STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Debra McCaslin, Circuit Court Judge

Appellate Case No. 2024-001644

The State of South Carolina,

Respondent,

v.

Jabin E. Trapp,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR BY DENYING APPELLANT IMMUNITY FROM PROSECUTION PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT BECAUSE THE COURT ABUSED ITS DISCRETION IN FINDING APPELLANT DID NOT ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THE ELEMENTS REQUIRED FOR IMMUNITY UNDER SUBSECTION 16-11-440(C) AND THE REQUISITE ELEMENTS OF SELF-DEFENSE?

STATEMENT OF THE CASE

On December 5, 2022, the Lexington County Grand Jury indicted Appellant, Jabin Trapp, for the Murder of Parrish Phillips ("Decedent") (R.* Indictment No. 2022–GS–32–03843).

On April 25, 2024, Appellant filed a motion for a pre-trial hearing to determine whether he was entitled to immunity from prosecution pursuant to Section 16-11-450 of the South Carolina Code of Laws (Protection of Persons and Property Act ("PPPA")). (R. *).

On September 5–6, 2024, Appellant appeared before the Honorable Debra McCaslin for the immunity hearing. (Hrg. Tr. p. 1 – 252). Robert T. Williams, Anna Yonge, and Jason Yonge represented Appellant, and Assistant Solicitors Bruce Norton, Lucas Pincelli, and Jordan Cox represented the State. After hearing the testimony and arguments presented by counsel, the Court denied the motion and found Appellant was not entitled to immunity under the PPPA.

On September 16–19, 2024, Appellant proceeded to trial before the Honorable Debra McCaslin and a jury. (Trial Tr. p. 1 – 671). Robert T. Williams, Anna Yonge, and Jason Yonge represented Appellant, and Assistant Solicitors Bruce Norton, Lucas Pincelli, and Jordan Cox prosecuted the case on behalf of the State. The jury returned a guilty verdict, and the Trial Court sentenced Appellant to forty (40) years imprisonment. (Trial Tr. p. 655 – 670).

On September 30, 2024, Appellant filed a Notice of Appeal.[1] (R.*). This appeal follows.

[1] Defense Counsel Jason Yonge emailed the notice of appeal, proof of service, and sentencing sheet to ctappfilings@sccourts.org on Friday, September 27, 2024. It appears Counsel Yonge filed these documents the following Monday because of court closures due to Hurricane Helene.

STATEMENT OF THE FACTS

Immunity Hearing

On September 5–6, 2024, Appellant appeared before the Court for an evidentiary hearing to determine whether Appellant was entitled to immunity under the PPPA. (Hrg. Tr. p. 1 – 252). The following witnesses testified at the hearing: (1) Appellant, (2) Officer William Norris, (3) Investigator Earl Alewine, and (4) Officer Paul Walker.

Appellant's Testimony

At the hearing, Appellant Jabin Trapp testified and immediately addressed the issue as to why he shot and killed Decedent on June 27, 2021: "*Because he attacked me and threatened me [with] bodily harm and really [,] I was very fearful for my life.*" (Hrg. Tr. p. 8, lines 8-13) (emphasis added). Appellant explained that Decedent was his friend and had been living with him for approximately three and a half weeks at the time of the shooting. (Hrg. Tr. p. 8, lines 8-13; Tr. p. 16, lines 15-17). Appellant stated that he did not want to kill Decedent and proceeded to testify about his background, relationship with Decedent, and the events leading up to the shooting.

Appellant's Background

Appellant testified that he worked as a cybersecurity engineer for Wells Fargo and had been with that company for eight years. (Hrg. Tr. p. 30, line 10). Appellant stated that he had previously worked for Intel Semiconductor and explained that his career was important to him because his "daughter just started back to finish her master's [degree] to go to dental school". (Hrg. Tr. p. 30, lines 3-5). Appellant further noted, "I keep a very clean - - squeaky clean life because of my job." (Hrg. Tr. p. 30, lines 7-8).

Appellant's Relationship with Decedent

Appellant testified that he and Decedent had been friends for about ten years. (Hrg. Tr. p.

