yousef owed a duty to Mr. Wilson, including the duty to him as an invitee of Defendant Green's, to act in a prudent and reasonable manner with regard to his safety in the following particulars to wit:

- a. to ensure Mr. Wilson's safety on Defendant Green's premises;
- b. to act in a reasonably prudent manner towards invitees; and
- c. to use only the force necessary to eject patrons from the premises.

82. Upon information and belief, Defendant S. Yousef violated these duties in the following ways:

- a. by threatening Mr. Wilson with bodily harm in the form of a taser despite the lack of any threatening behavior or conduct from him;
- b. by threatening Mr. Wilson with deadly force in the form of a machete and a firearm despite the lack of any threatening behavior or conduct from him;

- c. by admittedly arming himself with a firearm in an effort to scare Mr. Wilson;
- d. by ejecting Mr. Wilson from the premises with the threat of deadly force despite the lack of any threatening behavior or conduct from him;
- e. by failing to retreat after Mr. Wilson had been successfully ejected from the premises and when he did not present a threat to Defendant S. Yousef;
- f. by continuing to hold Mr. Wilson at gunpoint and escalating the situation after the Decedent left the premises and when he did not present a threat to Defendant S. Yousef; and
- g. by escalating the situation in a manner that resulted in the unjustified use of deadly force.

83. Defendant S. Yousef knew or should have known of the dangers posed by his conduct as illustrated in this complaint, including the acts of ejecting Mr. Wilson from the premises by threat of deadly force and escalating the dispute to the point that it resulted in the use of deadly force, and that these said actions constituted the absence of care likely to result in injury, and as such were reasonably foreseeable.

84. Defendant S. Yousef's actions and omissions were unreasonable, constituted the absence of care, and breached duties owed to Mr. Wilson, and actually and proximately contributed to and/or caused his death.

85. Plaintiff is entitled to damages pursuant to the laws of the State of South Carolina, including but not limited to the following:

- a. Compensatory, actual, and consequential damages;
- b. Loss of past and future support and services, companionship, society and support and the cost of past medical care;

- c. Loss of future earnings;
- d. Punitive damages; and
- e. Any and all other and further relief as this Court may deem appropriate including pre- and post-judgment interest.

FOR A FIFTH CAUSE OF ACTION
WRONGFUL DEATH PURSUANT TO S.C. CODE ANN. § 15-51-10
(DEFENDANT S. YOUSEF)

86. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 80 through 85 as if repeated verbatim herein.

87. Plaintiff brings this action pursuant to S.C. Code Ann. § 15-51-10, *et seq.* on behalf of the statutory heirs of David Wilson, for the wrongful death of Mr. Wilson, who died on September 29, 2020.

88. The death of Mr. Wilson was caused directly and proximately by Defendant S. Yousef's negligent conduct, set forth more fully herein.

89. As a direct and proximate result of Defendant S. Yousef's conduct, the beneficiaries of David Wilson have been damaged, and suffered the loss of Mr. Wilson's services, support, income, society, companionship, love, and/or affection.

90. Plaintiff is therefore entitled to a judgment against Defendant S. Yousef, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR A SIXTH CAUSE OF ACTION
SURVIVAL PURSUANT TO S.C. CODE ANN. § 15-5-90
(DEFENDANT S. YOUSEF)

91. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 80 through 90 as if repeated verbatim herein.

92. David Wilson's estate has incurred funeral and related expenses as a direct and proximate result of the negligent conduct of Defendant S. Yousef, set forth more fully herein.

93. As a direct and proximate result of Defendant S. Yousef's conduct, set forth more expressly above, David Wilson suffered grievous bodily injuries, physical pain and suffering, and incurred medical expenses prior to his death, and his estate is entitled to an award of actual damages in an amount to be determined through a trial of this matter.

FOR A SEVENTH CAUSE OF ACTION
GROSS NEGLIGENCE
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

94. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61 as if repeated verbatim herein.

95. This is an action for gross negligence brought against Defendant Green's and Defendant M. Yousef under the laws of the State of South Carolina.

96. At all times relevant to this complaint, Defendant S. Yousef was an employee of Defendant Green's and Defendant M. Yousef, and was acting within the course and scope of his employment, in furtherance of the interests of Defendant Green's and Defendant M. Yousef, and with Defendant Green's and Defendant M. Yousef's knowledge and consent.

97. Defendant Green's and Defendant M. Yousef are liable for the actions and omissions of their employees and/or agents that gave rise to this action including the actions of Defendant S. Yousef.

98. Defendant Green's and Defendant M. Yousef, by and through their employees and agents, owed a duty to Mr. Wilson, including the duty to him as an invitee of Defendant Green's, to act in a prudent and reasonable manner with regard to his safety in the following particulars to wit:

- a. to ensure Mr. Wilson's safety on their premises;
 - b. to properly supervise their employees;
 - c. to ensure that employees were mentally and emotionally competent to deal with invitees on their premises;
 - d. to ensure that invitees were not threatened by employees, particularly with weapons, while on their premises;
 - e. to ensure that employees were mentally and emotionally competent to be left alone with weapons on the premises;
 - f. to ensure that employees were not using or threatening to use deadly force against patrons in defense of property; and
 - g. to properly train its employees on the appropriate level of force needed to eject patrons from the premises.
99. Upon information and belief, Defendant Green's and Defendant M. Yousef violated these duties in the following ways:
- a. by requiring Defendant S. Yousef to work despite suffering from unresolved mental and emotional trauma associated with a prior robbery;
 - b. by failing to supervise Defendant S. Yousef despite knowledge that Defendant S. Yousef was "jumpy" around invitees on the premises;
 - c. by entrusting Defendant S. Yousef with a taser, a machete, and a firearm despite knowledge of his unresolved mental and emotional trauma;
 - d. by failing to supervise Defendant S. Yousef while such weapons were available on the premises;

- e. by failing to train Defendant S. Yousef against using or threatening to use deadly force in defense of property;
- f. by failing to train Defendant S. Yousef on the proper use of force to eject patrons from the premises; and
- g. by failing to train Defendant S. Yousef on alternate resolutions for perceived incidents on the premises, such as calling law enforcement or locking the front door of the store.

100. Defendant Green's and Defendant M. Yousef knew or should have known of the dangers posed by their failures illustrated in this complaint, including the failures to adequately train or supervise its employees, and that these said actions were reckless and/or constituted the total absence of care likely to result in injury, and as such were reasonably foreseeable.

101. Defendant Green's and Defendant M. Yousef, by and through their authorized employees, owed a duty to Mr. Wilson to be reasonable in the management of their premises. Defendant Green's and Defendant M. Yousef, by and through its employees, breached duties owed to the Decedent by failing to supervise Defendant S. Yousef and allowing him to access deadly weapons on the premises, despite their knowledge that Defendant S. Yousef suffered from unresolved mental and emotional trauma and was "jumpy" around invitees.

102. Defendant Green's and Defendant M. Yousef's actions and omissions, by and through their authorized agents, were unreasonable, constituted the total absence of care, and breached duties owed to Mr. Wilson, and actually and proximately contributed to and/or caused his death.

103. Plaintiff is entitled to damages pursuant to the laws of the State of South Carolina, including but not limited to the following:

- a. Compensatory, actual, and consequential damages;
- b. Loss of past and future support and services, companionship, society and support and the cost of past medical care;
- c. Loss of future earnings;
- d. Punitive damages; and
- e. Any and all other and further relief as this Court may deem appropriate including pre and post-judgment interest.

FOR AN EIGHTH CAUSE OF ACTION
WRONGFUL DEATH PURSUANT TO S.C. CODE ANN. § 15-51-10
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

104. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 94 through 103 as though repeated herein.

105. Plaintiff brings this action pursuant to S.C. Code Ann. § 15-51-10, et seq. on behalf of the statutory heirs of David Wilson, for the wrongful death of Mr. Wilson, who died on September 29, 2020.

106. The death of Mr. Wilson was caused directly and proximately by Defendant Green's and Defendant M. Yousef's grossly negligent willful and wanton conduct set forth more fully herein.

107. As a direct and proximate result of Defendant Green's and Defendant M. Yousef's conduct, the beneficiaries of David Wilson have been damaged, and suffered the loss of Mr. Wilson's services, support, income, society, companionship, love, and/or affection.

108. Plaintiff is therefore entitled to a judgment against Defendant Green's and Defendant M. Yousef, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR A NINTH CAUSE OF ACTION
SURVIVAL PURSUANT TO S.C. CODE ANN. § 15-5-90
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

109. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 94 through 108 as though repeated herein.

110. David Wilson's estate has incurred funeral and related expenses as a direct and proximate result of the grossly negligent, willful, and wanton conduct of Defendant Green's and Defendant M. Yousef, set forth more fully herein.

111. As a direct and proximate result of Defendant Green's and Defendant M. Yousef's conduct, set forth more expressly above, David Wilson suffered grievous bodily injuries, physical pain and suffering, and incurred medical expenses prior to his death, and his estate is entitled to an award of actual damages in an amount to be determined through a trial of this matter.

FOR A TENTH CAUSE OF ACTION
NEGLIGENT SUPERVISION
(DEFENDANT GREEN'S AND DEFENDANT M. YOUSEF)

112. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61 as if repeated verbatim herein.

113. Despite their knowledge of Defendant S. Yousef's mental and emotional trauma, as well as the fact that Defendant S. Yousef was "jumpy" around invitees, Defendant Green's and Defendant M. Yousef failed to supervise him and ensure that he did not present a danger to invitees of Defendant Green's.

114. Furthermore, despite their knowledge of Defendant S. Yousef's mental and emotional trauma, Defendant Green's and Defendant M. Yousef left multiple weapons, including a machete and a firearm, on the premises but failed to supervise Defendant S. Yousef and ensure that he did not present a danger to invitees of Defendant Green's.

115. Defendant Green's and Defendant M. Yousef owed Mr. Wilson a duty to operate their business in a reasonably prudent manner, including the duty to ensure that their employees were mentally and emotionally fit to interact with invitees and to ensure that Mr. Wilson would not be harmed as a result of doing business with Green's.

116. Furthermore, because Mr. Wilson was an invitee and a customer of Defendant Green's, Defendant Green's and Defendant M. Yousef owed him the duties owed to an invitee, including the duty to ensure his safety while on their premises.

117. Defendant Green's and Defendant M. Yousef breached these duties in a number of particulars including requiring Defendant S. Yousef to work the store despite knowledge of his unresolved mental and emotional trauma, failing to ensure that Defendant S. Yousef was mentally and emotionally fit to interact with invitees and members of the public, failing to ensure that Defendant S. Yousef was mentally and emotionally fit to be left alone with multiple weapons, failing to supervise Defendant S. Yousef while he worked at Green's with access to deadly weapons, and leaving Defendant S. Yousef with a handgun despite his lack of a South Carolina Concealed Weapons Permit.

118. Had Defendant Green's and Defendant M. Yousef properly supervised Defendant S. Yousef, Mr. Wilson would not have been assaulted by a mentally and emotionally unstable employee with access to deadly weapons, and would not have been shot and killed as a result.

119. Defendant Green's and Defendant M. Yousef's negligent, willful, and wanton conduct, set forth more fully herein, directly and proximately caused Mr. Wilson's death.

120. As a direct and proximate result of both Defendant Green's and Defendant M. Yousef's conduct, Mr. Wilson was killed and has been damaged.

121. Plaintiff is therefore entitled to a judgment against Defendant Green's and Defendant M. Yousef for these separate acts of negligence, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR AN ELEVENTH CAUSE OF ACTION
WRONGFUL DEATH PURSUANT TO S.C. CODE ANN. § 15-51-10
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

122. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 112 through 121 as though repeated herein.

123. Plaintiff brings this action pursuant to S.C. Code Ann. § 15-51-10, *et seq.* on behalf of the statutory heirs of David Wilson, for the wrongful death of Mr. Wilson, who died on September 29, 2020.

124. The death of Mr. Wilson was caused directly and proximately by Defendant Green's and Defendant M. Yousef's negligent conduct, set forth more fully herein.

125. As a direct and proximate result of Defendant Green's and Defendant M. Yousef's conduct, the beneficiaries of David Wilson have been damaged, and suffered the loss of Mr. Wilson's services, support, income, society, companionship, love, and/or affection.

126. Plaintiff is therefore entitled to a judgment against Defendant Green's and Defendant M. Yousef, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR A TWELFTH CAUSE OF ACTION
SURVIVAL PURSUANT TO S.C. CODE ANN. § 15-5-90
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

127. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 112 through 126 as though repeated herein.

128. David Wilson's estate has incurred funeral and related expenses as a direct and proximate result of the negligent conduct of Defendant Green's and Defendant M. Yousef, set forth more fully herein.

129. As a direct and proximate result of Defendant Green's and Defendant M. Yousef's conduct, set forth more expressly above, David Wilson suffered grievous bodily injuries, physical pain and suffering, and incurred medical expenses prior to his death, and his estate is entitled to an award of actual damages in an amount to be determined through a trial of this matter.

FOR A THIRTEENTH CAUSE OF ACTION
NEGLIGENT ENTRUSTMENT
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

130. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61 as if repeated verbatim herein.

131. Despite their knowledge of Defendant S. Yousef's mental and emotional trauma, as well as the fact that Defendant S. Yousef was "scared of everybody" and "jumpy" around invitees, Defendant Green's and Defendant M. Yousef entrusted him with multiple weapons, including a taser, a machete, and a firearm.

132. Further, despite their knowledge of Defendant S. Yousef's inexperience with firearms, including the fact that Defendant S. Yousef saw a firearm for the first time two-months prior to the incident, Defendant Green's and Defendant M. Yousef entrusted him with a firearm. The firearm was a handgun for which Defendant S. Yousef did not possess a South Carolina Concealed Weapons Permit and could not possess legally.

133. Defendant Green's and Defendant M. Yousef owed Mr. Wilson a duty to operate their business in a reasonably prudent manner, including the duty to ensure that their employees were mentally and emotionally fit to have access to weapons and to interact with invitees, as well

as the duty to ensure that Mr. Wilson would not be harmed as a result of doing business with Green's.

134. Furthermore, because Mr. Wilson was an invitee and a customer of Defendant Green's, Defendant Green's and Defendant M. Yousef owed him the duties owed to an invitee, including the duty to ensure his safety while on their premises.

135. Defendant Green's and Defendant M. Yousef breached these duties in a number of particulars including allowing Defendant S. Yousef to have access to multiple weapons, including a handgun for which he did not possess a South Carolina Concealed Weapons Permit, despite knowledge of his mental and emotional trauma, failing to ensure that Defendant S. Yousef was mentally and emotionally fit to be left alone with multiple weapons, failing to properly train Defendant S. Yousef on the proper use of the weapons, and failing create policies regarding employees' use of the weapons.

136. Had Defendant Green's and Defendant M. Yousef refrained from entrusting Defendant S. Yousef with multiple weapons, Mr. Wilson would not have been threatened with a taser after making a joke, would not have been assaulted with a machete when he did not present a threat, would not have been threatened with a firearm in an attempt to scare him, would not have been ejected from the premises at gunpoint, would not have been threatened at gunpoint after leaving the premises, and would not have been shot and killed as a result of the incident.

137. Defendant Green's and Defendant M. Yousef's negligent, willful, and wanton conduct, set forth more fully herein, directly and proximately caused Mr. Wilson's death.

138. As a direct and proximate result of both Defendant Green's and Defendant M. Yousef's conduct, Mr. Wilson was killed and has been damaged.

139. Plaintiff is therefore entitled to a judgment against Defendant Green's and Defendant M. Yousef for these separate acts of negligence, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR A FOURTEENTH CAUSE OF ACTION
WRONGFUL DEATH PURSUANT TO S.C. CODE ANN. § 15-51-10
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

140. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 130 through 139 as though repeated herein.

141. Plaintiff brings this action pursuant to S.C. Code Ann. § 15-51-10, et seq. on behalf of the statutory heirs of David Wilson, for the wrongful death of Mr. Wilson, who died on September 29, 2020.

142. The death of Mr. Wilson was caused directly and proximately by Defendant Green's and Defendant M. Yousef's negligent conduct, set forth more fully herein.

