STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 17 2025
SC Court of Appeals

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Court of Appeals Appellate Case No. 2023-000943

THE STATE,

Petitioner,

vs.

JUSTIN TYLER ANDERSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON APPEAL

Did the Court of Appeals reversibly err by affirming the circuit court judge grant of immunity to Anderson pursuant to the South Carolina Protection of Persons and Property Act when: (1) the circuit court judge granted immunity without making an actual determination on whether the "without fault for the difficulty" element of self-defense had been established as required; (2) Anderson could not have been without fault for the difficulty due to the opprobrious language he used to provoke the physical altercation that occurred with his victim; (3) Anderson did not reasonably need to use deadly force against his unarmed victim at the time he did so; and (4) the circuit court judge erroneously concluded Anderson was only legally required to establish two of self-defense's four elements to be entitled to immunity?

STATEMENT OF THE CASE

Procedural History

In March of 2022, Respondent Justin Tyler Anderson was arrested following an investigation into a stabbing that occurred in a parking lot. In August of 2022, the York County Grand Jury indicted Anderson for assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime. Prior to trial, Anderson sought immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. On January 11, 2023, a pre-trial hearing was conducted on the matter in the York County Court of General Sessions with the Honorable Eugene C. Griffith, Jr., circuit court judge, presiding. At the conclusion of the hearing, the circuit court judge took the matter under advisement. Thereafter, on February 15, 2023, the circuit court judge issued an order granting Anderson's request for immunity. Following that, the State timely moved for reconsideration of the decision. On May 18, 2023, the circuit court judge issued an order summarily denying the State's motion. The State then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing—affirmed the circuit court judge's order granting immunity through an unpublished opinion. State v. Anderson, Op. No. 2025-UP-242 (S.C. Ct. App. filed July 16, 2025). Thereafter, the State timely filed a petition for rehearing. On September 10, 2025, the Court of Appeals denied the State's petition.

Factual History

The incident at the heart of this appeal occurred on St. Patrick's Day in 2022. (App'x pp. 19-20; pp. 31-32; p. 72; pp. 81-82). That evening, Deputy Arens Marthone from the York County Sheriff's Office responded to a report of a stabbing that had just occurred in the parking lot of Bella Cay Salon and Spa, a business situated next to 2020 Tavern in Tega Cay, South

Carolina. (App'x pp. 8-9). Upon arriving at the scene, the deputy was alerted Anderson, the son of the salon's owner, stabbed the victim, Robert Wiestling ("Victim"), in the neck during a dispute.[1] (App'x p. 63; pp. 69-70; p. 91; pp. 114-115). Both had been drinking that day, and the dispute between the two broke out—and rapidly escalated—over Victim's attempt to park in one of the salon's customer parking spots on his way to the tavern despite the presence of signage indicating the spots were for salon customers only. (App'x pp. 10-11; pp. 66-70; p. 73; p. 99; p. 101). Ultimately, based on what had transpired, Anderson was arrested and charged with several offenses, including assault and battery of a high and aggravated nature, in connection to the stabbing. (App'x p. 4; pp. 156-161).

Before his case could be brought to trial, Anderson sought immunity from prosecution, and the circuit court judge conducted a hearing on the matter in response. (App'x p. 4). During that hearing, both Anderson and Victim offered accounts of the events leading up to the stabbing, and, notably, both those accounts were highly-similar in many key respects. (App'x pp. 61-109).

Regarding Anderson's account, he described what occurred as follows. (App'x pp. 61-80). On the date of the incident, Anderson was in the salon's parking lot with his girlfriend and her daughter getting ready to leave when a vehicle parked at the salon. (App'x pp. 63-64). His mother had asked him to make sure no one other than customers parked at the salon, so Anderson told the vehicle's occupants to move it or he would call a tow truck. (App'x pp. 63-65). Initially, the vehicle's occupants ignored him, he nonetheless allowed them to walk away without comment, and they returned a short time later and moved the vehicle. (App'x pp. 64-65). A few minutes after that, Victim arrived and also began parking in one of the salon's spots,

[1] Anderson claimed to the deputy he accidentally struck Victim with a Milwaukee-brand utility knife during the course of the dispute. (App'x p. 115). Anderson's knife was recovered at the scene resting in the windshield cowl panel of his van, which was parked in the salon's parking lot. (App'x p. 30; p. 61; p. 70; pp. 112-113; State's Ex. # 11 (Photograph)).