16, lines 21-25). Appellant explained that they met through a mutual friend and enjoyed riding motorcycles and singing karaoke. (Hrg. Tr. p. 17). Appellant testified that he initially allowed Decedent to stay as a "house guest to recuperate" from a previous intestinal surgery (due to a healing wound on his abdomen and had to wear a colostomy bag). (Hrg. Tr. p. 25, lines 3-5; Tr. p. 31, lines 12-21). Appellant noted that Decedent brought his dog, Max, to live at the residence, and his girlfriend, Elizabeth "Lizzy" Warwick, stayed most nights. (Hrg. Tr. p. 28, lines 20-23; Tr. p. 32, line 22 – 33, line 3). Appellant acknowledged that he had a threesome one time with Decedent and Lizzy. (Hrg. Tr. p. 33 – 34).

Appellant's Living Arrangement with Decedent

Appellant testified that he allowed the Decedent to live with him under the condition that Decedent would not keep "any large amounts of cash or … large amounts of drugs in my house" because a felony charge could end his career. (Hrg. Tr. p. 29, lines 12-19). Appellant explained that he implemented this rule because "any type of felony charge like that would ultimately just end my career and so I wanted to avoid being implicated in anything like that." (Hrg. Tr. p. 30, lines 19-21). Notably, Appellant clarified that he knew Decedent sold marijuana and THC cartridges, and that he occasionally purchased THC cartridges from Decedent to help with his "anxiety in the evenings". (Hrg. Tr. p. 23, line 24 – 24, line 16).

Appellant's Knowledge of Decedent's Violent Past

Appellant testified that he knew Decedent "*could have a hothead . . . a hot temper.*" (Hrg. Tr. p. 19, lines 16-20) (emphasis added). However, Appellant acknowledged that Decedent had never been angry towards him but specified that he did know about Decedent's "violent past":

> [Decedent] ha[d] the capability of being angry … I knew … he had been kicked out of a few bars because, you know, he'd showed out and stuff like that. *I was aware of his [] violent past in regards to his prior altercations that he had, so I was aware of those type of activities.* [] I was aware he had the potential [] to lose his temper

and be angry [].

(Hrg. Tr. p. 19, lines 20-21; p. 20, lines 2-9) (emphasis added). Appellant expounded on his specific knowledge of the Decedent's "violent past":

> [Decedent] was *charged with attempted murder* and he wound up *pleading to assault and battery* or some sort of lesser charge like that, but *he went to prison* for a while. So, I mean, *I knew he had the capability to be violent* because he took on two people and one of them was armed with a knife and he disarmed that person, *slashed that person up pretty good, so, I mean, he -- he had the capability to be vicious.*

(Hrg. Tr. p. 21, lines 5-12) (emphasis added). Notably, Appellant testified that he knew Decedent wore an eye patch because of an injury he received in prison after an inmate attacked him with a knife. (Hrg. Tr. p. 21 – 23).

Events Leading to the Shooting

Appellant admitted that he had become frustrated with Decedent for being messy, loud, and having to cook for him. (Hrg. Tr. p. 36 – 39). Appellant maintained that he became "a little bit nervous" when Decedent paid him $1,200 in cash for two months' rent because he had specifically told Decedent not to keep large amounts of cash in the house. (Hrg. Tr. p. 38). Appellant also became suspicious that Decedent borrowed his car for drug-related activities after tracking his movements using the "Cadillac app" during a trip to Charleston. (Hrg. Tr. p. 39 – 41).

On the day of the shooting, Decedent went to a bar for "Sunday Funday" with a mutual friend, Aubry Rowe, and her minor daughter while Appellant cut the grass and did yard work. (Hrg. Tr. p. 44 – 47). When Decedent returned from the bar, Appellant attempted to discuss the issues with their living arrangement but Decedent "wasn't the least bit apologetic" or willing to work with Appellant. (Hrg. Tr. p. 50, line 21 – 53, line 17). Appellant stated that while they were on the back patio, Decedent said, "you're my bitch now" referring to the rent payment. (Hrg. Tr. p. 51, lines 5-8).

Appellant then explained that he decided to get the envelope with $1,200 cash and return it to Decedent so he could find another place to stay. (Hrg. Tr. p. 52, lines 15-25). Appellant testified that Decedent and Lizzy were outside sitting on the patio furniture when he put the envelope on the table and informed Decedent that he needed to find a new place. (Hrg. Tr. p. 53, lines 1-16). Appellant explained that Decedent became "very irritable towards me" and said, "I own you for the next two months." (Hrg. Tr. p. 53, lines 18-20).