143. As a direct and proximate result of Defendant Green's and Defendant M. Yousef's conduct, the beneficiaries of David Wilson have been damaged, and suffered the loss of Mr. Wilson's services, support, income, society, companionship, love, and/or affection.

144. Plaintiff is therefore entitled to a judgment against Defendant Green's and Defendant M. Yousef, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR A FIFTEENTH CAUSE OF ACTION
SURVIVAL PURSUANT TO S.C. CODE ANN. § 15-5-90
(DEFENDANT GREEN'S & DEFENDANT M. YOUSEF)

145. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 130 through 144 as though repeated herein.

146. David Wilson's estate has incurred funeral and related expenses as a direct and proximate result of the negligent conduct of Defendant Green's and Defendant M. Yousef, set forth more fully herein.

147. As a direct and proximate result of Defendant Green's and Defendant M. Yousef's conduct, set forth more expressly above, David Wilson suffered grievous bodily injuries, physical pain and suffering, and incurred medical expenses prior to his death, and his estate is entitled to an award of actual damages in an amount to be determined through a trial of this matter.

FOR A SIXTEENTH CAUSE OF ACTION
NEGLIGENT USE OF A FIREARM
(DEFENDANT S. YOUSEF)

148. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61 as if repeated verbatim herein.

149. Defendant S. Yousef owed Mr. Wilson a duty to be reasonably prudent in his possession and use of a firearm.

150. Furthermore, because Mr. Wilson was an invitee and a customer of Defendant Green's, Defendant S. Yousef owed him the duties owed to an invitee, including the duty to ensure his safety while on their premises.

151. Defendant S. Yousef breached these duties in a number of particulars including pointing a firearm at Mr. Wilson when the Decedent did not threaten or present a risk of harm to Defendant S. Yousef, pointing a firearm at Mr. Wilson in an attempt to scare him, ejecting Mr. Wilson from the premises at gunpoint when the Decedent did not threaten or present a risk of harm, continuing to hold Mr. Wilson at gunpoint and threatening him after he had been ejected from the premises, failing to retreat after Mr. Wilson had been ejected from the premises, escalating the dispute with Mr. Wilson by holding him at gunpoint when he asked Defendant S. Yousef to put

the gun down and when he did not present a risk of harm, and putting Mr. Wilson in fear for his life resulting in his attempt to defend himself and Defendant S. Yousef's shooting and killing of the Decedent.

152. Had Defendant S. Yousef refrained from negligently arming himself with a firearm in an attempt to scare Mr. Wilson when he did not present a threat, pointing the firearm at Mr. Wilson, and holding it on Mr. Wilson during and after his ejection from the premises, Mr. Wilson would not have felt in fear for his life and attempted to defend himself, and Defendant S. Yousef would not have shot and killed him.

153. Defendant S. Yousef's negligent, willful, and wanton conduct, set forth more fully herein, directly and proximately caused Mr. Wilson's death.

154. As a direct and proximate result of Defendant S. Yousef's conduct, Mr. Wilson was killed and has been damaged.

155. Plaintiff is therefore entitled to a judgment against Defendant S. Yousef for these separate acts of negligence, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR A SEVENTEENTH CAUSE OF ACTION
WRONGFUL DEATH PURSUANT TO S.C. CODE ANN. § 15-51-10
(DEFENDANT S. YOUSEF)

156. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 148 through 155 as if repeated verbatim herein.

157. Plaintiff brings this action pursuant to S.C. Code Ann. § 15-51-10, et seq. on behalf of the statutory heirs of David Wilson, for the wrongful death of Mr. Wilson, who died on September 29, 2020.

158. The death of Mr. Wilson was caused directly and proximately by Defendant S. Yousef's negligent conduct, set forth more fully herein.

159. As a direct and proximate result of Defendant S. Yousef's conduct, the beneficiaries of David Wilson have been damaged, and suffered the loss of Mr. Wilson's services, support, income, society, companionship, love, and/or affection.

160. Plaintiff is therefore entitled to a judgment against Defendant S. Yousef, and for such actual and consequential damages in an amount to be determined by a jury trial.

FOR AN EIGHTEENTH CAUSE OF ACTION
SURVIVAL PURSUANT TO S.C. CODE ANN. § 15-5-90
(DEFENDANT S. YOUSEF)

161. Plaintiff hereby realleges the factual allegations in paragraphs 9 through 61, and paragraphs 148 through 160 as if repeated verbatim herein.

162. David Wilson's estate has incurred funeral and related expenses as a direct and proximate result of the negligent conduct of Defendant S. Yousef, set forth more fully herein.

163. As a direct and proximate result of Defendant S. Yousef's conduct, set forth more expressly above, David Wilson suffered grievous bodily injuries, physical pain and suffering, and incurred medical expenses prior to his death, and his estate is entitled to an award of actual damages in an amount to be determined through a trial of this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court award the following damages, jointly and severally against Defendants, as provide by South Carolina law, including but not limited to the following:

- a. Compensatory, actual, and consequential damages;

- b. Loss of past and future support and services, companionship, society and support and the cost of past medical care;
- c. Loss of future earnings;
- d. Punitive damages; and
- e. Any and all other and further relief as this Court may deem appropriate including pre- and post-judgment interest.

TRIAL BY JURY

WHEREFORE, Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 15th day of June, 2023.

STROM LAW FIRM, LLC

s/ Mario A. Pacella

Bakari T. Sellers (Bar No. 79714)
 Mario A. Pacella (Bar No. 68488)
 Amy E. Willbanks (Bar No. 69331)
 Matthew B. Robins (Bar No. 103685)
 6923 N. Trenholm Road, Suite 200
 Columbia, South Carolina 29206
 Phone: (803) 252-4800
 Email: bsellers@stromlaw.com
mpacella@stromlaw.com
awillbanks@stromlaw.com
mrobins@stromlaw.com

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT
)

Antoinet Moore, Individually and as) Civil Action No.: 2023CP1002924
Personal Representative of the Estate)
of David J. Wilson)

Plaintiff,)

v.)

MOTION TO DISMISS

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

Defendant.)

TO: MARIO A. PACELLA, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendants, Mahmoud A. Yousef and Green's Grocery, LLC by their undersigned attorneys will move before the Presiding Judge of the Charleston Court of Common Pleas at the Charleston Count Courthouse at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing the Plaintiff's Complaint pursuant to the South Carolina Rules of Civil Procedure 12(b)(6)(6).

This motion is made on the basis that the actions of Suhib Yousef, which form the grounds for plaintiff's complaint, were found to be reasonable under the circumstances pursuant to South Carolina's Stand Your Ground Law. In an order filed June 24, 2021, the Honorable R. Markley Dennis, Jr. held that Suhib Yousef "is entitled to immunity under the provisions of the Protection of Persons and Property Act, South Carolina Code Section 16-11-440(C)" (Order at p. 9.) (Order attached as Exhibit A.) After the court made a full review of all evidence, including video evidence, Judge Dennis also found that "[Suhib] 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.” (Id. at p. 8.) Further, after reciting Wilson’s increasingly aggressive and threatening actions toward Yousef, including Wilson’s physical attack of Yousef, the court found these events put Yousef “in reasonable fear of imminent serious injury. Accordingly, Wilson’s actions gave Yousef the statutory right to use lethal force.” (Order at p. 9.)

Therefore, Plaintiff cannot state any facts sufficient to constitute a cause of action against any defendant in the instant civil action because the underlying actions which form the basis of Plaintiff’s complaint were found by a court of competent jurisdiction to be reasonable, immune from prosecution and that Wilson was the aggressor.

This motion may be supported by a memorandum of law and rest on all applicable statutory and case law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/ Mark V. Gende
Mark V. Gende
Brandon R. Gottschall
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

August 31, 2023



SWEENEY WINGATE & BARROW P.A.

January 22, 2024

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x7121
mvg@swblaw.com

VIA EMAIL: djeddersc@sccourts.org

The Honorable Deadra L. Jefferson
Chief Administrative Judge
Charleston County
100 Broad Street, Suite 336
Charleston, SC 29407

RE: Antoinet Moore, Individually as a PR of the Estate of David J. Wilson v. Mahoud
A. Yousef, et. al.
Civil Action No.: 2023CP1002924
Our File: 4336-14781

Dear Judge Jefferson:

On August 31, 2023, the defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6)(6). It does not appear that the Motion has yet been set for a hearing. The purpose of this letter is to request a hearing be set for this Motion at the earliest convenience of the court.

Opposing counsel is copied on this communication with the court.

Sincerely,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read 'Mark V. Gende', is written over the typed name.

Mark V. Gende

MVG/ajs
CC: Mario A. Pacella, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	THE NINTH JUDICIAL CIRCUIT
	)	
Antoinet Moore, Individually and as Personal Representative of the Estate of David J. Wilson	)	Civil Action No.: 2023CP1002924
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANTS' MEMORANDUM
	)	IN SUPPORT OF MOTION TO DISMISS
Green's Grocery, LLC, and Mahmoud A. Yousef	)	
	)	
	)	
Defendants.	)	

COME NOW THE DEFENDANTS Mahmoud A. Yousef and Green's Grocery, LLC (collectively, "Defendants"), by and through their undersigned counsel, to submit this memorandum of law in support of their Motion to Dismiss filed August 31, 2023.

BACKGROUND

The Subject Incident

This case arises out of the fatal shooting of David J. Wilson by Suhib Yousef, who was working at the counter of Defendants' convenience store at the corner of President and Bogard Streets in Charleston on September 28, 2020. The altercation began when the Decedent, who was in the process of purchasing a phone charger, suddenly pulled back his proffered credit card and turned toward the exit of the store as if he were about to leave with the charger without paying. Yousef, an 18-year old Jordanian who had been the victim of an armed robbery at the convenience store less than two months previously, challenged the Decedent's behavior, saying,

"Don't play with me, man."

"It's what I do," the Decedent replied, adding, after similar back and forth, "Or what?"

“Or I don’t serve you. Get out of the store.” Suhib said, taking the charger from the Decedent’s hand and giving him back the un-swiped credit card. The Decedent, smiling, grabbed at the unpaid charger in a feigned tug of war with the increasingly distressed Suhib, who wrenched the charger away. Suhib began to shout, in a voice as deep and loud as he could,

“Get out! Get out of the store!”

Suhib continued this demand, and the Decedent, now aggressive, used intimidating language as he reached over the counter to direct threatening gestures at Suhib. The Decedent was much the bigger and taller of the two individuals.

Suhib brandished a taser at the Decedent and activated its electrical arc. But the taser proved an ineffective threat, and Decedent moved deeper into the store while shouting threats at Suhib. Now Suhib produced a machete—this too had little effect. Despite more than thirty demands for him to leave, Decedent seemed to become only more aggressive. Finally, the Decedent spit at Suhib, then walked away from the counter and towards the exit. But instead of leaving, he hesitated in the area of the door.

Suhib now showed the Decedent a pistol, but even this had little effect:

“Yeah, where you think you going, nowhere, that s*** don’t scare me.”

Decedent slowly turned and began opening the door to leave as Suhib came out from behind the counter, pointing the gun at the Decedent at close range as the Decedent walked outside. But Decedent turned as he left, batting the gun aside and facing Suhib for another moment before stepping out to begin pacing in the parking lot. Suhib stayed inside the store and pointed the gun out the partially ajar doorway, trained on the Decedent. At this point Decedent moved back toward Suhib, who quickly retreated back further into the store, keeping his gun pointed at the returning Decedent.

Suddenly, the Decedent leapt toward Suhib, again batting the gun aside but this time charging forward into the store, knocking Suhib backward and pinning him against the freezer units along the wall. As Suhib slipped to one side, the Decedent continued to reach for him, but too slowly. Suhib fired repeatedly as he backed away, striking the Decedent twice in the head, fatally wounding him. (*See generally* Order (Granting Immunity), attached as Exhibit A).

The Immunity Hearing

On June 3, 2021, a hearing was held to determine whether Suhib was entitled to immunity from criminal and civil prosecution with regard to the subject shooting under South Carolina's Stand Your Ground law. 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 Suhib'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 Suhib "is entitled to immunity under the provisions of the Protection of Persons an Property Act, South Carolina Code Section 16-11-440(C)." (Order at 8, 9).

In reaching this ruling, the court found that Suhib "*was not at fault in bringing on the difficulty*, rather he was *acting lawfully in his place of business* when [the Decedent] initially approached him;" that Suhib under the circumstances "had the right to demand that [the Decedent] leave;" that "[Decedent's] continuous refusal to leave coupled with his aggressive actions, *gave [Suhib] Yousef a legitimate reason to threaten the use of force*;" that "[Decedent], after temporarily leaving, re-entered the store, displaying a clear intent to commit an Assault and Battery upon [Suhib] Yousef;" and that "[w]hen [the Decedent] physically attacked [Suhib] Yousef, he placed [Suhib] Yousef in reasonable fear of imminent serious injury," "g[i]v[ing] [Suhib] Yousef *the statutory right to use lethal force*." *Id.* at 8, 9 (emphases added).

Thus, by order of the Charleston County Court, civil immunity under S.C. Code Section 16-11-440(C) bars civil prosecution on the basis of the shooting, which was legally justified.

ARGUMENT

The South Carolina Protection of Persons and Property Act (“PPPA” or the “Act”), also commonly known as the “Stand My Ground Law”, is codified at S.C. Code Ann. §§ 16-11-410 to -450. *See Carter v. Bryant*, 429 S.C. 298, 304, 838 S.E.2d 523, 527 (Ct. App. 2020). As the PPPA itself states, the Act is 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). With respect to wrongful death claims, the Court of Appeals has recognized the broad legislative intent of the PPPA to grant immunity:

“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’

....

The Act’s language is clear and unambiguous that it was the legislature’s intent to extend immunity under the Act from both criminal prosecution and civil actions to law-abiding citizens who were justified in their use of deadly force.

Singletary v. Shuler, 433 S.C. 600, 607–608 861 S.E.2d 591, 595 (Ct. App. 2021) (emphasis in original) (citing S.C. Code § 16-11-420(A), (B); § 16-11-450(A)). As the *Shuler* court went to explain, this immunity serves as an “absolute bar” to civil suit:

[T]he legislature intended to create a true immunity, not merely an affirmative defense, for law-abiding citizens who seek to invoke protection under the Act. 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 and must be decided prior to trial.

Id. at 608 (citing *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011) (citations omitted) (emphasis added)).¹

I. Defendants are entitled to immunity under the PPPA because a grant of such immunity prevents derivative claims against third parties.

Because a grant of immunity under the Act is “a true immunity” and “an absolute bar” to prosecution (*id.*), Plaintiff’s attempt to impose civil liability on the basis of the shooting is barred at the outset. To hold otherwise would undermine the legislative intent made clear where 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.*’” *Singletary*, 433 S.C. at 607 (Ct. App. 2021) (emphasis in original) (quoting S.C. Code § 16-11-420(B)). If law-abiding persons are to protect themselves, families, and others from attackers *without fear of civil action*, the grant of immunity from civil action must extend beyond the law-abiding persons themselves to also bar derivative claims against their employers, companions, family members, and others who might otherwise be exposed to the threat of liability.

In examining the derivative nature of immunity under the Act for parties besides the person who exercised lethal force, the recent unpublished opinion by the Court of Appeals in *State v. Daniel Calderon* is instructive. *See State v. Daniel Calderon*, No. 2018-001707, 2021 WL 4077014 (S.C. Ct. App. Sept. 8, 2021). In *Calderon*, the defendant had been criminally

¹ *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).

prosecuted as an accessory after the fact to a felony based on his having driven the car in which his companion escaped the scene after committing a deadly shooting. Calderon's companion, the shooter, had not yet sought immunity under the Act, but Calderon argued in the trial court that he was nonetheless entitled to "derivative immunity from prosecution pursuant to the [PPPA] based upon his co-defendant's entitlement to immunity for the underlying murder." *Id.* at *1. The trial court determined that based on the evidence, the shooter was not entitled to immunity, and that Calderon was accordingly not immune from prosecution as an accessory to his crime. *Id.*

On appeal, the Court of Appeals implicitly upheld Calderon's theory of derivative immunity, as it denied the appeal not on the basis that PPPA immunity does not extend beyond the party using lethal force, but rather on the basis that "[the Court of Appeal's] review of the record shows that the trial court applied the proper burden of proof [for immunity under the Act], and the evidence supports the determination that Appellant's co-defendant[, the shooter,] was at fault for bringing on the difficulty." *Id.* The ruling thus assumed the legal proposition that if Calderon's co-defendant, the shooter, were entitled to immunity, then by extension so would Calderon. When the Court denied Calderon's appeal for immunity, it did so on the absence of immunity for the shooter, not on the inapplicability of derivative immunity under the Act to third parties like Calderon. By so ruling, the Court of Appeals implicitly recognized derivative immunity under the Act for parties besides an immunized shooter.