and Anderson quickly advised Victim he could not park there.[2] (App'x pp. 65-66). In response, Victim questioned why he could not do so if the salon was closed, Anderson—now angry—told Victim that did not matter, and Victim indicated he did not like Anderson's attitude. (App'x pp. 66-67; pp. 76-77). At that point, the situation between the two began to get "heated," and they started exchanging threats with one another. (App'x p. 67; pp. 71-72). As their back-and-forth continued, Victim got out of his car, approached Anderson, began "running his mouth," and put his fingers in Anderson's face. (App'x p. 67). Anderson responded by "definitely" cursing at Victim and telling him he needed to "get the fuck out." (App'x pp. 67-68; p. 77). Victim then began "getting in [Anderson's] face again," and "words were said." (App'x p. 68). Following that, Victim returned to his vehicle, fumbled around, came back, got back in Anderson's face again, and then return to his vehicle once more. (App'x p. 68). "Then some other things were said[.]" (App'x p. 68). As to those things, Anderson—by his own acknowledgement—made statements to Victim like "Fuck you," "*Come at me*," and "What are you gonna do?" (App'x p. 78) (emphasis added). In response to those provocative statements, Victim did, in fact, come back toward Anderson and spit in Anderson's face, and Anderson—by his own admission—responded: " '*Let's go*,' or something like that." (App'x p. 68; p. 78) (emphasis added). Victim then physically pushed Anderson into a car. (App'x p. 69). After that, Anderson armed himself with a utility knife he had in his pocket and moved his hands up when he saw Victim's fist moving toward him.[3] (App'x p. 69; pp. 78-79). When he did, he "accidentally" made contact with Victim's neck. (App'x p. 69; p. 79). Immediately in response to that, Victim back away,

[2] Regarding how Anderson conveyed to Victim he could not park in the spot, a neutral observer asserted Anderson was "being a dick" and spoke to Victim in "not the nicest way." (Court's Ex. # 2 (Interview Recording)).

[3] Although he personally was armed with a deadly weapon, Anderson candidly conceded during the hearing he was unaware if Victim had anything in his hand. (App'x p. 79).

grabbed his neck, accused Anderson of stabbing him, returned to his vehicle, and then began heading toward 2020 Tavern. (App'x p. 70; p. 79). At that point, Anderson "chased [Victim] down" and "tackled him to the ground." (App'x p. 70; p. 80). But, before doing so, Anderson discarded his knife onto the hood of his van even though he thought Victim was "grabbing a gun or something" when Victim last returned to his vehicle after being stabbed. (App'x p. 70). Following that, Anderson, who was uninjured, waited in the parking lot and was eventually arrested. (App'x p. 71; pp. 79-80).

Meanwhile, regarding Victim's account, he remembered the incident in the following manner. (App'x pp. 81-109). Victim went to 2020 Tavern around 7:00 p.m. with his wife and his wife's friend to celebrate St. Patrick's Day. (App'x pp. 81-82). Upon arriving there, he saw an empty parking spot that he had previously parked in in the past and backed into it. (App'x p. 83). Once he was parked, they all got out of the car, and Anderson immediately began cussing at him and saying he could not park in the spot. (App'x pp. 83-84; pp. 104-105). In response, Victim told Anderson it did not matter because the salon was closed. (App'x p. 84). Nevertheless, due to Anderson's belligerent behavior, Victim returned to his car and began to move it out of the spot. (App'x pp. 84-85; p. 105). As he did, though, Anderson said: "That's right[,] you son of a bitch, you better leave."[4] (App'x p. 85). In response to that, Victim stopped his vehicle, opened the door, and asked Anderson what his "fucking problem" was, and the two began exchanging profanities with one another. (App'x p. 85). During that exchange, Victim exited his vehicle, the two continued cussing at each other, and he spit on the ground at one point. (App'x pp. 85-86). Anderson then beckoned him to come over if he had a problem, Victim did so, and Victim stated: "What now?" or "Now what?" (App'x p. 87). At that point,

[4] Later on, Victim confirmed he would have continued leaving if Anderson had not called his mother, who was deceased, a bitch. (App'x p. 108).

Anderson suddenly struck Victim in the mouth, he grabbed Anderson, and Anderson hit him in the neck. (App'x pp. 87-88; pp. 105-106). The blow to his neck felt like a "shock," and Victim quickly released Anderson and returned to his car. (App'x pp. 88-87; pp. 105-10). When he did, Victim realized blood was spurting from his neck, and he accused Anderson of stabbing him over a parking spot. (App'x p. 88). Victim then began walking toward the tavern for help, and, as he did, Anderson unsuccessfully attempted to physically stop him from doing so several times. (App'x pp. 90-91).