Decedent's Threats to Appellant

Appellant testified that he told Decedent about tracking the car's movements during Decedent's trip to Charleston and showed him the places on the app. (Hrg. Tr. p. 54). In response, Appellant testified that Decedent threatened him, saying, "*you're dead and don't even know it yet; [] you're already dead*" and "*people [have] died for knowing shit like this*". (Hrg. Tr. p. 54, lines 11-13) (emphasis added). Appellant also testified that Decedent got in his face and said, "he owns me and that he might not be able to completely take me out right now, *but that once Max [the dog] gets done - - once Max gets done with me there won't be nothing left but a carcass.*" (Hrg. Tr. p. 54, lines 14-18) (emphasis added).

Appellant also described the Decedent's level of anger,

> [Decedent] -- on a scale of one to ten at that -- at that point, he's probably like a three or so, but *he went from just from that to a hundred like instantly.* It was like - - at that point like I'd saw something in him change and like *he had this rage and anger* and his cheeks were like clinched together and he was like just -- just I've never -- *I've never seen somebody so angry before* and I -- and I never -- I never thought [Decedent] would go like that towards me and he was so hard, like just so -- *it was scary. Scary.*

(Hrg. Tr. p. 55, lines 4-13) (emphasis added). Appellant testified, "I actually stood up out of my chair" and "said you can't talk to me like this in my house, you need to leave, and [Decedent] said I ain't fucking leaving and [] he's right in my face." (Hrg. Tr. p. 56, lines 5-9). Appellant testified,

"that's when I saw Lizzy, like she got scared and she left", then Decedent "head-butted" him, and "stormed inside" the house. (Hrg. Tr. p. 56, lines 9-13). Notably, Appellant further testified, "*I thought [Decedent] was going to get a knife, club or something"* and *"come back and beat the crap out of me*". (Hrg. Tr. p. 56, lines 23-25) (emphasis added).

Appellant then explained why he went inside, " I actually had to go inside because I'm going to get my phone because I'm calling 9-1-1". (56-57). Appellant also testified that, while looking for his phone, "*I'm in such fear and such like panicky I grabbed the gun*" on the dresser. (Hrg. Tr. p. 58, lines 6-8) (emphasis added). Appellant further testified that he went back to the porch area because he could not find his phone. (Hrg. Tr. p. 58, lines 20-25).

The Shooting

Appellant testified, "[A]s I'm walking out and I see my phone on the stool, I can hear [Decedent] saying a few things that I couldn't make out like he was behind me, like he was inside coming behind me". (Hrg. Tr. p. 59, lines 5-8). Notably, Appellant detailed the moments immediately before the shooting:

> [A]t the time *the gun was down by my side* and I went to say I just want you to leave and I -- I couldn't even get that out of my mouth because *he like bum-rushed me, like he was gonna try to tackle me, and so as he's coming towards me*, you know, I'm trying to raise the gun up to like get it away from him like this and I'm gonna start to evade to take it away from him and so instead of like block tackling me he kind of drives up and grabs -- *grabs my arm and drives me off the back porch* and as I'm going off the back porch -- or as he's driving me off the back porch, my arm or back of my shoulder hits the -- this hanging fern basket and we kick over the chair, and I don't know if I kicked over the chair or he kicked over the chair, but one of us did, but as I go off the porch and he's driving me off the porch, *he's like almost on top of me kind of thing, so when I land on the ground I stumble and like trying to get my balance and I'm about to fall and like I'm afraid that if he gets me on the ground he -- he can definitely hurt me* because I don't -- I'm not -- I don't know how to fight, I've never fought anybody before, and *so he'd be able to just do what he wanted to do with me.*
>
> *And so I'm trying to get away*, I'm trying to get away, and I'm actually starting to get my footing back and when we go out on the yard we kind of -- he drives me out