Accordingly, if the view of the Court of Appeals 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 (Defendant Mahmoud Yousef) and his uncle's store where Suhib was working (Defendant Green's Grocery) on the basis of Suhib's lawful exercise of reasonable force. 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. Therefore, Plaintiff's claims against Defendants should be dismissed on the basis of the grant of PPPA immunity to Suhib with respect to this incident.

II. Plaintiff's vicarious liability theory must fail because Suhib's conduct was found reasonable.

Derivative immunity in this case is not only necessary to uphold the legislative intent of the Act, but it is also a logical necessity based upon the Charleston County Court's immunization of Suhib's actions and its related factual findings, which were established by a preponderance of the evidence.² Suhib was not at fault, had the right to demand the Decedent leave the store, had a legitimate reason to threaten the use of force, was placed in reasonable fear of imminent serious injury, and had the statutory right to use lethal force. *Id.*

Given these facts, Plaintiff's claims collapse as a matter of law. Plaintiff alleges that Defendants were negligent because they are vicariously "liable for the actions and omissions of... [Suhib] Yousef," but Suhib's actions were reasonable and therefore not in breach of any duty. (Complaint at ¶65). Contrary to Plaintiff's Complaint, 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

² In the subject incident, Suhib "was not at fault in bringing on the difficulty, rather he **was acting lawfully in his place of business** when [the Decedent] initially approached him;" under the circumstances he "**had the right to demand that [the Decedent] leave;**" "[Decedent's] continuous refusal to leave coupled with his aggressive actions, gave [Suhib] Yousef **a legitimate reason to threaten the use of force;**" "[Decedent], after temporarily leaving, re-entered the store, displaying a clear intent to commit an Assault and Battery upon [Suhib] Yousef;" and "[w]hen [the Decedent] physically attacked [Suhib] Yousef, he placed [Suhib] Yousef in **reasonable fear of imminent serious injury,**" "g[i]v[ing] [Suhib] Yousef **the statutory right to use lethal force.**" (Order dated June 23, 2021 at 8, 9) (emphases added).

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) (*cf.* Complaint at ¶¶66). Plaintiff’s numerous allegations to the effect that Defendants failed to adequately train or supervise Suhib or erred in entrusting him with the weapons he used to defend himself (*see, e.g.*, Complaint at ¶¶78, 97, 101, 110, 113, 131) fail because Plaintiff’s injuries were the result of *reasonable* conduct on the part of Suhib. As a result, Plaintiff cannot show breach of duty to support a finding of negligence or gross negligence on the part of Defendants, and therefore all of Plaintiff’s claims against Defendants fail as a matter of law.

III. Plaintiff’s claims fail because there are no actionable damages as there was no wrongful death.

Neither can Plaintiff show actionable damages in this case, because the person who caused the injury has been immunized from civil prosecution and declared to have been exercising his statutory right to use lethal force in the face of Plaintiff’s own aggression. Plaintiff’s claims for wrongful death, for example (*see, e.g.*, Complaint at ¶¶73, 105, 123, 141), lack a wrongful death for which to recover. (*See 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). Because the Decedent was found to be entirely at fault for this incident, he suffered no damages upon which he or his beneficiaries can maintain an action against other parties. For this reason, too, Plaintiff’s claims fail as a matter of law.

CONCLUSION

With the enactment of the Protection of Persons and Property Act, the General Assembly intended that the fear of civil action not hinder law-abiding persons from the exercise of their

right to defend themselves and others with reasonable force. If this intent is to be upheld, a grant of immunity under the PPPA must shield the law-abiding person's employer, family, and friends from derivative claims based upon the immunized use of reasonable force. Indeed, where a grant of immunity has been made, such derivative claims based on the immunized conduct are rendered logically nonviable on multiple grounds. For these reasons, Defendants respectfully request that this Court issue an order granting this Motion to Dismiss, dismissing with prejudice Plaintiff's claims against Defendants and providing any such other relief as the Court may deem appropriate.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/ Mark V. Gende
Mark V. Gende
Brandon R. Gottschall
Daniel Q. Atkinson
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

April 15, 2024

EXHIBIT A

FILED

STATE OF SOUTH CAROLINA,)
COUNTY OF CHARLESTON)
STATE OF SOUTH CAROLINA,)
CLERK OF COURT)
WARRANT NUMBERS: 2020A1010900392;
2020A1010900393

Plaintiff,)
-versus-)
SUHIB YOUSEF,)
Defendant.)

ORDER

On June 3, 2021, this Court held a hearing in the matter of State of South Carolina v. Suhib Yousef (Yousef). The hearing was held at the Charleston County Courthouse under guidelines approved by the Charleston County Clerk of Court and the Chief Justice of the South Carolina Supreme Court.

Present (in person) was the movant, Suhib Yousef, his counsel Andrew J. Savage, III, and Assistant Solicitors Benjamin Chad Simpson and Nicholas Uricchio. The Court authorized immediate members of the victim's family to attend and other members and friends to observe the proceedings virtually. A member of Yousef's family was in attendance to observe and facilitate communications between Yousef and his defense team.

Leila Omar (Omar) was present to provide translations for the Court as Yousef has limited ability to communicate in English. Yousef's home is Amman, Jordan, and his primary language is Arabic. Omar has been approved by South Carolina Court Administration to translate English-Arabic/Arabic-English in courts of this state.

RMS/1

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By *[Signature]*
DEPUTY CLERK

This hearing was held at the request of Yousef who believes he is entitled to a dismissal of the pending charges in accordance with statutory entitlements provided by the South Carolina Code Sections 16-11-410, *et. seq.*, "Protection of Persons and Property Act." His request for a *Duncan* hearing was filed on November 6, 2020. The scheduling of this hearing was delayed (without opposition) due to Coronavirus related issues and a substitution by the State of its primary prosecutor.

BACKGROUND

Yousef legally entered the United States in March of 2020 to visit relatives living in Charleston, South Carolina. His visa was valid until April of 2020, but due to the worldwide COVID-19 pandemic, he was unable to leave as planned. Unable to return to Jordan, he sought employment under the supervision of his uncle Mahmood Yousef who owned a small convenience store at the corner of President and Bogard Streets in Charleston. Despite being the victim of an armed robbery at that location on July 14, 2020, Yousef continued to work for his uncle while waiting for the resumption of international flights to Amman, Jordan.

On September 28, 2020, Yousef was working at his uncle Mahmood's store when close to 6:00 p.m., a confrontation occurred between Yousef and a customer (Wilson). Yousef repeatedly asked Wilson to leave, and when he refused, Yousef used a progressively more resolute threat of force to motivate Wilson to leave. Although Wilson momentarily left the store, within seconds he suddenly and aggressively returned, and violently attacked Yousef. Yousef reacted by shooting Wilson at close range, striking him twice. Wilson died from his injuries the following day. Yousef was arrested that evening (September 28, 2020) by the City of Charleston Police Department. He has been detained without bond since his arrest.

Rmo/z

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By *[Signature]*
 DEPUTY CLERK

EVIDENCE

Attorneys for the State and Defense agreed to present all stipulated relevant evidence to the Court for judicial review prior to the hearing. At the June 3, 2021, hearing, the same material was formally entered into evidence by Yousef without objection. The evidence I have reviewed is as follows:

I. DOCUMENTS

1. CAD Incident Detail Report
2. Safetouch Alarm Activity Report
3. Translations of Yousef's Telephone Calls
 - a. City of Charleston Police Department Case Supplemental Report prepared by Det. Crockett
 - b. Transcript of First Call to Mahmood Yousef (uncle)
(Surveillance Tape Time: 17:53:35 - 17:55:16)
 - c. Transcript of Second Call to Mahmood Yousef (uncle)
(Surveillance Tape Time: 17:55:52 - 17:56:11)
 - d. Transcript of Third Call to Ali Yousef (uncle)
(Surveillance Tape Time: 17:56:26 - 17:56:54)
 - e. Transcript of Fourth Call to Imad Yousef (uncle)
(Surveillance Tape Time: 17:57:09 - 17:57:20)
 - f. Transcript of Fifth Call to Ali Yousef (uncle)
(Howell BWC Time: 18:01:34 - 18:02:03)
 - g. Transcript of Sixth Call to Mahmood Yousef (uncle)
(Howell BWC Time: 18:02:05 - 18:03:07)
 - h. Transcript of Seventh Call to Imad Yousef (uncle)
(Howell BWC Time: 18:04:09 - 18:04:21)

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By 
DEPUTY CLERK

RmD/3

4. Coroner's Report
5. Autopsy Report
6. City of Charleston Business License for Quick Stop Market, LLC
7. Copies of Suhib Yousef's ID Cards
8. Copies of Suhib Yousef's Passport and Visa
9. Health Alert issued by Overseas Security Advisory Council regarding flight restrictions to Jordan
10. Health Alert issued by Overseas Security Advisory Council regarding reopening of flights to Jordan
11. Transcript of the initial verbal exchange between Wilson and Yousef

II. VIDEOS

1. All Camera View- full video- Greens Surveillance (Original Surveillance Video)
2. Camera #5
 - a. Camera #5 - Full Video with Audio
 - b. Camera #5 - Slow Motion Select 17:51:40 - 17:53:06
 - c. Camera #5 Still Photo of Wilson making gun gesture at Yousef
 - d. Camera #5 Still Photo of Wilson making gun gesture at Yousef
 - e. Camera #5 Still Photo of Wilson shoving items at Yousef
 - f. Camera #5 Still Photo of Wilson spitting at Yousef; Yousef holding machete
3. Camera #8 Full Video with Audio
4. Cameras #7 and #8 Side-by-Side video (with audio)
5. Camera #7

AmD/4

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By 
DEPUTY CLERK

- a. Camera #7 Full Video (No Audio)
 - b. Camera #7 Still Photo of Yousef at Door; Wilson Slapping At Gun
 - c. Camera #7 Still Photo of Wilson Charging Through Door at Yousef
 - d. Camera #7 Still Photo of Wilson Charging Through Door at Yousef
 - e. Camera #7 Still Photo of Wilson Attacking Yousef
6. Camera #9
- a. Camera #9 Full Video (No Audio)
 - b. Camera #9 Still Photo of Yousef Pressing Panic Button
7. Camera #10
- a. Camera #10 Full Video (No Audio)
 - b. Camera #10 Still Photo of Wilson at Counter Door
 - c. Camera #10 Still Photo of Wilson at Counter Door
8. Camera #3
- a. Camera #3 Full Video (with Audio)
 - b. Camera #3 Still Photo of Wilson outside of store
9. City Camera
10. Body Worn Camera - Officer A. T. Howell

In light of the agreement by the State and Yousef, this Court has had ample opportunity to closely examine all of the evidence. No witnesses were presented at the hearing by either party, nor did I find that witness testimony was required to determine all relevant and material facts.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By 
DEPUTY CLERK

Based on my review of the evidence, and assisted by the arguments of counsel, I make the following findings:

FINDINGS OF FACTS

1. Green's Grocery is a licensed business within the City limits of Charleston, South Carolina and was so on September 28, 2020.
2. Yousef was an employee of Green's Grocery and had the authority to manage, supervise and direct all activities at Green's Grocery on September 28, 2020.
3. Green's Grocery on September 28, 2020, had a functioning surveillance system consisting of nine cameras, several with an audio component. The surveillance cameras provided real time audio and video recording of all store activity including the entire incident which is the subject of this litigation, and that the video presented a clear picture of the entire incident, and that the audio was easily understood.
4. When Wilson entered Green's Grocery, several customers were actively shopping. The atmosphere was calm and business-like.
5. Wilson approached Yousef who was operating the store cash register. Yousef was separated from his customers by a counter. Business was brisk. Yousef was the only employee in the store. Yousef was packaging purchased items and accepting payments in cash, credit/debit and EBT cards.
6. Wilson approached Yousef to purchase a cell phone charger and handed Yousef a credit card for payment. As Yousef processed the sale, Wilson suddenly grabbed the charger and his credit card and turned toward the exit as if he were about to leave. When Wilson did not leave, the following exchange took place between Yousef and Wilson:

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Shirley Wilson
DEPUTY CLERK

Yousef: Don't play with me, man.
 Wilson: It's what I do.
 Yousef: You hear?
 Wilson: It's what I do.
 Yousef: You hear?
 Wilson: Huh?
 Yousef: Don't play with me.
 Wilson: Or what?
 Yousef: You hear?
 Wilson: Or what?
 Yousef: I don't serve you. Get out of the store.
 Yousef: **Get out! Get out of the store! ***

(* bold indicates a raised voice)

7. Following this exchange, when Yousef returned Wilson's credit card and again directed him to leave. Wilson immediately became aggressive in his language and his posture and challenged Yousef's authority to evict him. Wilson forcefully reached over the counter to take possession of the unpaid charger all the while using intimidating language and directing threatening gestures at Yousef.

8. Wilson became increasingly combative and persistent in his refusal to leave even when Yousef presented a taser. Instead of leaving, Wilson walked further into the store (away from the exit), all the while shouting threats at Yousef.

9. Yousef found the threatened use of a taser was ineffective, and he thereafter presented a machete. This too proved ineffective. Despite more than thirty (30) demands from Yousef that he leave, Wilson refused to vacate the store and continued to constantly challenge Yousef.

10. Instead of leaving, Wilson shoved numerous items off the counter toward Yousef and spat at him before slowly walking toward the exit door. Twice Wilson hesitated, turned around, and when he saw Yousef pick up a pistol, stated "yeah, where you think you going, nowhere, that shit

7

RMB/7

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By: *[Signature]*
 DEPUTY CLERK

don't scare me."

11. Yousef then followed Wilson to the store's exit, continuously pointing his firearm and shouting to the unarmed Wilson to get out.

12. Wilson eventually opened the store door and began to exit, but as he did, he turned around and forcefully struck Yousef's hand that was holding the gun. As Wilson paced immediately outside the entrance, Yousef remained inside continuing to admonish Wilson to leave.

13. Within seconds, Wilson violently rushed back into the store and physically attacked Yousef. According to the evidence presented, 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.

14. The power of Wilson's attack knocked Yousef backward, pinning him against a freezer unit in the store, thereby placing Yousef in reasonable fear of great bodily injury such as a person of ordinary firmness and courage would feel. During the attack, Yousef shot and critically injured Wilson. The entrance wounds (2) were located at the right and left frontoparietal of Wilson's scalp. Wilson died the following day.

LAW/ANALYSIS

Yousef has proved by a preponderance of the evidence that he is entitled to immunity in accordance with the provisions of the Protection of Persons and Property Act [South Carolina Code Section 16-11-440(C)]. 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. When Wilson (actually or

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Julie J. Armstrong
DEPUTY CLERK

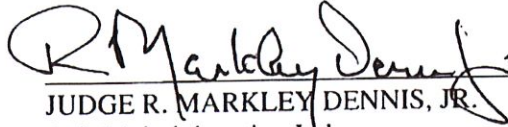
RWD/8

pretending) to shoplift a charger, Yousef firmly but respectfully told Wilson "Don't play with me." Yousef, apparently believing that Wilson was disrupting his business, had the right to demand that Wilson leave. Wilson immediately became belligerent. 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 reasonable fear of imminent serious injury. Accordingly, Wilson's actions gave Yousef the statutory right to use lethal force.

CONCLUSION

Based upon the preponderance of evidence, I find that Yousef is entitled to immunity under the provisions of the Protection of Persons and Property Act, South Carolina Code Section 16-11-440(C), and that he is therefore entitled to have his charge of Murder (Arrest Warrant Number 2020A1010900392) dismissed.