In addition to Anderson's and Victim's accounts, Kirsten Pickett, who was both Anderson's girlfriend and an employee of the salon, testified about what she witnessed on the date of the incident and recounted the events that occurred as follows. (App'x pp. 20-21; p. 31). Around sunset that evening, a car parked in a salon parking lot shortly before Victim's arrival, which angered Anderson. (App'x p. 23; p. 32; pp. 38-39; p. 57). However, Pickett was able to get the person to move their vehicle by threatening to have it towed. (App'x p. 23; p. 32; pp. 38-39; p. 57). Only minutes later, Victim arrived in his car and began backing into one of the salon's customer parking spots. (App'x p. 23; p. 39). When he did, Anderson approached and let Victim know he should not park in the spot, Victim rolled down his vehicle's window and asked what the problem was, Anderson repeated he could not park there, and Victim claimed he could because the salon was closed. (App'x p. 25). Following that, both raised their voices with one another, Victim asked Anderson what his problem was, and Anderson tauntingly replied: "*Come figure it out*." (App'x pp. 25-26; p. 41) (emphasis added). In response to that, Victim exited his vehicle, walked toward Anderson, and began poking his finger at Anderson's chest and nose. (App'x pp. 26-27; p. 42). Anderson then became angry and "bowed up a little bit." (App'x pp. 26-27; p. 42). At that point, a verbal exchange ensued during which both Anderson

and Victim directed vulgar and insulting statements at each other. (App'x p. 46). Amongst the things said, Victim told Anderson he was "[g]oing to fuck him in the ass," and Anderson told Victim to "[s]uck [his] dick."[5] (App'x pp. 45-46). Additionally, throughout that verbal exchange, Victim walked back to his vehicle several times, and, each time he did, Anderson continued "running his mouth," which led Victim to come back over toward Anderson and—at one point—spit in his face.[6] (App'x p. 47; pp. 51-52). More specifically, Anderson taunted Victim with statements such as "What are you going to do?" and "*Come at me*." (App'x pp. 52-53) (emphasis added). After Anderson continued to direct more statements at Victim, Victim finally returned to Anderson and lunged at or pushed him into Pickett's nearby vehicle. (App'x p. 28; p. 47; p. 53). Following that, the two locked arms, struggled for a few seconds, and then pushed away from one another. (App'x p. 29; pp. 53-55). Victim, who was now bleeding, then began heading toward the tavern, "said something" as he did, and was promptly tackled to the ground by Anderson, who only released Victim when Pickett began kicking him in the side. (App'x pp. 29-30; pp. 55-56).

At the conclusion of the hearing, the circuit court judge took the matter under advisement. (App'x pp. 128-129). Thereafter, upon considering the matter, the circuit court judge granted immunity from prosecution to Anderson. (App'x p. 140). In doing so, the circuit court judge correctly noted Anderson had the burden of demonstrating entitlement to immunity by a preponderance of the evidence. (App'x p. 132). Likewise, the circuit court judge correctly recognized the defense of self-defense has four necessary elements when deadly force has been

[5] In the aftermath of the stabbing, Pickett admittedly did *not* tell the investigating officers about Victim's supposed comment about "fuck[ing] [Anderson] in the ass." (App'x pp. 50-51).

[6] Regarding Victim's returns to his vehicle, Pickett indicated it looked to her like Victim might have been trying to get his phone. (App'x p. 44).

employed. (App'x pp. 137-138). The circuit court judge then began analyzing the elements of self-defense in light of the various factual findings he made. (App'x pp. 138-140).

Beginning his substantive analysis with the "without fault in bringing on the difficulty" element, the circuit court judge recognized a business proprietor has the right to eject trespassers from the premises and will be considered to be without fault in bringing on the difficulty so long as the proprietor engaged in a legitimate good faith exercise of the right to eject. (App'x p. 138). The circuit court judge further recognized the question of whether the right to eject was exercised in good faith can turn on the language used during the interaction. (App'x p. 138). The circuit court judge then—in total—ruled as follows:

> In the facts of this case, [Anderson] verbally advised the Victim not to park in the designated salon space but then heard the Victim questioning whether the salon was open for patrons. The uncontroverted testimony is that the verbal exchange between the parties escalated rapidly. [Anderson] testified that multiple face-to-face confrontations occurred between the Victim and him. Both men yelled at each other, and the Victim returned to his vehicle between the short confrontations. *The Court finds that [Anderson] had no duty to retreat*.

(App'x p. 139) (emphasis added).

After incorrectly conflating the duty to retreat with the "without fault for the difficulty" element, the circuit court judge then moved on to the "belief in or actual imminent danger" element and concluded Anderson either actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or truly was in such danger. (App'x p. 139). As support for that conclusion, the circuit court judge noted the testimony established Victim retreated to his car several times during the incident, Anderson testified he was "unsure" why Victim did so, and Anderson indicated he was concerned Victim "could have" obtained a weapon. (App'x p. 139).