> going, you know, back towards the -- the shop, the garage, and *I tripped and -- and so as we're struggling* I'm trying to like get free so we're just doing this side to side motion. And we kind of go out in the yard and we do almost like a horseshoe and turn back towards the house now, right, and at this point in time I'm able to like work my arm back and shaking it back free, so his -- his -- he's losing his grip on my arm, so I'm getting my -- pulling to get my arm free and then all of a sudden while I'm doing that, you know, *he's just saying you better pull that trigger, you better pull that fucking trigger or you're a dead man, you're fucking dead, and he's like Max on me.*
>
> And I was like really shaking back and forth and *outside of my periphery I see Max come out the back -- the back door* and I'm like -- I'm like dude, stop; dude, stop, stop, stop, and I saw Max come out the back door and so I brought my arm down a little bit like this and by this point I'd regained my footing so I was -- instead of being like backpedaling, you know, I'm able to stand upright, and so I bring my arm down a little bit, *I'm able to get a few paces away from him, and I shot. And when I shot like he just snarled at me and kept -- kept charging towards me, so I just shot him and I kept pulling the trigger until I saw him hit the ground.*

(Hrg. Tr. p. 59, line 14 – 61, line 10).

Appellant testified that the attack and struggle lasted about eight seconds from when Decedent "charged" him to the time of the shooting. (Hrg. Tr. p. 61, line 14-17). Appellant described the shooting as follows: "*It was just -- it was just a blur. All I saw was his face, that he was snarling at me, and him -- and when I say he was yelling, it was not like a yell like at the top or screaming, it was anger, like a death wish. You better pull that gun or I'm gonna fucking kill you.*" (Hrg. Tr. p. 61, line 21-25) (emphasis added).

Appellant also explained why he shot Decedent more than once:

> *I shot once and like nothing happened. He just like snarled and just kept driving towards me, so I just kept pulling the trigger* and the whole time I'm like -- I'm trying to get distance the entire time, so as I get my footing and I get my arm back up and I see Max come out and I start to shoot, I -- I just continue to get a couple more paces away from him each time, and so as he hits the ground I'm probably another pace or two behind, you know, backed up away from him.

(Hrg. Tr. p. 62, line 9-17) (emphasis added). Appellant further testified, "*[M]ost importantly it would have gotten me to the ground and that's what I was afraid of. If [Decedent] got me to the*

ground it would be game over." (Hrg. Tr. p. 62, line 25 – 63, line 2).

Appellant testified that, after the shooting, he removed the magazine from the gun, and placed the weapon and cartridges on the ground, called 9-1-1, and held the Decedent's head while waiting for the police to arrive. (Hrg. Tr. p. 63, lines 7 – 64, line 3).

Cross-Examination of Appellant

On cross-examination, Appellant acknowledged that he had not had any prior violent incidents with Decedent, and that Decedent had medical issues (e.g., a colostomy bag, a healing surgical wound on his abdomen, and wore an eye patch). (Hrg. Tr. p. 67). Specifically, Appellant explained that the Decedent had been walking around naked in the house "holding gauze over his wound" while being in a lot of pain a few days before the shooting. (Hrg. Tr. p. 97, lines 18-22).

Appellant admitted purchasing THC cartridges from Decedent for his anxiety. Appellant also acknowledged that he acted as a "middleman" for Decedent, facilitating the sale of marijuana vapes and edibles to a friend, Shannon Tilford. (Hrg. Tr. p. 82 – 85). Appellant also agreed that he was aware that Decedent had a storage container of THC cartridges and bag of marijuana with a padlock in his room. (Hrg. Tr. p. 100).

Appellant acknowledged that he did not mention that Decedent headbutted him during his initial statements to the police, and that the Decedent was unarmed with no other physical injuries. (Hrg. Tr. p. 115 – 116). Appellant also conceded that he went back inside the home to retrieve his phone after the Decedent went inside and returned to the back porch after arming himself. Appellant stated that the only item he remembered getting knocked over during the struggle was a chair. (Hrg. Tr. p. 142 – 143). Appellant testified that he never saw the bag of supposedly marijuana in Decedent's hand. (Hrg. Tr. p. 144, line 24-25). Notably, Appellant reenacted the struggle and shooting. (Hrg. Tr. p. 139).

Police Testimony

Officer William Norris

Officer Norris, a former officer with the Lexington Police Department, testified that he arrived on scene approximately five seconds behind Officer Brandon Hassler and observed Appellant kneeling near the Decedent lying on the ground, and a dog running around in the back yard. (Hrg. Tr. p. 147 – 148). Officer Norris also stated that Officer Hassler detained Appellant, and that Appellant complied without any issues. (Hrg. Tr. p. 152 – 153). As recorded on his body-worn camera (BWC), Officer Norris testified that Appellant stated he "found out [Decedent] was dealing drugs" and was addressing that issue with him. (Hrg. Tr. p. 158, line 24 – 159, line 5).