AND, IT IS SO ORDERED!


 JUDGE R. MARKLEY DENNIS, JR.
 Chief Administrative Judge
 Ninth Judicial Circuit

Charleston, South Carolina

June 23, 2021

2021 JUN 24 AM 9:20
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY Julie

FILED

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.

By Quincy Mason
 DEPUTY CLERK

Handwritten: PMS/9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE 9 TH JUDICIAL CIRCUIT
	)	
Antoinet Moore, individually and as Personal	)	C/A No.: 2023-CP-1002924
Representative of the Estate of David J.	)	
Wilson,	)	
	)	
Plaintiff,	)	
	)	MEMORANDUM IN OPPOSITION
v.	)	TO DEFENDANTS' MOTION TO
	)	DISMISS
Green's Grocery, LLC, and Mahmoud A.	)	
Yousef,	)	
	)	
Defendants.	)	
	)	

Antoinet Moore, individually and as Personal Representative of the Estate of David J. Wilson, by and through her undersigned counsel, files this Memorandum in Opposition to Defendant Green's Grocery, LLC ("Defendant Green's") and Defendant Mahmoud A. Yousef's ("Defendant Yousef") Motion to Dismiss.

BACKGROUND

Defendant Green's is a convenience store located in Charleston County and is owned and operated by Defendant Yousef. On September 28, 2020, Decedent Wilson entered Defendant Green's intending to buy a cell phone charger. At that time, Defendant Yousef was not present and his nineteen-year-old nephew was working as the clerk (hereinafter "the Clerk").

At some point, Decedent Wilson approached the counter and attempted to purchase a cell phone charger. In doing so, Decedent Wilson handed the cellphone charger and his debit card to the Clerk before jokingly feigning an attempt to walk away without paying for the item, causing others in the store to laugh at the encounter. However, the Clerk became frustrated and embarrassed, telling Decedent Wilson "Don't play with me, man." Decedent Wilson responded, "That's what I do," while continuing to smile at the Clerk. At that point, the Clerk shouted for

Decedent Wilson to get out of the store instead of processing the payment. Decedent Wilson, thinking the Clerk was joking with him, continued to smile and reached for the charger. The Clerk then pulled the charger back and screamed for Decedent Wilson to get out of the store.

Decedent Wilson and the Clerk then engaged in a back-and-forth, with Decedent Wilson ultimately telling the Clerk to watch his tone. The Clerk then retrieved a long, black taser and activated the electric arc. The two engaged in further argument before the Clerk retrieved a machete. The Clerk then raised the machete up near his head in a threatening posture and challenged Decedent Wilson to touch him. Decedent Wilson responded by knocking over some items on the register, at which point the Clerk swung the machete at Decedent Wilson. Decedent Wilson then spit at the Clerk before turning to exit the store.

Decedent Wilson walked toward the front door to exit the store but kept his eye on the Clerk. Decedent Wilson then witnessed the Clerk put down the machete and retrieve a handgun, for which he did not possess a concealed weapons permit. At that point, Decedent Wilson mumbled “What you gonna do?” and the Clerk responded by racking the handgun and chambering a round. The Clerk then came from behind the counter and pursued Decedent Wilson through the store, pointing the gun at him. When Decedent Wilson saw that the Clerk had a gun pointed at his head, he exited the store. After Decedent Wilson exited the store, the Clerk followed to the front door, held the door open with his right foot, and continued pointing the gun at Decedent Wilson.

Decedent Wilson then turned and unsuccessfully tried to swat the gun out of the Clerk’s hand. At this point, Decedent Wilson was outside the store and the Clerk continued to hold the door open with his right foot while pointing the gun at Decedent Wilson. While the two were in this position, Decedent Wilson repeatedly told the Clerk to stop pointing the gun at him and the Clerk continued to scream at Decedent Wilson to get out of the store. Decedent Wilson then rushed

the Clerk in an attempt to disarm him, but he stepped aside and repeatedly shot Decedent Wilson. Throughout the encounter, the Clerk never attempted to call 911 or activate the store's silent alarm, nor did he attempt to lock the front door once Decedent Wilson had exited the store.

Defendant Yousef spoke with officers from the Charleston County Police Department following the incident. Defendant Yousef indicated that he had last seen the Clerk, his nephew, several hours before the incident and that he was at his brother's mechanic shop when the Clerk called about the shooting. He also explained that the Clerk was his brother's son from Jordan who came to visit before COVID and got locked down in Charleston, and that he had been coming to the store with him and working.

Defendant Yousef further detailed a prior robbery occurring at the store months before Decedent Wilson was shot. According to Defendant Yousef, the Clerk was there at the time of the robbery, the robbery was the first time the clerk had seen a gun, and Defendant Green's and Defendant Yousef did not keep a gun in the store beforehand. Following the robbery, the Clerk got "so scared" and started acting weird. Defendant Yousef took him to a therapist because he was "scared of everybody" and would wake up in the middle of the night to make sure all of the doors were locked. However, Defendant Yousef only took the Clerk to see the therapist one time. Defendant Yousef also took the Clerk to the gun range, showed him how to use a gun, and obtained a gun for the store. Neither Defendant Yousef nor the Clerk obtained a concealed weapons permit (CWP) for the Clerk as required by South Carolina law.

Additionally, Defendant Yousef explained that the Clerk no longer came in to work at the store following the robbery, so he started making the Clerk come to the store again. Defendant Yousef explained that after coming back, the Clerk would jump every time a customer entered the

store. Defendant Yousef claimed that the Clerk eventually returned to normal and that the incident involving Decedent Harris occurred once the Clerk “got normal again.”

Thereafter, Plaintiff filed her Summons and Complaint against Defendants on June 15, 2023. Defendants now seek the dismissal of Plaintiff’s Complaint based on the circuit court’s ruling that the Clerk was immune from prosecution pursuant to the South Carolina Protection of Persons and Property Act (“the Act”). However, such a ruling in favor of a non-party does not support dismissal of Plaintiff’s Complaint.

STANDARD

Defendants bring their Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Pursuant to the Rule, “a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action.” *Ashley River Props. I, LLC v. Ashley River Props. II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007). “[I]n considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” *Id.* (quoting *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004)). Thus, “[a] motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” *Id.* at 278, 648 S.E.2d at 298 (quoting *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003)). Ultimately, “[t]he question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Cowart v. Poore*, 337 S.C. 359, 364, 523 S.E.2d 182, 184–85 (Ct. App. 1999).

ARGUMENT

Defendants' argument that the circuit court's ruling granting immunity to the clerk under the Act necessitates dismissal of the instant action is without merit, as the Act does not grant civil immunity to third-parties and Defendants cannot satisfy the elements of collateral estoppel.

I. The civil immunity provided by the Act does not extend to third parties who were not involved in the use of deadly force.

Pursuant to a plain reading of the Act, civil immunity does not extend to anyone other than the party who employed deadly force.

"All rules of statutory construction are servient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used which must be construed in the light of the intended purpose." *Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963). Additionally, "[o]ne of the primary rules in the construction of a statute is that the words used therein should be taken in their ordinary and popular signification unless there is something in the statute requiring a different interpretation." *Id.* Ultimately, "[i]f a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning." *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

Pursuant to section 16-11-450 of the South Carolina Code, "*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.*" (emphases added). When looking at the plain language of the statute, the Act does not purport to extend immunity from civil action to anyone other than a "person who uses deadly force as permitted by the provisions of this article or another applicable provision of law." As such, the Act does not provide civil immunity to third-parties for another's use of deadly

force. Thus, Defendants cannot claim that the circuit court's ruling providing immunity to the clerk necessitates dismissal of this action.

Defendants' assertion that the Act requires barring derivative claims against an immunized party's employers, companions, and family members is not supported by South Carolina law. This broad assertion, if accepted, would result in the grant of immunity to those who may have engaged in culpable conduct. For example, imagine that two friends are hanging out together when Friend A throws a bottle at a third individual. That individual, believing that Friend B threw the bottle, draws a weapon and prepares to attack Friend B. If Friend B shoots the individual, he may be entitled to immunity under the Act. However, under Defendants' theory of the law, Friend A would be entitled to derivative liability even though Friend A's act in bringing about the difficulty would foreclose his own entitlement to self-defense. *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.").

Furthermore, Defendants have cited no law in support of their argument that the grant of immunity to the Clerk extends civil immunity to Defendants, and their reliance on *State v. Daniel Calderon*,¹ is misplaced. First and foremost, that opinion was not published and is not binding on this Court. *See Lanham v. Blue Cross and Blue Shield of S.C., Inc.*, 338 S.C. 343, 349, 526 S.E.2d 253, 256 (Ct. App. 2000) ("[U]npublished opinions have no precedential value."). Second, the Court of Appeals' failure to address derivative liability does not constitute an implicit holding recognizing wide-ranging derivative liability. Rather, the Court determined that the appellant's co-defendant was not entitled to immunity and ended its analysis there, as it was dispositive of the

¹ No. 2018-001707, 2021 WL 4077014 (S.C. Ct. App. Sept. 8, 2021).

issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (indicating that an appellate court need not address remaining issues when disposition of prior issue is dispositive).

Moreover, there is a crucial fact that distinguishes *Calderon* from the facts at bar. Calderon was criminally charged as an accessory after the fact to murder and therefore was alleged to have participated in the crime. “Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.” *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) (internal quotation marks omitted) (quoting *State v. Langley*, 334 S.C. 643, 648–49, 515 S.E.2d 98, 101 (1999)). Accordingly, “[a]ny person who is present at a homicide, aiding and abetting, *is guilty of the homicide as a principal*, even though another does the killing.” *Id.* at 480, 697 S.E.2d at 584 (emphasis added) (quoting *State v. Ziegler*, 364 S.C. 94, 103, 610 S.E.2d 859, 864 (Ct. App. 2005)). Thus, there are two lines of reasoning for the potential extension of derivative immunity from criminal prosecution to an accomplice under the Act. First, if the accomplice steps into the shoes of the principal, immunizing the principal would therefore immunize the accomplice. Second, if the principal is entitled to immunity, the State could not satisfy the elements of accomplice liability. In other words, if the use of deadly force is determined to be justified, then there is no “crime” to aid or abet.

Notably, the instant case does not implicate immunity from criminal prosecution for either Defendant. Additionally, under the claims alleged by Plaintiff, neither Defendant steps into the shoes of the Clerk or becomes the principal in the shooting such that immunity might apply. Rather, Plaintiff has alleged that the Defendants were negligent in the operation of Green’s Grocery, by way of their own conduct separate and apart from the shooting, such that it created

the conditions resulting in the use of deadly force. Specifically, Defendants permitted the Clerk, a person who does not have a concealed weapons permit (CWP) to carry a concealed weapon. Here, Defendants failed to ensure that the Clerk met the requirements of S.C. Code Ann. § 23-31-215, including that the Clerk signed a completed application with his picture identification, that he proved his residency, that he provided proof of CWP training, that he had proof of sufficient vision, and that he was fingerprinted. This negligence was the direct and proximate cause of the death of Decedent Wilson. As such, extending civil immunity to Defendants under the Act would be improper.

II. Plaintiff cannot be bound by the findings of fact from the immunity hearing as she has not had a full and fair opportunity to litigate the issues in this matter and the issues raised in the criminal action are distinct from those raised in the current action.

Defendants seemingly rely on collateral estoppel in arguing that the findings of a “court of competent jurisdiction” are binding on this Court in this action, requiring dismissal of Plaintiff’s Complaint. However, Defendants’ reliance is misplaced, as Plaintiff has not had an opportunity to litigate her claims against Defendants, and the issues arising in this action are distinct from those arising in the clerk’s criminal proceedings.

“The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). “[M]odern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Snavelly v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008). “Thus, the primary concerns of our courts in applying collateral estoppel is . . . whether a potentially precluded

party had a full and fair opportunity to litigate the issues in a prior action.” *Id.* “Due process prohibits estopping litigants who never had a chance to present their evidence and arguments on a claim, despite other adjudications of the same issue that stand squarely against their position.” *Wade v. Berkeley Cty.*, 330 S.C. 311, 317–18, 498 S.E.2d 684, 687 (Ct. App. 1998).

Here, Plaintiff had no opportunity to previously litigate the issues raised in her Complaint. The findings of fact and legal conclusions relied on by Defendants were made by the Circuit Court in the criminal action against the Clerk, to which Plaintiff was not a party. Accordingly, Plaintiff had no opportunity to offer evidence, raise issues, or make arguments throughout the criminal matter, including the immunity hearing at issue. Accordingly, because Plaintiff has not had a full and fair opportunity to litigate the issues in her Complaint, she cannot be collaterally estopped from raising any issue determined by the Circuit Court during the immunity hearing. As such, Defendants’ Motion to Dismiss should be denied.

Moreover, the State’s participation in the criminal matter does not satisfy Plaintiff’s “full and fair opportunity to be heard” because Plaintiff and the State are not in privity. “Privity deals with a person’s relationship to the subject matter of the previous litigation, not to the relationships between entities.” *Wade*, 330 S.C. at 317, 498 S.E.2d at 687. “Having an interest in the same question or in proving or disproving the same set of facts does not establish privity.” *Id.* “Nor is privity found when the litigated question might affect a person’s liability as a judicial precedent in a subsequent action.” *Id.* “Even one whose interest is almost identical to that of a party, but who does not claim through him, is not in privity with that person.” *Id.*

The State did not represent the interests of Plaintiff or her legal rights at the Clerk’s immunity hearing. Rather than seeking to determine the civil liability of Defendants for Decedent Wilson’s death, the State represented its own interest in prosecuting crimes and in determining the

Clerk's criminal liability. Accordingly, the State's prosecution of the Clerk and its attempt to deny him immunity under the Act did not sufficiently represent Plaintiff's interests such that she should be estopped in the instant action. *See, e.g., Carrigg v. Cannon*, 347 S.C. 75, 82, 552 S.E.2d 767, 771 (Ct. App. 2001) ("To be in privity, Cannon's legal interests must have been represented or litigated during Heider's criminal proceeding and, clearly, this was not the case. Cannon's legal interest in the civil action stands in sharp contrast to Heider's legal interest in the criminal case.").

Additionally, collateral estoppel would not apply because many of the issues raised by Plaintiff were not actually litigated in the criminal proceeding. Plaintiff has alleged that the Defendants were negligent in the operation of Green's Grocery such that it created the conditions resulting in the use of deadly force. Thus, the Circuit Court's ruling that the Clerk was justified in using deadly force did not resolve whether Defendants were negligent in the management and operation of Green's Grocery, or whether such negligence proximately caused Decedent Wilson's death. Rather, there are myriad issues that must be determined by a jury, including but not limited to whether Defendants were negligent for leaving a firearm with an unlicensed and unsupervised employee, whether Defendants were negligent for leaving multiple weapons with an unsupervised employee displaying trauma symptoms from a prior robbery, or whether Defendants negligently trained the Clerk on proper ejectment of patrons on Defendant Green's premises. Ultimately, there are numerous issues in Plaintiff's action that were not raised or resolved in the criminal action and are therefore not precluded by collateral estoppel. *See Carolina Renewal, Inc.*, 385 S.C. at 554, 684 S.E.2d at 782 ("The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) *actually litigated in the prior action*; (2) *directly determined in the prior action*; and (3) necessary to support the prior judgment." (emphases added)). Consequently, Defendants' Motion to Dismiss should be denied.

III. The Circuit Court's immunity determination does not foreclose Plaintiff's ability to prosecute her claims against Defendants.

Defendants argue that Plaintiff's claims "collapse as a matter of law" because (1) Plaintiff cannot rely on vicarious liability for the negligence claims, and (2) there was no "wrongful death" because the Circuit Court determined that Decedent Wilson was at fault for the incident. However, as explained above, Defendants cannot demonstrate that Plaintiff should be collaterally estopped regarding any issue determined during the Clerk's immunity hearing, and Defendants have not even attempted to demonstrate that collateral estoppel would apply. As such, the Circuit Court's factual findings are not binding on this Court and cannot be applied to foreclose any theory of liability raised by Plaintiff. *See Wade*, 330 S.C. at 317–18, 498 S.E.2d at 687 ("Due process prohibits estopping litigants who never had a chance to present their evidence and arguments on a claim, despite other adjudications of the same issue that stand squarely against their position.").

Moreover, Plaintiff would point out that her negligence-based claims do not rely solely on vicarious liability. While Plaintiff does allege that Defendants are liable for the actions and omissions of their employee, Plaintiff further alleges a litany of Defendants' own actions and inactions that constitute negligence. Such conduct includes, but is not limited to, Defendants' failure to supervise and train the Clerk, Defendants' failure to take reasonable efforts to ensure Decedent Wilson's safety on its premises, Defendants' failure to ensure that patrons were not threatened with multiple weapons while on their premises, Defendants' failure to ensure that employees with concealed weapons had the appropriate training and permits, and Defendants' failure to ensure that employees were mentally and emotionally fit to be left alone with weapons.

CONCLUSION

Based on the foregoing, Defendants' Motion to Dismiss should be denied, because (1) the Protection of Persons and Property Act does not extend civil immunity to third persons; (2)

collateral estoppel does not apply to the issues raised in Plaintiff's Complaint because Plaintiff did not have a full and fair opportunity to be heard in the criminal action; and (3) there are issues raised in Plaintiff's Complaint that were not actually litigated in the criminal action.

Respectfully submitted this 15th day of April, 2024.

STROM LAW FIRM, LLC

s/ Mario A. Pacella

Bakari T. Sellers (Bar No. 79714)
Mario A. Pacella (Bar No. 68488)
Amy E. Willbanks (Bar No. 69331)
Matthew B. Robins (Bar No. 103685)
6923 N. Trenholm Road, Suite 200
Columbia, South Carolina 29206
Phone: (803) 252-4800
Email: bsellers@stromlaw.com
mpacella@stromlaw.com
awillbanks@stromlaw.com
mrobins@stromlaw.com

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

Antoinet Moore, Individually and as) Civil Action No.: 2023CP1002924
Personal Representative of the Estate)
of David J. Wilson,)

Plaintiff,)

v.)

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

Defendants.)

**DEFENDANTS' REPLY
TO PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

COME NOW THE DEFENDANTS, by and through their undersigned counsel, to briefly reply to Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss ("Plaintiff's Memorandum") (filed April 15, 2024).

Plaintiff's Memorandum, attempting to distinguish the Court of Appeal's consideration of derivative immunity under the Protection of Persons and Property Act ("PPPA") in *Calderon*,¹ completely misunderstands the Court of Appeal's holding in *Calderon* by conflating accessory after the fact to murder with the significantly distinct charge of accomplice liability for murder. In *Calderon*, the defendant Calderon was convicted as an accessory after the fact to murder due to his having driven the car in which his co-defendant escaped the scene after a shooting. *See id.* Calderon argued that his co-defendant was entitled to self-defense immunity as to the shooting under the PPPA, and that because of this, Calderon himself was entitled to derivative immunity from prosecution in connection with the shooting. *See id.*

¹ *State v. Daniel Calderon*, No. 2018-001707, 2021 WL 4077014, at *1 (S.C. Ct. App. Sept. 8, 2021).

In the language of the Court of Appeals, Calderon “appeal[ed] from his accessory after the fact to murder conviction[,] [when] [h]e assert[ed] the trial court erred in (1) denying him **derivative immunity** from prosecution pursuant to the Protection of Persons and Property Act (the Act) based upon his co-defendant’s entitlement to immunity for the underlying murder.” *Calderon*, 2021 WL 4077014 at *1 (emphasis added). The Court of Appeals concluded that: “We find no error in the denial of immunity under the Act[;] [o]ur review of the record shows the trial court applied the proper burden of proof, and the evidence supports its determination that Appellant’s co-defendant was at fault in bringing on the difficulty.” *Id.* By holding that Calderon was not entitled to derivative immunity only *because the shooter was not entitled to direct immunity*, the Court of Appeals implicitly accepted Calderon’s theory of potential derivative immunity under the PPPA.

Thus, the *Calderon* opinion is indeed on point with the present case. The defendant in *Calderon* sought derivative immunity under the PPPA from prosecution related to the shooting on the theory that the shooter was entitled to direct immunity from such prosecution. In the instant case, Defendants assert they are entitled to derivative immunity under the PPPA from civil action related to the shooting of David Wilson because the shooter *has been granted direct immunity* from such civil action.

Plaintiff’s conflation of accessory after the fact to murder in *Calderon* with accomplice liability for murder prevents her from following the Court of Appeal’s reasoning. To sum up Plaintiff’s argument, she asserts that “there is a crucial fact that distinguishes *Calderon* from the facts at bar[:] Calderon was criminally charged as an accessory after the fact to murder and therefore was alleged to have participated in the crime.” Plaintiff’s Memorandum at 7. Plaintiff posits that a charge of accessory after the fact is brought under “accomplice liability theory” such

that the accessory “*is guilty of the homicide as a principal*,” and asserts that the defendant in *Calderon* argued that “if the accomplice steps into the shoes of the principle, immunizing the principal would therefore immunize the accomplice.” *Id.* Plaintiff concludes that *Calderon* does not apply to the instant case because “under the claims alleged by Plaintiff, neither Defendant steps into the shoes of the Clerk [Suhib Yousef] or becomes the principal in the shooting such that immunity might apply.”

Plaintiff is entirely mistaken. Accessory after the fact to murder is not a form of accomplice liability, and an accessory does not “step into the shoes of the principal” so as to be guilty of murder. Accessory after the fact is a separate crime from the underlying murder:

The elements of accessory after the fact to a crime are 1) the felony has been completed, 2) the accused must have knowledge that the principal committed the felony, and 3) the accused must harbor or assist the principal felon. A defendant may not be found guilty as an accessory when indicted solely as a principal.

State v. Fuller, 346 S.C. 477, 480, 552 S.E.2d 282, 283 (2001) (citations omitted). Further, “[i]t is well-settled that accessory after the fact is not a lesser-included offense of murder in this State.” *State v. Dickerson*, 395 S.C. 101, 118, 716 S.E.2d 895, 905 (2011). As to accomplice liability for murder, by contrast, “[i]t is well settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense”, because “[u]nder the ‘hand of one is the hand of all’ theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010).

Plaintiff’s attempts to distinguish *Calderon* are entirely grounded in her misunderstanding of criminal law. The defendant in *Calderon* was not charged with accomplice liability for the actions of his co-defendant shooter, and he did not argue that he was entitled to

PPPA immunity because he stood in the principal's shoes with respect to the shooting. Nor did he argue, contrary to Plaintiff's Memorandum, that immunity for the principal would mean the State could not meet all the elements of a charge for accessory after the fact to murder. Rather, he argued that *if the shooter were entitled to immunity, then that immunity would also extend to him*. Similarly, Plaintiff's assertion that "the instant case does not implicate immunity from criminal prosecution for either Defendant" does not suggest a meaningful distinction from the Court of Appeals' consideration of derivative immunity in *Calderon*, as "[t]he Act's language is clear and unambiguous that it was the legislature's intent to extend immunity under the Act from both criminal prosecution and civil actions." *Singletary v. Shuler*, 433 S.C. 600, 608, 861 S.E.2d 591, 595 (Ct. App. 2021).

While it seriously mistakes relevant jurisprudence, Plaintiff's Memorandum is, however, cogent on one salient point, when it notes as to derivative immunity that "if the use of deadly force is determined to be justified, then there is no 'crime' to aid or abet." (Plaintiff's Memorandum at 7). And it therefore follows that if a person's death was not wrongful (which in the instant case a court has ruled it was not), then it cannot serve as the basis of a civil suit for damages.

Signature Page Follows

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/ Mark V. Gende

Mark V. Gende

Brandon R. Gottschall

Daniel Q. Atkinson

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

April 16, 2024

STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT 9
COUNTY OF CHARLESTON) DOCKET NO. 2023-CP-10-02924

MOORE,)
Plaintiff,)
versus)
GREEN'S GROCERY, LLC,)
Defendant.)

H E A R I N G
BEFORE THE HONORABLE GEORGE M. MCFADDIN

DATE: April 18, 2024
TIME: ***
LOCATION: South Carolina Circuit Court 9

TRANSCRIBED BY: Mary Ragsdale

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2

3 MARIO PACELLA, ESQUIRE

4 Strom Law Firm, LLC

5 247 Edwards Plaza, Suite 1

6 Saint Simons Island, Georgia 31522

7

8 Attorney for the Plaintiff,

9

10 MARK GENDE, ESQUIRE

11 Sweeny Wingate & Barrow, PA

12 PO Box 12129

13 Columbia, South Carolina 29211

14

15 Attorney for the Defendant.

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

INDEX

Proceedings	4
Certificate of Reporter.....	16

EXHIBITS

(None marked)

24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 MR. GENDE: Your Honor, may I please the court?

2 THE COURT: Yes, sir.

3 MR. GENDE: Mark -- Mark Gende (inaudible) for the
4 defendants in this matter, Green's Grocery and Mohammed
5 Yusuf.

6 MR. PACELLA: Mario Pacella on behalf of the estate of
7 David Wilson.

8 THE COURT: Okay. And it's a motion to dismiss?

9 MR. GENDE: Yes, Your Honor. This is my motion to
10 dismiss or defendant's motion to dismiss.

11 THE COURT: Yes, sir.

12 MR. GENDE: (Inaudible) has been filed in this case. We
13 filed the memorandum in support of our motion to dismiss.
14 Plaintiff filed a response, we filed apply to that period.
15 Your Honor's, had a long day hearing motions, and I will not
16 belabor the points in the brief. So let -- can get to a
17 brief statement of the facts and I -- by two arguments.

18 In September, 2020 at Green's Brokerage, which is a
19 small convenience store, and under certain section of
20 Charleston, there was an altercation inside the store at the
21 register where the decedent, Mr. Walker, got into an argument
22 with the person working the register, Sahi Yusuf, nephew of
23 Mohammed Yusuf, owner to defendant in this case. And that
24 argument escalated.

25 Sahi Yusuf used three different ways to try to confront

1 the threat that he was facing. First, he pulled out a taser
2 escalation. He pulled out actually a small machete, and then
3 in the third place he pulled out a handgun. Mr. Walker
4 finally backed up out of a store when confronted with the
5 handgun, but then he came back into the store and rushed Sahi
6 Yusuf, at which time Mr. Yusuf defended himself and shot Mr.
7 Walker and he (inaudible) the falling dead bus.

8 Subsequent to that event, it was a no standard ground
9 hearing, and you know, Your Honor was very familiar with that
10 law. What goes on with that? And Judge Dennis at that time
11 ruled Sahi Yusuf qualifying for the immunity and protection
12 under the standard ground law that his actions were
13 justified.

14 And in the order, which is attached is an exhibit, and
15 it's on the long list of evidence that he was able to
16 consider. This was not a case where there was a question
17 about what happened inside the store. And so in general
18 sessions court with respect to Sahi Yusuf, the board was --
19 entered, that he was justified in the shooting. He was
20 immune from civil and criminal liability under the PPA or
21 standard ground statute.

22 Subsequent to that, then the plaintiff -- a -- I'm not
23 sure their exact relation to decedent. Formal by -- of the
24 decedent file instant lawsuit. We believe that the instant
25 lawsuit should be dismissed based on the order entered in the

1 stand your ground analysis found that the shooter, Sahi Yusuf
2 was justified in his actions and important based on the
3 wording of the statute, say, immune criminal and civil
4 prosecution.

5 Two reasons for that. The first one is what we call
6 derivative immunity. Call it that because the Court of
7 Appeals called it that in an unlovable opinion called
8 Calderon, which recite in our briefing. And Calderon, there
9 was a shooting and the -- not the shooter, but someone who's
10 alleged to be an accessory after the fact argued that they
11 should be immune from prosecution because the shooter should
12 have been immune to the prosecution because he was acting in
13 self defense.

14 Now, in that case, there was no stand your ground
15 hearing, there wasn't a finding of immunity. This is just
16 what the person who was not the shooter was arguing. The
17 Court of Appeals found in that case that derivative immunity,
18 you know, we're not talking about collateral stop, we talking
19 about derivative immunity from the application of the stand
20 your ground finding, but not apply in Calderon. Because the
21 shooter was never found to be immune.

22 And so all of this second person who was charged as an
23 accessory after the fact, a separate crime, not an accessory
24 liability. Although this person might have believed that the
25 shooter was justified in acting in self-defense, there was no

1 finding. So, although Calderon doesn't apply derivative
2 immunity and say that this secondary individual is not liable
3 from civil prosecution or -- or civil action against him, the
4 Court of appeals and Calderon does recognize that concept of
5 derivative immunity that can flow from the stand your ground
6 finding.

7 But in that case, there just wasn't an underlying
8 finding. In this case, we became the underlying finding or
9 order of Judge Dennis, with respect to Sahi Yusuf in the
10 stand your ground period. So for that on the basis of
11 derivative immunity, because Sahi Yusuf is immune with
12 respect to the shooting, not found not guilty immune, and he
13 is immune from criminal to the prosecution.

14 But then you can't bootstrap that back up to the grocery
15 store, or his nephew owns and operates the grocery store
16 because the shooting that's found to be immune. Second
17 argument that we make is again, based on the finding of the
18 stand your ground order, that there can be no damages in the
19 case because the shooting was justified.

20 There can be no wrongful death. And because of that,
21 the claim act failed. So for those two reasons, the
22 derivative immunity from the stand your ground order by Judge
23 Dennis, and for the fact that there can be no damages because
24 the shooting was found to be justified and Sahi Yusuf act --
25 acted reasonably and is new that the instant case should be

1 dismissed because there's no -- no underlying damage, no
2 wrongful death.

3 I think it's interesting just in closing that originally
4 plaintiffs had Sahi Yusuf as a defendant in the case and then
5 dismissed it. I think that the recognition existed that the
6 problem that I'm arguing would clearly exist if Sahi was
7 still in the case. But I don't think that the positions that
8 we are making should be so easily able to be dispensed of by
9 just dismissing the shooter. And then the legal doctrine
10 that we are arguing apply would no longer attach. So those
11 reasons we ask Your Honor, motion to dismiss.

12 THE COURT: That's an interesting motion read out. I
13 (inaudible) I call them dunking here, stand your ground
14 probably two a year. Certain -- they're quite common. That
15 doesn't mean I have rule, I just tell you that a lot -- lot
16 of people here has gone on. Yes, sir.

17 MR. PACELLA: Yes. And, Your Honor, we have one coming
18 up in Greenville County, so on the criminal defense side. So
19 it is -- it is something that's certainly percolating and
20 ready, get more development by our appellate courts. I'm
21 going to just start with the Calderon and then I'm going to
22 kind of get to my argument.

23 The Calderon doesn't actually recognize the concept of
24 derivative immunity. It assumes for the purposes of the --
25 of the argument that there would be driven -- there could be

1 derivative immunity because it -- it really gets to the point
2 quickly.

3 There was no immunity for the shoot, for the -- for the
4 person involved with conduct that the accessory couldn't have
5 derivative immunity. But there's nothing in our appellate
6 courts that says that you can have derivative immunity, in
7 fact, and that can be a -- that's a question of first
8 impression for you today. So thank you. You're welcome,
9 Your Honor.

10 It -- it does. And I'm going to get to -- now to the
11 statute, and I'll explain why we dismissed the -- the actual
12 shooter in a second. But statute says a person who is not
13 engaged in the law and -- and unlawful activity and who is
14 attacking another place where he has a right to be including
15 but not limited to his place of business, has no duty to
16 retreat and has the right to stand his ground and meet force
17 with deadly -- with -- meet -- meet force with force,
18 including deadly force, if he reasonably believes it is necessary to
19 prevent that a great violent injury to himself or another
20 person or to prevent the condition of a buyer is defined in
21 section 16-1-60 that the -- the code is 16-11-440.