On cross-examination, Officer Norris admitted that Officer Hassler said that the dog had bitten him. (Hrg. Tr. p. 160, lines 4-9). Officer Norris also acknowledged that Officer Hassler expressed concern for Appellant's well-being and had EMS check him out. (Hrg. Tr. p. 162).

Investigator Earl Alewine

Investigator Earl Alewine, a former detective with the Lexington Police Department, testified that he arrived on the scene shortly after the shooting occurred, and Appellant was already in police custody. (Hrg. Tr. p. 163 – 164). Investigator Alewine also testified that he observed a firearm, a magazine, and a cartridge on the ground, and that a chair and a tiki torch were "knocked over in disarray". (Hrg. Tr. p. 167; Tr. p. 170). He further noted that Decedent had a bag of marijuana in his left hand, and that he did not find any weapons on or near Decedent's body. (Hrg. Tr. p. 169 – 170).

Investigator Alewine stated that he observed gunshot wounds on Decedent's left side and back shoulder, but none on his "front torso". (Hrg. Tr. p. 169, lines 14-19). Investigator Alewine also testified that he took a photograph of the defendant and stated that Appellant "did not appear

to have any injuries". (Hrg. Tr. p. 172, lines 11-17).

Investigator Alewine testified that Appellant agreed to a recorded interview a few days later, on June 30, 2021. In the interview, Appellant admitted he was "weary and tired" of Decedent living in his home. (Hrg. Tr. p. 181, lines 4-16). Investigator Alewine also testified that Appellant stated that they had agreed on a rent of $600 per month, with two months paid upfront. (Hrg. Tr. p. 177, lines 20-23). Investigator Alewine noted that Appellant acknowledged that he smoked a THC cartridge on the day of the shooting. (Hrg. Tr. p. 180, lines 1-2).

Investigator Alewine testified that Appellant admitted that he had never fought or argued with the Decedent. (Hrg. Tr. p. 180, lines 3-8). Investigator Alewine maintained that Appellant said he had heard Decedent's dog was a "trained attack dog". (Hrg. Tr. p. 187, lines 5-8). Investigator Alewine also testified that Appellant also admitted to having an "intimate moment" with Lizzy after Decedent's surgery. (Hrg. Tr. p. 190, lines 14-17). Investigator Alewine further testified that Appellant did not mention being head-butted by Decedent, and that Appellant's description of the shooting was not consistent with the gunshot wounds observed on Decedent's left side of his body. (Hrg. Tr. p. 184, lines 3-4; Tr. p. 189, lines 3-13).

On cross-examination, Investigator Alewine viewed a surveillance video recording of Decedent walking into a gas station wearing the same clothes on purportedly the same day as the shooting, and acknowledged that Decedent appeared to walk normal, did not appear in pain (was not clinching his side), or stumble while walking around the gas station. (Hrg. Tr. p. 192 – 194).

Officer Paul Walker

Officer Paul Walker, a patrol sergeant with the Town of Lexington Police Department, was called in while off-duty to assist in the investigation by sitting with Appellant during the preparation and execution of search warrants. (Hrg. Tr. p. 197). Officer Walker testified that

Appellant made the following statements to him that were recorded on his body-worn camera: "I found out he was a drug dealer, I didn't want any part of that, and things went south really quickly", and "I was backing away, trying to get away, he kept coming at me". (Hrg. Tr. p. 201, lines 3 – 202, line 10).

Court Ruling

After hearing the testimony and arguments from counsel, the Court denied the motion and found Appellant was not entitled to immunity under the PPPA. (Hrg. Tr. p. 243 – 247). First, the Court found that Appellant was at fault in bringing about the difficulty. Specifically, the Court found Appellant initiated and escalated a heated argument with Decedent and then left the argument to retrieve a gun. (Hrg. Tr. p. 243, lines 13-24). The Court stated, "I do believe that he had a part of bringing about the difficulty and under *State v. Strickland* words alone could be sufficient to bring about the difficulty, and I think that's exactly what happened here." (Hrg. Tr. p. 243, lines 20-24). The Court held that Appellant's actions were "sufficient to bring about the difficulty". (Hrg. Tr. p. 243, lines 22-23).