22 So there's nothing in the statute that indicates that --
23 that it creates distributed liability. We did -- we did
24 dismiss to him -- because we -- we made the decision that we
25 didn't want to really get in -- into challenging Judge

1 Dennis's order. But there is a problem with Judge Dennis's
2 order, and I don't mean it's a problem that Judge Dennis
3 made. It is a problem from the prosecution's standpoint,
4 because I just read that sentence. A person who is not
5 engaged in unlawful activity. Well, Sahi Yusuf actually was
6 violating 16-23-20 unlawful carrying of a handgun. Now, this
7 -- this statute has been amended for a 16-23-20. If I could
8 pass up the -- the prior version, the version that was in
9 place at the time, Your Honor.

10 THE COURT: Yes, sir. Let me ask you this, aren't you
11 in some way, I'm not saying in a bad way, asking me to go
12 behind Judge Dennis' order?

13 MR. PACELLA: Just let me get back to -- actually no,
14 Your Honor. The reason why is because my client didn't
15 participate in that hearing. I mean, basically they're
16 asking for collateral estoppel in a situation where my client
17 wasn't able to make this particular argument right now that
18 I'm making. Which is that he -- he's -- in order to have
19 under section 13 of the statute to be in possession of a
20 firearm in a place of business, you have to have permission
21 by the owner and a concealed weapons permit.

22 Otherwise, you are unlawfully possessing a handgun. And
23 so at that first part of the statute, the person who was not
24 engaged in criminal activity is engaged in criminal activity.
25 But there's more to it, Your Honor, because to get a

1 concealed weapons permit, if I may pass that section of
2 23-31-215, there are a number of requirements to get a
3 concealed weapons permit.

4 This is also a prior version. They did actually amend
5 statute to allow 18 year olds to get a concealed weapons
6 permit. But at the time of this incident, it was 21, the --
7 the -- the shooter, the clerk was 19. So the beginning, he
8 can't go. He -- it is -- it is a -- it's -- it's legally
9 inappropriate for him to have as a complete assigned
10 application.

11 We don't believe he has -- he has to provide photocopy
12 of his identification, proof of residence. He may have
13 actually been a Jordanian resident at the time proof of
14 training. Well, we know from -- from the facts in this case
15 that -- that he went to the shooting range. He wants --
16 that's not sufficient for concealed weapons permit, pay the
17 application fee and have his fingerprints on.

18 All of those -- none of those requirements were met. So
19 it is -- he's in violation of unlawful carrying of a handgun.
20 So actually permitted on behalf of the client to make
21 arguments that the state didn't make. And we shouldn't be
22 bound by that decision when we're not -- an opportunity to
23 fully and fairly litigate it.

24 We -- we shouldn't have collateral estoppel shouldn't
25 apply in this particular situation. And so when we get to

1 those facts, those are the facts related to Sahi Yusuf, I
2 still dismissed him, but we dismissed him voluntarily. But
3 if you're looking at derivative liability, this is the reason
4 why it's not -- there's no derivative liability.

5 The next step is -- is what did we actually allege in
6 our complaints that Green's Grocery on Mohammed actually do?
7 And that is they gave a gun to a person who was not qualified
8 to have one. That's their -- that's part of their negligence
9 is if I get our complaint that 66 and 67, paragraph 66 and 67
10 really lay that out, they're giving a gun to someone who's
11 not qualified to have one.

12 He had some trauma from a prior robbery and was just
13 getting back to the store and didn't get sufficient
14 treatment, and he gave him the gun. All of that is -- is --
15 and gave him a gun, but he was not qualified to have one
16 under the law. And when you lay all that out, you come to a
17 -- you come to a position where even if Sahi Yusuf is immune
18 from shooting, the independence -- the independent negligent
19 acts of the grocery store and Mohammed Yusuf is sufficient to
20 allow the Phoenix to stand next to them for their negligent,
21 their gross negligence in giving a gun to someone who
22 couldn't have one under the law.

23 And not to properly train them to use the gun and not to
24 properly train them to de-escalate activities when you have a
25 firearm, the things that you would need to go through to get

1 a concealed weapon. And so for those reasons the motion
2 should be denied, Your Honor.

3 MR. GENDE: Sure. Very briefly in response I think that
4 you got to the heart of the matter, the (inaudible) to
5 challenge Judge Dennis's order. Judge Dennis's order was
6 entered in June, 2021, correct on that?

7 THE COURT: Yes.

8 MR. GENDE: June 23, 2021. There's been ample time for
9 them to either address it with Judge Dennis or address it
10 under some Rule 60 way or some other way in the criminal
11 system that I might not be familiar with because I don't
12 practice criminal law and they shouldn't be able to come into
13 the court now and file a civil action and claim that Judge
14 Dennis did it wrong.

15 Also, I just want to underline that we are not asking
16 for collateral estoppel, and I stated and agreed that
17 Calderon did not apply derivative immunity because there was
18 some actual immunity for the underlying shooter. But it --
19 it does recognize that this concept is (inaudible). I -- I
20 will agree that this will most likely be a matter of first
21 impression. We went very hard for -- for something that
22 applied it in a way that got our outcome and didn't -- didn't
23 see.

24 And you know, we got into some factual things here also,
25 but I just want to make sure that Your Honor is aware Sahi

1 Yusuf wasn't given a gun in a sense of (inaudible) person.
2 There was a gun placed in the store at the register that
3 would be available to those who were properly working behind
4 the counter. He tried three other, excuse me, two other
5 means before he resorted to that because he felt his life was
6 a danger in (inaudible) registry. Thank you.

7 MR. PACELLA: Your Honor, just that having practiced in
8 the criminal realm for a period of my career, there's no
9 mechanism for the victim to come before the court and
10 challenge an order. So make that point. They -- they
11 complain to the -- to the solicitor all they want, but they
12 can't come to the court.

13 THE COURT: Yes. Well, I worked with a man one time who
14 took great delight in making laws in court (inaudible). I'll
15 tell you what he (inaudible). But interesting question
16 really is -- really is we -- we just might make some law here
17 and I've read and thought to myself that even if I'm
18 reversed, they're making law from the great -- great majority
19 of all of us. There's been so many times, I know you all
20 been here before, chase, we think not even know happened.

21 How many times has that happened? A lot. Anyway, most
22 time. Deep pondering on this record got a lot way ahead of
23 you all to work on. So this -- this will be few days,
24 probably a few days. So just bear with me, please. All
25 right?

1 MR. PACELLA: Thanks sir.

2 MR. GENDE: Thank you, Your Honor.

3 THE COURT: Yeah.

4 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF TRANSCRIBER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9 of Charleston County, South Carolina, on the 18th Day of April, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 24, 2024

Mary Ragsdale

Transcriber

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT

Antoinet Moore, Individually and as) Civil Action No.: 2023CP1002924
Personal Representative of the Estate)
of David J. Wilson,)

Plaintiff,)

v.)

ORDER

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

Defendants.)

This matter came before the Court on April 18, 2024 for a hearing on Defendants' Motion to Dismiss. Present for the hearing were Mario A. Pacella, Esq., counsel for Plaintiff, and Mark V. Gende, Esq., counsel for Defendants. The Court has carefully considered the record, including but not limited to Defendants' Motion and supporting Memorandum, Plaintiff's Response in opposition, Defendants' Reply in support, and the arguments made by the parties at the hearing. For the reasons set forth below, Defendants' Motion to Dismiss is GRANTED.

I. Background

a. The Subject Incident

This case arises out of the tragically fatal shooting of David J. Wilson by Suhib Yousef, who was working at the counter of Defendants' convenience store at the corner of President and Bogard Streets in Charleston on September 28, 2020 when the shooting occurred. Video and audio recording of the incident was captured from multiple vantage points by the store's surveillance system, and to the extent there are differences in the parties' description of the

course of events, that distinction appears to be a matter of what elements the parties choose to emphasize rather than any substantive disagreement as to what occurred.

The parties agree that Wilson entered the store and attempted to purchase a cellphone charger from Yousef. In the midst of that transaction, Wilson jokingly feigned an attempt to walk away with the charger without paying, which led to a heated argument in which Yousef refused to process the purchase and ordered Wilson to leave the store. The argument continued, with Yousef repeatedly ordering Wilson to leave the store while Wilson, who was the larger of the two individuals, challenged Yousef's behavior and directed physical gestures toward him. Yousef retrieved a taser from behind the counter, but this threat failed to induce Wilson to leave. As the argument escalated, Yousef next retrieved a machete. The individuals exchanged more threatening gestures, but Wilson still did not leave the store. Finally, Yousef retrieved a handgun, walked out from behind the counter, and pointed it at Wilson, who swatted the gun with his hand as he exited the store. Wilson lingered outside the door while Yousef remained inside, holding open the door and pointing the gun at Wilson. Wilson then rushed Yousef, batting the gun aside and knocking Yousef backward into the store. Yousef managed to slip aside and fired at Wilson repeatedly, fatally wounding him by striking him twice in the head.

b. Immunity Proceedings

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. The Honorable R. Markley Dennis, Jr. presided, and after reviewing nearly 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 and Property Act, South Carolina Code Section 16-11-440(C).” (Immunity Order, Exhibit A to Defendants’ Memorandum, at 8, 9).

In granting Yousef immunity, the court found that he “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.* at 8, 9.

II. Arguments by the Parties

Defendants assert that because Suhib Yousef has been granted immunity from civil prosecution with respect to the shooting under the South Carolina Protection of Persons and Property Act, Defendants Green’s Grocery, LLC (the convenience store) and Mahmoud Yousef (Suhib Yousef’s uncle and the owner of the store) are entitled to derivative immunity from civil prosecution with respect to the shooting. Defendants further assert that where a court has determined that Suhib Yousef’s actions were justified and David Wilson’s death was not wrongful, Wilson’s death at the hands of Yousef cannot serve as actionable damages at bar.

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. In their briefs and oral arguments, the parties argued at length regarding the Court of Appeals’ unpublished decision in *State v. Daniel Calderon*, No. 2018-001707, 2021 WL 4077014 (S.C.

Ct. App. Sept. 8, 2021). In *Calderon*, the defendant was criminally prosecuted as an accessory after the fact to a felony based on his having driven the car in which his companion escaped the scene after committing a deadly shooting. Calderon's companion, the shooter, had not yet sought immunity under the Act, but Calderon argued in the trial court that he was nonetheless entitled to "derivative immunity from prosecution pursuant to the [PPPA] based upon his co-defendant's entitlement to immunity for the underlying murder." *Id.* at *1. The trial court determined that based on the evidence, the shooter was not entitled to immunity, and that Calderon was accordingly not immune from prosecution as an accessory to his crime. *Id.* On appeal, the Court of Appeals agreed, finding that its "review of the record shows that the trial court applied the proper burden of proof [for immunity under the Act], and the evidence supports the determination that Appellant's co-defendant[, the shooter,] was at fault for bringing on the difficulty." *Id.*

Defendants have argued that in *Calderon*, the Court of Appeals implicitly upheld Calderon's theory of derivative immunity, as it denied the appeal not on the basis that PPPA immunity does not extend beyond the party using lethal force, but rather on the basis that the shooter himself was not entitled to immunity. According to Defendants, *Calderon* recognizes derivative immunity under the Act for parties besides an immunized shooter because it assumes the proposition that if Calderon's co-defendant, the shooter, were entitled to immunity, then by extension so would Calderon. Plaintiff, by contrast, has pointed out that *Calderon* as an unpublished opinion has no precedential value, and argues that even if it were a published opinion, its reasoning would not be applicable to instant case. So arguing, Plaintiff cites the close identification between principal and accomplice for accomplice liability purposes, contending that no such identification exists between Defendants and Suhib Yousef in the present case, such

that *Calderon*'s reasoning would be inapplicable to these parties. That argument mistakenly conflates accessory after the fact to a murder with accomplice liability for murder. Accomplice liability, which imputes the principal's actions to the accomplice, was not at issue in *Calderon*. However, Plaintiff's initial point stands: *Calderon* is an unpublished opinion with no precedential value in this Court. Accordingly, this Court treats the issue of derivative immunity and the questions of its existence and application as matters of first impression and does not place any reliance on *Calderon* in this opinion.

III. Analysis

a. The Protection of Persons and Property Act

The South Carolina Protection of Persons and Property Act ("PPPA" or the "Act"), also commonly known as the "Stand Your Ground Law", is codified at S.C. Code §§ 16-11-410 to - 450. *See Carter v. Bryant*, 429 S.C. 298, 304, 838 S.E.2d 523, 527 (Ct. App. 2020). As the PPPA itself states, the Act is 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). With respect to wrongful death claims, the Court of Appeals has recognized the broad legislative intent of the PPPA to grant immunity:

"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'

....

The Act's language is clear and unambiguous that it was the legislature's intent to extend immunity under the Act from both criminal prosecution and civil actions to law-abiding citizens who were justified in their use of deadly force.

Singletary v. Shuler, 433 S.C. 600, 607–608 861 S.E.2d 591, 595 (Ct. App. 2021) (emphasis in original) (citing S.C. Code § 16-11-420(A), (B); § 16-11-450(A)). As the *Shuler* court went to explain, this immunity serves as an “absolute bar” to civil suit:

[T]he legislature intended to create a *true immunity*, not merely an affirmative defense, for law-abiding citizens who seek to invoke protection under the Act. 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 and must be decided prior to trial.

Id. 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)).

b. Derivative Immunity

Based on its analysis of the language of S.C. Code §§ 16-11-410 to -450 and on published case precedent construing this statutory language, the Court agrees with Defendants’ arguments that an immunity derivative in nature is necessary to uphold the legislative intent of the Act, which “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.*’” *Singletary*, 433 S.C. at 607 (Ct. App. 2021) (emphasis in original) (quoting S.C. Code § 16-11-420(B)). *See also, e.g., 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.””) (emphasis in original). If law-abiding persons are to protect themselves, their families, and others from attackers *without fear of civil action*, the grant of immunity from civil action must extend beyond the law-abiding persons themselves to also bar derivative claims against their employers, companions, family members, and others who might otherwise be exposed to the threat of civil liability.

Accordingly, 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. 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. Therefore, Defendants in this case are derivatively immune from civil action brought on the basis of Suhib Yousef’s immunized conduct.

The Court notes that Plaintiff has argued that application of a derivative immunity in this case is tantamount to an improper application of collateral estoppel. In particular, at the hearing Plaintiff challenged the underlying grant of immunity to Suhib Yousef on the rationale that Yousef’s access to and use of the handgun during the shooting amounted in Plaintiff’s opinion to unlawful carrying of a handgun in violation of S.C. Code § 16-23-20. Plaintiff argues that if Defendants receive a derivative immunity, then Plaintiff, who was not provided an opportunity to be heard at the immunity hearing during the State’s prosecution of Yousef, will be deprived of

any opportunity to litigate this unlawful-carry argument and any other argument which the State declined to pursue.

The Court finds this position unavailing for two reasons. First, Plaintiff has not cited any authority which would indicate she has standing to challenge the Charleston County Court's prior grant of immunity under the Act. Second, her argument by analogy to collateral estoppel is not limited to derivative immunity under the Act, but would also apply with equal force to all civil immunity provided under the Act. Whenever a criminal defendant is granted immunity from criminal prosecution under the Act, that defendant is simultaneously immunized from civil action, even though the potential plaintiffs who could otherwise bring a civil action do not participate in the hearing alongside the State to make arguments against the grant of immunity. Nonetheless, pursuant to the terms of the statute and established case precedent, each grant of immunity from criminal prosecution carries with it a grant of immunity from future civil prosecution. Potential plaintiffs are absolutely barred from suit (*Singletary*, 433 S.C. at 608), and thus they are not able to later challenge the grant of immunity to the immunized individual by citing collateral estoppel doctrine. By the same logic, such potential plaintiffs cannot re-litigate an underlying grant of immunity for purposes of derivative claims against other individuals.

c. Lack of Actionable Damages

Because a grant of immunity under the Act is "a true immunity" and "an absolute bar" to prosecution (*Singletary*, 433 S.C. at 608), Plaintiff's attempt to impose civil liability on the basis of the shooting is barred at the outset. For this reason, having found that Defendants are entitled to derivative immunity in this case, the Court need not, for purposes of granting Defendants' Motion to Dismiss, reach Defendants' second argument: that there are no actionable damages in

this case. However, the Court has examined this argument and finds it to be an additional sustaining ground for its decision to grant Defendants' Motion to Dismiss.