Second, the Court also found that Appellant failed to prove he was in actual imminent danger of losing his life or sustaining serious bodily injury. (Hrg. Tr. p. 244). Specifically, the Court noted Appellant's relationship with Decedent (no prior incidents), the Decedent medical issues, and the Decedent being unarmed. (Hrg. Tr. p. 244 – 245). The Court also found it unreasonable for Appellant to have feared Decedent's dog because Appellant had taken care of the dog while Decedent lived with him. (Hrg. Tr. p. 244, lines 3-11).

Third, the Court held that a reasonably prudent person would not have entertained the same belief as Appellant, finding the shooting occurred because of an argument over rent and money that escalated, and that the physical struggle described by Appellant was not consistent with the

undisturbed items on the porch. (Hrg. Tr. p. 245, line 18 – 246, line 4).

Finally, the Court found Appellant did not have a duty to retreat since he was at his residence. (Hrg. Tr. p. 246, lines 14-15). Notably, the Court held, "Even if [Appellant] wasn't [engaged] in an unlawful activity and [was at] a place that he [has a] right to be, I don't believe that the force that he used was necessary to prevent death or great bodily injury because I don't believe the imminent fear was there." (Hrg. Tr. p. 246, lines 23 – 247, line 2).

STANDARD OF REVIEW

"Circuit courts utilize pretrial hearings to determine whether an Appellant is entitled to immunity under the Act, employing a preponderance of the evidence standard." *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019); *State v. Duncan*, 392 S.C. 404, 410-11, 709 S.E.2d 662, 665 (2011). An appellate court reviews an immunity determination for abuse of discretion. *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). A trial court abuses its discretion when its ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support. *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016).

ARGUMENT

I. THE CIRCUIT COURT ERRED BY DENYING APPELLANT IMMUNITY FROM PROSECUTION PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT BECAUSE THE COURT ABUSED ITS DISCRETION IN FINDING APPELLANT DID NOT ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THE ELEMENTS REQUIRED FOR IMMUNITY UNDER SUBSECTION 16-11-440(C) AND THE REQUISITE ELEMENTS OF SELF-DEFENSE.

Law

In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force. S.C. Code Ann. § 16-11-450 (2015); *Curry*, 406 S.C. at 371, 752 S.E.2d at 266. The Act codified the common law Castle Doctrine and extended its reach. S.C. Code Ann. § 16-11-420(A) (2015) ("It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business").

"Under the Castle Doctrine, '[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense.' " *Jones*, 416 S.C. at 291, 786 S.E.2d at 136 (citing *State v. Gordon*, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924)). The Legislature adopted the Act based on its finding that "no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." S.C. Code Ann. § 16-11-420(E).

Specifically, the immunity section of the Act provides:

> A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using

> deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450(A) (2015) (emphasis added). Our Supreme Court has acknowledged that "another applicable provision of law" includes the common law of self-defense. *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018); *see also Jones*, 416 S.C. at 300 n.8, 786 S.E.2d at 141 n.8. This means that an Appellant may seek immunity from prosecution under the Act by "demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence." *Curry*, 406 S.C. at 372, 752 S.E.2d at 267.

For immunity claims under this theory, "a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a Appellant's entitlement to the Act's immunity." *Curry.* at 371, 752 S.E.2d at 266. There are four elements a Appellant must establish to justify the use of deadly force under the common law of self-defense:

> *First*, the Appellant must be without fault in bringing on the difficulty. *Second*, the Appellant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. *Third*, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the Appellant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. *Fourth*, the Appellant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (emphasis added); s*ee also Curry*, 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4 117 (citing *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d

452, 453 (1984)). Accordingly, a trial court should first consider whether the Appellant has proved the elements of self-defense by a preponderance of the evidence. *Curry*, 406 S.C. at 370, 752 S.E.2d at 266.

If the Appellant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable. Section 16-11-440(A) may, under appropriate facts, replace the reasonable fear element of self-defense by providing a presumption that the person's fear was reasonable under certain circumstances:

> A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
>
> (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A) (2015). The presumption of subsection (A) does not apply, however, "if the victim has an equal right to be in the dwelling or residence." *Jones*, 416 S.C. at 292, 786 S.E.2d at 137 (citing *Curry*, 406 S.C. at 370, 752 S.E.2d at 266).

Similarly, in cases where the Appellant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(C) is applicable because that provision was enacted to extend the protections of the Castle Doctrine to " '[ ]other place[s] where he has a right to be.' " *Scott*, 424 S.C. at 475, 819 S.E.2d at 121 (quoting S.C. Code Ann. § 16-11-440(C)). Section 16-11-440(C) provides:

> A person who is not engaged in an unlawful activity and *who is*

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

S.C. Code Ann. § 16-11-440(C) (2015) (emphasis added). Notably, where the section is applicable, it replaces the duty to retreat element required to establish self-defense. *Curry*, 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4.

Generally, an Appellant will be defaulted into satisfying subsection (C) when the Castle Doctrine does not apply or he cannot otherwise show he was excused from the duty to retreat. *See Jones*, 416 S.C. at 292, 786 S.E.2d at 137 (defaulting the Appellant into seeking immunity under subsection (C) where she and her assailant had an equal right to be in the apartment because they both resided at the same housing complex). *See State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328 (1989) (holding under the common law of self-defense that an individual has no duty to retreat if by doing so he would increase his danger of being killed or suffering serious bodily injury). Notably, in determining whether an Appellant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be where he is attacked. S.C. Code Ann. § 16-11-440(C).

Discussion

In this case, the Circuit Court erred by denying Appellant immunity from prosecution pursuant to the PPPA because the Court abused its discretion in finding Appellant did not establish by a preponderance of the evidence the elements required for immunity under subsection 16-11-440(C) of the South Carolina Code of Laws and the requisite elements of self-defense. (Hrg. Tr.

p. 243 – 247). *See Jones*, 416 S.C. at 290, 786 S.E.2d at 136.

Applying subsection 16-11-440(C), Appellant (1) was not engaged in unlawful activity at the time of the attack; (2) was attacked in a place where he had a right to be; and (3) did not have a duty to retreat because he was in the curtilage of his home when he used deadly force against Decedent and was free to stand his ground under the Castle Doctrine.

Although the Court noted Appellant's knowledge and limited participation in Decedent selling marijuana and THC cartridges, the Court failed to issue a specific finding whether Appellant was engaging in unlawful activity at the time of the attack. *See generally State v. Leaks*, 114 S.C. 257, 103 S.E. 549, 551 (1920) (holding that a defendant's presence at and participation in an unlawful gambling game "did not destroy the right to self-defense" because "[t]he causal connection between the unlawful act of gambling and the encounter . . . is too remote."); *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) ("[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting."); *State v. Goodson*, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994) ("[T]he burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.").

Notably, the Court erroneously found that Appellant did not act in self-defense and was not entitled to immunity by finding Appellant was at fault in bringing on the difficulty, Appellant did not believe he was in imminent danger of losing his life nor was Appellant actually in imminent danger of losing his life, and a reasonably prudent person would not have entertained the same belief.

A. The Circuit Court Erred In Finding Appellant Failed To Prove By A Preponderance Of The Evidence That He Was Without Fault In Bringing On The Difficulty.

In this case, Appellant's verbal dispute over Decedent's living arrangements at his house

does not constitute "fault" in the context of the PPPA because Appellant was at his home and only armed himself *after* Decedent escalated the verbal dispute by becoming enraged, issuing death threats, and head-butting Appellant. *See State v. Hendrix*, 270 S.C. 653, 244 S.E.2d 503 (1978) (finding "[a] man arming himself on his own land in a legal manner after he has been threatened is not evidence of his being at fault in bringing on the difficulty."). In other words, Appellant initiating a conversation about Decedent moving out of his home is not the same as initiating a violent confrontation with Decedent (i.e., potential civil matter versus escalated physical assault).

Appellant's decision to arm himself was justified based on the threats, physical assault, and knowledge of Decedent's violent history: "*I thought [Decedent] was going to get a knife, club or something"* and *"come back and beat the crap out of me*". (Hrg. Tr. p. 56, lines 23-25) (emphasis added). Appellant was also not at fault by going back outside on the porch because Appellant was at his residence and looking for his phone to call 9-1-1. *See Dickey*, 394 S.C. at 502, 716 S.E.2d at 103 (finding "Petitioner was not at fault in bringing about the harm by exiting the building."). The Court erroneously relied on "*State v. Strickland*" finding that "words alone could be sufficient to bring about the difficulty". (Hrg. Tr. p. 243, lines 20-24). Therefore, the Court erred in finding appellant failed to prove by a preponderance of the evidence that he was without fault in bringing on the difficulty. (Hrg. Tr. p. 243).