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. (Immunity Order at 8, 9). Given these facts, Plaintiff's claims against Defendants are not viable. Plaintiff alleges that Defendants were negligent because they are vicariously "liable for the actions and omissions of... [Suhib] Yousef," but Yousef's actions have been expressly found to have been *reasonable* and therefore not in breach of any duty. (Complaint at ¶65). 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) (*cf.* Complaint at ¶66).

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 (*see, e.g.*, Complaint at ¶¶78, 97, 101, 110, 113, 131) fail for the same reason. While Plaintiff argues that these claims are independent of any attribution of negligence to Yousef, this argument overlooks that the entirety of Plaintiff's alleged damages directly resulted from reasonable conduct on the part of Yousef. As a result, Plaintiff cannot show breach of duty to support a finding of negligence on the part of Defendants, nor can she show actionable damages, because the person who caused the injury has been immunized from civil prosecution and declared to

have been exercising his statutory right to use lethal force in the face of Wilson's own aggression. Plaintiff's claims for wrongful death, for example (*see, e.g.*, Complaint at ¶¶73, 105, 123, 141), lack a wrongful death for which to recover. (*See 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).

It is undeniable this incident was a deeply tragic one which cost David Wilson his life. However, 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.

CONCLUSION

For the above reasons, the Court grants Defendants' Motion to Dismiss as to all of Plaintiff's claims. The Plaintiff's Complaint against Defendants is therefore dismissed.

IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Antoinet Moore , plaintiff, et al VS Greens Grocery Llc , defendant,
et al
Case Number: 2023CP1002924
Type: Order/Dismissal

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2024-06-11 15:32:10 page 11 of 11

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff,

v.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE 9TH JUDICIAL CIRCUIT
)

) C/A No.: 2023-CP-1002924
)
)
)

) **PLAINTIFF'S NOTICE OF MOTION**
) **AND MOTION PURSUANT TO RULE**
) **59(e), SCRPC**

TO: MARK V. GENDE, ESQ., BRANDON R. GOTTSCHALL, ESQ., & DANIEL Q. ATKINSON, ATTORNEYS FOR DEFENDANTS ABOVE-NAMED.

PLEASE TAKE NOTICE that Plaintiff Antoinet Moore, individually and as Personal Representative of the Estate of David J. Wilson ("Plaintiff"), by and through her undersigned counsel, hereby moves the Court for an order which reconsiders, alters, and/or amends its decision in the above-referenced matter. This motion is brought pursuant to Rule 59(e), SCRPC, as well as the relevant statutory and case law.

Plaintiff filed her Summons and Complaint against Defendants on June 15, 2023. On September 1, 2023, Defendants filed their Motion to Dismiss Plaintiff's Complaint. The parties then briefed the issues raised in Defendants' motion. This Court heard arguments on Defendant's motion on April 18, 2024, and subsequently filed its Order dismissing Plaintiff's Complaint on June 12, 2024.

Based upon the facts in the record, Plaintiff respectfully moves that the Court reconsider its ruling on the following grounds:

1. This Court found a finding that a party is entitled to immunity from criminal prosecution pursuant to S.C. Code Ann. § 16-11-450 extended derivative immunity to certain third parties in a civil action. In doing so, this Court invaded the province of the Legislature and expanded the scope of the statute beyond its legislative intent, which plainly and unambiguously limited immunity under the Protection of Persons and Property Act to only a “person who uses deadly force as permitted by the provisions of this article or another applicable provision of law.”

2. This Court found a determination that a party is immune from criminal prosecution under the Act simultaneously immunizes that person from civil liability. Consequently, this Court found that because a plaintiff could not challenge such immunity under the doctrine of collateral estoppel, a plaintiff could not challenge derivative immunity stemming from the same grant of immunity. However, this Court does not cite any law for the proposition that a determination of criminal immunity under the Act simultaneously confers civil immunity under the Act. While Plaintiff believes this is a novel issue in South Carolina, Plaintiff points to the Florida Supreme Court’s analysis of Florida’s Stand Your Ground law for the proposition that a grant of criminal immunity does not simultaneously result in a grant of civil immunity. The Florida Supreme Court’s analysis in *Kumar v. Patel*, 227 So.3d 557 (Fla. 2017), determined that civil immunity is not automatically conferred to a party receiving criminal immunity because (1) the law does not sanction binding a party to a judicial determination in a proceeding in which she was not a party; (2) the statute did not purport to modify the common law doctrine of collateral estoppel; and (3) the inclusion of an attorney’s fees provision in the statute contemplated a recovery for litigating the immunity issue in civil court. Because the same rationales exist under South Carolina and the Protections of Persons and Property Act, a party receiving immunity from criminal prosecution under the Act does not simultaneously receive civil immunity under the Act. Instead, pursuant to

South Carolina law, a party must file a pretrial motion seeking immunity. Thus, because the grant of criminal immunity does not automatically confer civil immunity, a third party cannot claim derivative immunity from civil suit on the basis of another's immunity from criminal prosecution.

3. This Court effectively applied the doctrine of collateral estoppel to bar Plaintiff from litigating issues determined in an action to which she was not a party. South Carolina law and due process prohibits estopping litigants who never had a chance to present their evidence and arguments on a claim despite other adjudications of the same that stand squarely against their position. In determining that Plaintiff's action lacked wrongful damages and that Decedent Wilson was at fault for the incident causing his death, this Court effectively relied on findings from the criminal immunity hearing to estop Plaintiff from litigating the issues in this case. Moreover, this Court further precluded Plaintiff from raising issues that were not litigated at the immunity hearing.

WHEREFORE, the grounds upon which Defendants' motion rests are not supported, and Plaintiff respectfully urges the Court to reconsider its Order of Dismissal.

Respectfully submitted this 17th day of June, 2024.

STROM LAW FIRM, LLC

s/ Mario A. Pacella

Bakari T. Sellers (Bar No. 79714)
 Mario A. Pacella (Bar No. 68488)
 Amy E. Willbanks (Bar No. 69331)
 Matthew B. Robins (Bar No. 103685)
 6923 N. Trenholm Road, Suite 200
 Columbia, South Carolina 29206
 Phone: (803) 252-4800
 Email: bsellers@stromlaw.com
 mpacella@stromlaw.com
 awillbanks@stromlaw.com
 mrobins@stromlaw.com

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE 9 TH JUDICIAL CIRCUIT
	)	
Antoinet Moore, individually and as Personal	)	C/A No.: 2023-CP-1002924
Representative of the Estate of David J.	)	
Wilson,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S MEMORANDUM
v.	)	IN SUPPORT OF PLAINTIFF'S
	)	MOTION PURSUANT TO RULE
Green's Grocery, LLC, and Mahmoud A.	)	59(e), SCRPC
Yousef,	)	
	)	
Defendants.	)	
	)	

Antoinet Moore, individually and as Personal Representative of the Estate of David J. Wilson, by and through her undersigned counsel, files this Memorandum in Support of her Motion to Reconsider, Alter, and/or Amend the Judgment.

BACKGROUND

Defendant Green's is a convenience store located in Charleston County and is owned and operated by Defendant Yousef. On September 28, 2020, Decedent Wilson entered Defendant Green's intending to buy a cell phone charger. At that time, Defendant Yousef was not present and his nineteen-year-old nephew was working as the clerk (hereinafter "the Clerk"). However, Defendant Yousef unlawfully provided a firearm to the Clerk, and the Clerk committed the criminal offense of unlawful possession of a firearm pursuant to the version of S.C. Code Ann. 16-23-20(13) in effect at that time.

At some point, Decedent Wilson approached the counter and attempted to purchase a cell phone charger. In doing so, Decedent Wilson handed the cellphone charger and his debit card to the Clerk before jokingly feigning an attempt to walk away without paying for the item, causing others in the store to laugh at the encounter. However, the Clerk became frustrated and

embarrassed, telling Decedent Wilson “Don’t play with me, man.” Decedent Wilson responded, “That’s what I do,” while continuing to smile at the Clerk. At that point, the Clerk shouted for Decedent Wilson to get out of the store instead of processing the payment. Decedent Wilson, thinking the Clerk was joking with him, continued to smile and reached for the charger. The Clerk then pulled the charger back and screamed for Decedent Wilson to get out of the store.

Decedent Wilson and the Clerk then engaged in a back-and-forth, with Decedent Wilson ultimately telling the Clerk to watch his tone. The Clerk then retrieved a long, black taser and activated the electric arc. The two engaged in further argument before the Clerk retrieved a machete. The Clerk then raised the machete up near his head in a threatening posture and challenged Decedent Wilson to touch him. Decedent Wilson responded by knocking over some items on the register, at which point the Clerk swung the machete at Decedent Wilson. Decedent Wilson then spit at the Clerk before turning to exit the store.

Decedent Wilson walked toward the front door to exit the store but kept his eye on the Clerk. Decedent Wilson then witnessed the Clerk put down the machete and retrieve a handgun, for which he did not possess a concealed weapons permit. At that point, Decedent Wilson mumbled “What you gonna do?” and the Clerk responded by racking the handgun and chambering a round. The Clerk then came from behind the counter and pursued Decedent Wilson through the store, pointing the gun at him. When Decedent Wilson saw that the Clerk had a gun pointed at his head, he exited the store. After Decedent Wilson exited the store, the Clerk followed to the front door, held the door open with his right foot, and continued pointing the gun at Decedent Wilson.

Decedent Wilson then turned and unsuccessfully tried to swat the gun out of the Clerk’s hand. At this point, Decedent Wilson was outside the store and the Clerk continued to hold the door open with his right foot while pointing the gun at Decedent Wilson. While the two were in

this position, Decedent Wilson repeatedly told the Clerk to stop pointing the gun at him and the Clerk continued to scream at Decedent Wilson to get out of the store. Decedent Wilson then rushed the Clerk in an attempt to disarm him, but he stepped aside and repeatedly shot Decedent Wilson. Throughout the encounter, the Clerk never attempted to call 911 or activate the store's silent alarm, nor did he attempt to lock the front door once Decedent Wilson had exited the store.

Defendant Yousef spoke with officers from the Charleston County Police Department following the incident. Defendant Yousef indicated that he had last seen the Clerk, his nephew, several hours before the incident and that he was at his brother's mechanic shop when the Clerk called about the shooting. He also explained that the Clerk was his brother's son from Jordan who came to visit before COVID and got locked down in Charleston, and that he had been coming to the store with him and working.

Defendant Yousef further detailed a prior robbery occurring at the store months before Decedent Wilson was shot. According to Defendant Yousef, the Clerk was there at the time of the robbery, the robbery was the first time the clerk had seen a gun, and Defendant Green's and Defendant Yousef did not keep a gun in the store beforehand. Following the robbery, the Clerk got "so scared" and started acting weird. Defendant Yousef took him to a therapist because he was "scared of everybody" and would wake up in the middle of the night to make sure all of the doors were locked. However, Defendant Yousef only took the Clerk to see the therapist one time. Defendant Yousef also took the Clerk to the gun range, showed him how to use a gun, and obtained a gun for the store. Neither Defendant Yousef nor the Clerk obtained a concealed weapons permit (CWP) for the Clerk as was required by South Carolina law. In fact, this would have been a legal

impossibility because, at this time, only legal residents twenty-one-years of age or older could obtain a CWP pursuant to the version of S.C. Code Ann. § 23–31–215 then in effect.¹

Additionally, Defendant Yousef explained that the Clerk no longer came in to work at the store following the robbery, so he started making the Clerk come to the store again. Defendant Yousef explained that after coming back, the Clerk would jump every time a customer entered the store. Defendant Yousef claimed that the Clerk eventually returned to normal and that the incident involving Decedent Wilson occurred once the Clerk “got normal again.”

Thereafter, Plaintiff filed her Summons and Complaint against Defendants on June 15, 2023. On September 1, 2023, Defendants filed their Motion to Dismiss Plaintiff’s Complaint. The parties then briefed the issues raised in Defendants’ motion. This Court heard arguments on Defendant’s motion on April 18, 2024, and subsequently filed its Order dismissing Plaintiff’s Complaint on June 12, 2024.

STANDARD

Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). The purpose of a motion filed pursuant to Rule 59(e) of the SCRCF is to “request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Rule 59(e), SCRCF. Rule 59 motions should be granted if the circuit court finds that there has been an intervening change of controlling law, that new evidence has become available, or that there is a need to correct a clear error or prevent manifest injustice. *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403, 411 (4th Cir. 2010).

¹ See S.C. Code Ann. § 23–31–215 (“Notwithstanding any other provision of law, . . . SLED must issue a permit . . . to carry a concealable weapon to a resident or qualified nonresident *who is at least twenty-one years of age* and who is not prohibited by state law from possessing the weapon.” (emphasis added)). This version of the statute was effective between June 3, 2016, and August 14, 2021. Additionally, these versions were handed up to the Court at oral argument

When reviewing a dismissal from a Rule 12(b)(6) motion, the reviewing court applies the same standard as the trial court. *Cf. Delaney v. First Fin. Of Charleston, Inc.*, 426 S.C. 607, 611, 829 S.E.2d 249, 250 (2019) (“An appellate court reviews dismissal from a Rule 12(b)(6), SCRCF motion under the same standard employed by the trial court.”). Pursuant to the Rule, “a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action.” *Ashley River Props. I, LLC v. Ashley River Props. II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007). “[I]n considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” *Id.* (quoting *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004). Thus, “[a] motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” *Id.* at 278, 648 S.E.2d at 298 (quoting *Fleteau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003)). Ultimately, “[t]he question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Cowart v. Poore*, 337 S.C. 359, 364, 523 S.E.2d 182, 184–85 (Ct. App. 1999).

ARGUMENT

This Court erred in dismissing Plaintiff’s Complaint because (1) it impermissibly expanded the scope of S.C. Code Ann. § 16-11-450; and (2) it misapplied section 16–11–450 such that it improperly defeated South Carolina’s collateral estoppel jurisprudence, and (3) it improperly applied the doctrine of collateral estoppel to determine that Plaintiff’s claims lacked actionable damages.

I. This Court’s ruling impermissibly expands the scope of S.C. Code Ann. § 16-11-450.

This Court erred in determining that Defendants are entitled to derivative immunity under the Protection of Persons and Property Act because such a determination expands the scope of the statute beyond the Legislature's intent.

"All rules of statutory construction are servient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used which must be construed in the light of the intended purpose." *Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963). "One of the primary rules in the construction of a statute is that the words used therein should be taken in their ordinary and popular signification unless there is something in the statute requiring a different interpretation." *Id.* Thus, "[w]hen 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.*" *Rhame v. Charleston Cty. Sch. Dist.*, 412 S.C. 273, 276, 772 S.E.2d 159, 160 (2015) (emphasis added) (quoting *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014)). As such, "[u]nder the plain meaning rule, *it is not the court's place to change the meaning of a clear and unambiguous statute.*" *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (emphasis added). Stated differently, "[i]f a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and *the Court has no right to impose another meaning.*" *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

Here, pursuant to section 16-11-450 of the South Carolina Code, "*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.*" (emphases added). When looking at the plain language of the statute, the Act does not purport to extend immunity from civil action to anyone other than a "person who

uses deadly force as permitted by the provisions of this article or another applicable provision of law.” As such, the Legislature clearly intended to limit immunity under the Act to those who use deadly force. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 (“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992))). Notably, our appellate courts have reached the same conclusion when analyzing the statute. *See State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011) (“[T]he legislature intended defendants be shielded from trial *if they use deadly force as outlined under the Act.*” (emphasis added)); *Singletary v. Shuler*, 433 S.C. 600, 608, 861 S.E.2d 591, 595 (Ct. App. 2021) (“The Act’s language is *clear and unambiguous* that it was the legislature’s intent to extend immunity under the Act from both criminal prosecution and civil actions *to law-abiding citizens who were justified in their use of deadly force.*” (emphases added)). By extending derivative immunity to Defendants under the Act, this Court has invaded the province of the Legislature and acted contrary to the statute’s clearly stated legislative intent that immunity be extended only to law-abiding citizens who were justified in using deadly force.