B. The Circuit Court Erred In Finding Appellant Failed To Prove By A Preponderance Of The Evidence That He Actually Believed He Was In Imminent Danger Of Losing His Life Or Sustaining Serious Bodily Injury, Or He Actually Was In Such Imminent Danger.

Here, the Court failed to properly consider Appellant's testimony that Decedent escalated the verbal dispute by becoming enraged, issuing death threats, and head-butting Appellant. The Court also failed to properly consider that Appellant's fear of Decedent was heightened by knowing Decedent's "violent past" (e.g., arrested for attempted murder, and a knife fight in

prison). (Hrg. Tr. p. 19 – 23). *See State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) (finding "words accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense.") (quotation citation omitted); *Fuller*, 297 S.C. at 443–44, 377 S.E.2d at 331 (finding a person has the right to act on appearances, even if the person's belief is ultimately mistaken).

Appellant also had a reasonable fear for his safety due to the dog because Decedent "bum-rushed" him, and if Decedent got him "to the ground it would be game over". (Hrg. Tr. p. 61 – 63). *See State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000) (finding "[o]nce the right to fire in self-defense arises, a Appellant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act.") (citation omitted). The Court's ruling also ignored the testimony that Decedent's dog bit one of the responding officers. Further, a bag of marijuana being found in the Decedent's hand does not negate the threats and physical assault Appellant perceived in that moment. Notably, Appellant testified that he was "very fearful for my life" and that attack was "just a blur" that lasted a matter of eight seconds.

Therefore, the Court erred in finding Appellant failed to prove by a preponderance of the evidence that he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. (Hrg. Tr. p. 244).

C. The Circuit Court Erred In Finding That A Reasonably Prudent Man Of Ordinary Firmness And Courage, Similarly Situated, Would Not Have Felt That He Was In Imminent Danger Of Losing His Life Or Sustaining Serious Bodily Injury.

At the hearing, Appellant testified to his specific knowledge of the Decedent's "violent past":

> [Decedent] was *charged with attempted murder* and he wound up *pleading to assault and battery* or some sort of lesser charge like that, but *he went to prison* for a while. So, I mean, *I knew he had the capability to be violent* because he took on two people and one of them was armed with a knife and he disarmed that person,

slashed that person up pretty good, so, I mean, he -- he had the capability to be vicious.

(Hrg. Tr. p. 21, lines 5-12) (emphasis added). Notably, Appellant testified that he knew Decedent had been in bar fights and wore an eye patch because of an injury he received in prison after an inmate attacked him with a knife. (Hrg. Tr. p. 21 – 23).

Appellant also testified that Decedent threatened him, saying, "*you're dead and don't even know it yet; [] you're already dead*" and "*people [have] died for knowing shit like this*". (Hrg. Tr. p. 54, lines 11-13) (emphasis added). Appellant also testified that Decedent got in his face and said, "he owns me and that he might not be able to completely take me out right now, *but that once Max [the dog] gets done - - once Max gets done with me there won't be nothing left but a carcass.*" (Hrg. Tr. p. 54, lines 14-18) (emphasis added).

Appellant further testified, *[Decedent] like bum-rushed me, like he was gonna try to tackle me, and so as he's coming towards me . . . while I'm doing that, you know, he's just saying you better pull that trigger, you better pull that fucking trigger or you're a dead man, you're fucking dead, and he's like Max on me.*" (Hrg. Tr. p. 59 – 61). Therefore, based on Decedent's actions and Appellant's knowledge of his "violent past", the Court erred in finding that reasonably prudent man of ordinary firmness and courage, similarly situated, would not have felt that he was in imminent danger of losing his life or sustaining serious bodily injury.

CONCLUSION

Based on the foregoing reasons, Appellant Jabin Trapp respectfully requests that this Court reverse his convictions and sentences and grant him immunity from prosecution.

Respectfully submitted,

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