Accordingly, Plaintiff’s Motion to Reconsider, Alter, and/or Amend the Judgment should be granted.

II. This Court’s analysis regarding the relationship between § 16-11-450 and collateral estoppel lacks support under the law, and this Court misapplied the statute to defeat South Carolina’s collateral estoppel jurisprudence.

This Court erred in dismissing Plaintiff’s Complaint because such a determination improperly applied the statute to bar Plaintiff from litigating issues she had no opportunity to litigate and likewise prevented Plaintiff from litigating issues not decided at the immunity hearing, both in contravention of South Carolina’s collateral estoppel law.

In its Order, this Court determined that Plaintiff's collateral estoppel argument did not have merit because "her argument by analogy to collateral estoppel is not limited to derivative immunity under the Act, but would also apply with equal force to all civil immunity provided under the Act." This Court then concluded that when a criminal defendant is granted immunity from criminal prosecution under the Act, that defendant is simultaneously immunized from civil action. As such, this Court concluded that a plaintiff could not re-litigate an underlying grant of immunity for purposes of derivative claims against other individuals.

Crucially, however, this Court does not cite any support for its conclusion that a grant of criminal immunity under the Act effects a simultaneous grant of immunity from civil suit. Upon diligent search, Plaintiff does not believe such case law exists and asserts that the issue constitutes a matter of first impression. While this Court relies on *Shuler*, in its analysis, the *Shuler* Court determined "the only way immunity under the Act can be meaningfully enforced in a civil action is to require individuals seeking immunity to file a pretrial motion." *Shuler*, 433 S.C. at 608, 816 S.E.2d at 595. The *Shuler* Court did not hold that a grant of criminal immunity under the Act simultaneously extends to civil actions.

While this issue has not been decided in South Carolina courts, the Florida Supreme Court has addressed the issue as it pertains to the Florida Stand Your Gound law.² In *Kumar v. Patel*, the Florida Supreme Court addressed whether a determination that a criminal defendant was immune from prosecution under the law conferred civil immunity to the same defendant. 227 So.3d 557, 558 (Fla. 2017). The Court began by noting, "In both criminal and civil proceedings,

² This is the same law analyzed by the Florida Supreme Court in *Dennis v. State*, 51 So.3d 456 (Fla. 2010), which our Supreme Court relied on to determine whether immunity under the PPPA should be decided prior to trial and the proper standard of proof for such a determination. *Duncan*, 392 S.C. at 409–11, 709 S.E.2d at 664–65.

the determination of whether a defendant is entitled to Stand Your Ground immunity has been made at pretrial evidentiary hearings where the defendant must prove that the immunity attaches by a preponderance of the evidence.” *Id.* at 559 (Fla. 2017). However, the Court explained,

where a criminal immunity determination is made prior to the filing of a civil suit, that determination cannot bind a potential civil plaintiff who is not a party to the criminal proceeding . . . because *the law does not generally sanction binding a person to judicial determinations made in a proceeding to which he or she was not a party.*

Id. at 560 (emphasis added). The Florida Supreme Court further indicated that the Stand Your Ground statute did not purport to modify the doctrine of collateral estoppel, and a statute cannot be construed to modify the common law unless such intent is evident. *Id.* at 560–61. Additionally, the Court found that the attorney’s fees and costs provision in the statute “implies recognition by the Legislature that civil immunity will be determined separately in a civil proceeding.” *Id.* at 560.

The Court explained if the statute

had clearly and unambiguously modified our common law such that the criminal immunity finding would be binding on potential civil litigants, it would be equally clear and unambiguous that anyone filing a suit for civil damages based upon the same incident for which Stand Your Ground immunity had been found in a criminal case could be subject to an attorney’s fee sanction under

Florida’s statute awarding attorney’s fees as a sanction for raising unsupported claims. *Id.* at 561. Finally, the Court explained that “the . . . fees and costs provision seems to contemplate a recovery for litigating the immunity question in a more traditional fashion, in most civil cases (as opposed to having almost all civil cases subject to dismissal at the outset based upon a prior binding finding).” *Id.* As such, the Court concluded that Florida’s “Stand Your Ground law does not confer civil liability immunity to a criminal defendant who is determined to be immune from prosecution in the criminal case.” *Id.*

The same rationales considered by the Florida Supreme Court are equally applicable to the application of the Protection of Persons and Property Act. First, like Florida law, South Carolina law does not sanction binding a person to judicial determinations made in a proceeding to which he or she was not a party. *See Wade v. Berkeley Cty*, 330 S.C. 311, 317–18, 498 S.E.2d 684, 687 (Ct. App. 1998) (“Due process prohibits estopping litigants who never had a chance to present their evidence and arguments on a claim, despite other adjudications of the same issue that stand squarely against their position.”). Second, there is nothing in section 16–11–540 purporting to limit the common law or the application of collateral estoppel as it relates to immunity under the Act and South Carolina law precludes statutes from being interpreted in a manner modifying the common law unless the same was clearly intended by the Legislature. *See Doe v. Marion*, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004) (“[A] statute is *not to be construed in derogation of common law rights* if another interpretation is reasonable.” (emphasis added)). Finally, section 16–11–540 contains an attorney’s fee provision almost identical to that included in the Florida Stand Your Ground statute.³ Thus, as explained by the Florida Supreme Court, the attorney’s fee provision implies recognition by the Legislature that civil immunity will be determined separately in a civil proceeding and litigated in a more traditional fashion.

Accordingly, this Court erred in determining that a defendant granted immunity from criminal prosecution under the Act is simultaneously immunized from civil action, as the same is not supported by South Carolina law. Rather, like Florida’s Stand Your Ground law, South

³ Compare Fla. Stat. § 776.032(3) (“The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).”), with S.C. Code Ann. § 16–11–450 (“The court shall award reasonable attorneys’ fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).”).

Carolina’s collateral estoppel jurisprudence precludes binding a Plaintiff to an immunity determination from a criminal action in which she was not a party. This conclusion is further supported by the Legislature’s refusal to modify collateral estoppel in the immunity context and the inclusion of a statutory provision awarding attorney’s fees for litigating immunity in a civil action. Thus, as our Court of Appeals has explained, “the only way immunity under the Act can be meaningfully enforced in a civil action is to require individuals seeking immunity to file a pretrial motion.” *Shuler*, 433 S.C. at 608, 816 S.E.2d at 595. As such, a defendant is not entitled to immunity from civil suit simply because he was granted immunity from criminal prosecution. Consequently, a third-party cannot invoke “derivative” immunity in a civil suit based on the grant of immunity to a party in a criminal action and this Court erred in finding that a grant of immunity under the Act overcomes the doctrine of collateral estoppel.

Therefore, Plaintiff’s Motion to Reconsider, Alter, and/or Amend the Judgment should be granted.

III. This Court erred in improperly applying the doctrine of collateral estoppel to determine that Plaintiff’s claims lacked actionable damages.

This Court erred in determining that Plaintiff lacked actionable damages because this determination constituted an improper application of collateral estoppel.

In determining that the Circuit Court’s factual findings in the immunity hearing barred Plaintiff from litigating the issues raised in her Complaint, this Court effectively employed the doctrine of collateral estoppel against her. *See Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (“Collateral estoppel, also known as issue preclusion, *prevents a party from relitigating an issue that was decided in a previous action*, regardless of whether the claims in the first and subsequent lawsuits are the same.” (emphasis added)). However, “[d]ue process prohibits estopping litigants who never had a chance to present

their evidence and arguments on a claim, despite other adjudications of the same issue that stand squarely against their position.” *Wade*, 330 S.C. at 317–18, 498 S.E.2d at 687. As such, collateral estoppel may only be applied when an “issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” *Carolina Renewal, Inc.*, 385 S.C. at 554, 684 S.E.2d at 782. “[M]odern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Snavelly v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008). “Thus, the primary concerns of our courts in applying collateral estoppel is . . . whether a potentially precluded party had a full and fair opportunity to litigate the issues in a prior action.” *Id.*

Here, Plaintiff had no opportunity to previously litigate the issues raised in her Complaint. The findings of fact and legal conclusions relied on by this Court, including the conclusions that Decedent Wilson was entirely at fault for the shooting incident, were made by the Circuit Court in the criminal action against the Clerk, to which Plaintiff was not a party. Plaintiff had no opportunity to offer evidence, raise issues, or make arguments throughout the criminal matter, including the immunity hearing at issue. Accordingly, because Plaintiff has not had a full and fair opportunity to litigate the issues in her Complaint, this Court erred in barring her from litigating issues determined by the Circuit Court during the immunity hearing.

Moreover, the State’s participation in the criminal matter does not satisfy Plaintiff’s “full and fair opportunity to be heard” because Plaintiff and the State are not in privity. “Privity deals with a person’s relationship to the subject matter of the previous litigation, not to the relationships between entities.” *Wade*, 330 S.C. at 317, 498 S.E.2d at 687. “Having an interest in the same

question or in proving or disproving the same set of facts does not establish privity.” *Id.* “Nor is privity found when the litigated question might affect a person’s liability as a judicial precedent in a subsequent action.” *Id.* “Even one whose interest is almost identical to that of a party, but who does not claim through him, is not in privity with that person.” *Id.*

The State did not represent the interests of Plaintiff or her legal rights at the Clerk’s immunity hearing. Rather than seeking to determine the civil liability of Defendants for Decedent Wilson’s death, the State represented its own interest in prosecuting crimes and in determining the Clerk’s criminal liability. Accordingly, the State’s prosecution of the Clerk and its attempt to deny him immunity under the Act did not sufficiently represent Plaintiff’s interests such that she should be barred from litigating issues of negligence against Defendants in the instant action. *See, e.g., Carrigg v. Cannon*, 347 S.C. 75, 82, 552 S.E.2d 767, 771 (Ct. App. 2001) (“To be in privity, Cannon’s legal interests must have been represented or litigated during Heider’s criminal proceeding and, clearly, this was not the case. Cannon’s legal interest in the civil action stands in sharp contrast to Heider’s legal interest in the criminal case.”).

Additionally, this Court improperly applied collateral estoppel to bar Plaintiff’s claims because many of the issues raised by Plaintiff were not actually litigated in the criminal proceeding. In fact, the Court’s Order ignores a number of arguments made by Plaintiff in this regard. Plaintiff has alleged that the Defendants were negligent in the operation of Green’s Grocery such that it created the conditions resulting in the use of deadly force. Thus, the Circuit Court’s ruling that the Clerk was justified in using deadly force did not resolve whether Defendants were negligent in the management and operation of Green’s Grocery, or whether such negligence proximately caused Decedent Wilson’s death. Rather, there are myriad issues that must be determined by a jury, including but not limited to whether Defendants were negligent for leaving a firearm with an

unlicensed and unsupervised employee, whether Defendants were negligent for leaving multiple weapons with an unsupervised employee displaying trauma symptoms from a prior robbery, or whether Defendants negligently trained the Clerk on proper ejection of patrons on Defendant Green's premises. Ultimately, there are numerous issues in Plaintiff's action that were not raised or resolved in the criminal action. Therefore, Plaintiff should not have been barred from litigating such issues by and improper application of collateral estoppel. *See Carolina Renewal, Inc.*, 385 S.C. at 554, 684 S.E.2d at 782 ("The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) *actually litigated in the prior action*; (2) *directly determined in the prior action*; and (3) necessary to support the prior judgment." (emphases added)).

Furthermore, Plaintiff would point out that her negligence-based claims do not rely solely on vicarious liability. While Plaintiff does allege that Defendants are liable for the actions and omissions of their employee, Plaintiff further alleges a litany of Defendants' own actions and inactions that constitute negligence. Such conduct includes, but is not limited to, Defendants' failure to supervise and train the Clerk, Defendants' failure to take reasonable efforts to ensure Decedent Wilson's safety on its premises, Defendants' failure to ensure that patrons were not threatened with multiple weapons while on their premises, Defendants' failure to ensure that employees with concealed weapons had the appropriate training and permits, and Defendants' failure to ensure that employees were mentally and emotionally fit to be left alone with weapons. Defendants' failures were but-for causes of Decedent Wilson's death.

Specifically, Defendants permitted the Clerk, a person who did not have a concealed weapons permit (CWP), to carry a concealed weapon while on their premises in violation of South

Carolina law. Under a prior version of S.C. Code Ann. 16–23–20(13),⁴ the carrying of a handgun by an employee of a fixed business constituted unlawful carrying of a handgun unless the employee acquired a permit to carry a handgun from the South Carolina Law Enforcement Division. See S.C. Code Ann. 16–23–20(13) (“It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law: . . . the employee of a fixed place of business . . . while at the place of business; *however, the employee may exercise this privilege only after: (a) acquiring a permit pursuant to item (12), and (b) obtaining the permission of the owner or person in legal control or legal possession of the premises.*” (emphasis added)).⁵ Defendants failed to ensure that the Clerk obtained a permit or otherwise met the requirements of S.C. Code Ann. § 23–31–215, including that the Clerk was at least twenty-one-years of age, that he signed a completed application with his picture identification, that he proved his residency, that he provided proof of CWP training, that he had proof of sufficient vision, and that he was fingerprinted. This negligence was a direct and proximate cause of Decedent Wilson’s death. As such, the fact that the Circuit Court determined that Decedent Wilson’s death was not wrongful in the context of the clerk’s actions should not be taken to mean that his death was not wrongful in the context of Defendants’ acts and omissions.

⁴ This version of the statute was effective between February 11, 2014, and August 14, 2021. These versions were handed up to the Court at oral argument.

⁵ As explained above, a finding of immunity from criminal prosecution does not simultaneously immunize a party from civil prosecution. Thus, if the Clerk were a party to this action, he would be required to petition this Court for civil immunity. However, the Clerk would not be entitled to such immunity because he was carrying the firearm unlawfully. See S.C. Code Ann. § 16–11–440 (“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.”). Thus, Defendants are not entitled to derivative immunity.

Ultimately, the fact that the clerk was granted immunity from criminal prosecution should not foreclose Plaintiff's negligence claims against Defendants.

Accordingly, Plaintiff's Motion to Reconsider, Alter, and/or Amend the Judgment should be granted.

CONCLUSION

Based on the foregoing, Plaintiff's Motion to Reconsider, Alter, or Amend the Judgment should be granted, and this Court should enter an order denying Defendants' Motion to Dismiss.

Respectfully submitted this 17th day of June, 2024.

STROM LAW FIRM, LLC

s/ Mario A. Pacella

Bakari T. Sellers (Bar No. 79714)
Mario A. Pacella (Bar No. 68488)
Amy E. Willbanks (Bar No. 69331)
Matthew B. Robins (Bar No. 103685)
6923 N. Trenholm Road, Suite 200
Columbia, South Carolina 29206
Phone: (803) 252-4800
Email: bsellers@stromlaw.com
mpacella@stromlaw.com
awillbanks@stromlaw.com
mrobins@stromlaw.com

Attorneys for Plaintiff

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1002924

Antoinet Moore et al
PLAINTIFF(S)

Greens Grocery Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Having been timely served with Plaintiff's motion to reconsider and memorandum, I have indeed reviewed the ruling after considering the motion. Pursuant to the rule allowing me to do so, I decline to hold a hearing to address the motion. Plaintiff's motion and memorandum addressed well the issue. I respectfully decline to grant the motion. This is an interesting case, and I will stand corrected if a higher and more learned body of jurists conclude that I erred.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/23/2024 .

David J Wilson
David J Wilson Estate
Greens Grocery Llc
Antoinet Moore Personal Representative

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Antoinet Moore , plaintiff, et al VS Greens Grocery Llc , defendant,
et al
Case Number: 2023CP1002924
Type: Order/Electronic Form 4

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2024-07-23 10:39:39 page 3 of 3

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

May 12 2025

SC 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.

CERTIFICATE OF COUNSEL FOR THE RECORD ON APPEAL

Pursuant to Rule 210(g), SCACR, the undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

s/ Yasmee Ebbini

Blake T. Williams

Yasmee Ebbini

Morgan B. Thompson

Nelson Mullins Riley & Scarborough LLP

1320 Main Street/ 17th Floor

P.O. Box 11070 (29211-1070)

Columbia, SC 29201

Attorneys for Appellant

This 7th day of April 2025