Next, the circuit court judge analyzed the reasonableness of Anderson's supposed belief he was at risk of death or serious bodily injury and concluded that element of self-defense had likewise been satisfied. (App'x pp. 139-140). However, in reaching such a conclusion, the circuit court judge simply noted: (1) "the physical confrontation was initiated by the Victim;" and (2) "[t]he consistent testimony of all of the witnesses was that the Victim retreated no less than twice to his car." (App'x pp. 139-140).

Finally, after making those rulings, the circuit court concluded Anderson was only required to establish *two* of self-defense's four elements under "the current law." (App'x p. 140). Specifically, in so concluding, the circuit court judge stated:

> And so under the current law, [Anderson], being in a place he had a right to be, and being authorized to eject trespassers, only must satisfy two elements: 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; and that a reasonable prudent man of ordinary firmness and courage would have entertained the belief of imminent danger.

(App'x p. 140). The circuit court judge then granted Anderson's motion for immunity from prosecution without further explanation. (App'x p. 140).

Following the grant of immunity, the solicitor timely sought reconsideration of the circuit court judge's ruling. (App'x pp. 141-153). As support for the request, the solicitor pointed out several critical problems with the circuit court judge's order. (App'x p. 146). First, the solicitor noted the circuit court judge had failed to fully analyze or reach a conclusion about whether Anderson was without fault for the difficulty and, instead, had improperly conflated the duty to retreat with the no fault requirement. (App'x pp. 146-147; p. 153). Second, regarding the "without fault for the difficulty" element, the solicitor argued Anderson's own testimony, which included candid acknowledgements he verbally encouraged Victim to come and fight him, was

by itself sufficient to establish he was not without fault for the difficult, which meant his request for immunity had to be denied. (App'x pp. 146-147; pp. 149-150). Third, the solicitor asserted the circuit court judge incorrectly concluded a reasonably prudent man of ordinary firmness and courage would have feared death or serious bodily injury under the circumstances involved since: (1) Anderson disproportionately used deadly force against an unarmed man in response to a shove and a punch; and (2) Anderson never testified to seeing a weapon or even seeing anything that looked like a weapon in Victim's hands. (App'x pp. 150-153). Fourth and finally, the solicitor noted the circuit court judge incorrectly concluded Anderson was only required to establish two elements of self-defense and, thus, committed a plain error of law by explicitly doing so. (App'x pp. 152-153).

Ultimately though, the circuit court judge summarily denied the solicitor's reconsideration request. (App'x p. 155). Notably, in doing so, the circuit court judge did not specifically address any of the issues raised by the solicitor and provided no substantive explanation for the denial. (App'x p. 155). Following the summary denial of the reconsideration motion, the State appealed. (App'x p. 163).

On appeal, the Court of Appeals affirmed the circuit court judge's grant of immunity through an unpublished decision. (App'x pp. 206-210). In affirming, the Court of Appeals first rejected the State's contention the circuit court judge—who, again, expressly "f[ound] that [Anderson] had no duty to retreat" in the section of his order purporting to address self-defense's "without fault for the difficulty" element—failed to actually rule upon the "without fault for the difficulty" element because the circuit court judge: (1) "cit[ed] the language relating to a business proprietor's right to eject trespassers in good faith"; (2) "acknowledge[d] that language used during the interaction can lend itself to a determination of whether the proprietor was acting

in good faith"; and (3) "made a credibility finding that Victim was more exaggerated and less credible than the others." (App'x pp. 138-139; pp. 208-209). Meanwhile, in so ruling, the Court of Appeals failed to acknowledge or even mention at all the circuit court judge's ultimate finding Anderson "had no duty to retreat" and—like the circuit court judge—failed to specifically discuss or analyze any of the provocative language Anderson *self-admittedly* used during the incident, including "Fuck you," "Come at me," and "What are you gonna do?" (App'x p. 78; pp. 138-139; pp. 208-209). Next, the Court of Appeals rejected the State's argument Anderson did not reasonably need to use deadly force against his victim, holding the circuit court judge "properly determined Anderson actually believed he was in danger because of the physical confrontation initiated by Victim, and did not err in finding Anderson's use of deadly force was justified." (App'x p. 209). Finally, the Court of Appeals rejected the State's argument the circuit judge erred by finding Anderson was only legally required to establish two elements of self-defense under the circumstances involved. (App'x p. 210). As support for that ruling, the Court of Appeals interpreted the circuit court judge's ruling as an affirmative determination Anderson "was a business proprietor who, in good faith, exercised his right to eject a trespasser" and, thus, concluded the circuit court judge's order "properly addressed each element of self-defense[.]" (App'x p. 210).

STANDARD OF REVIEW

In an appeal from a circuit court judge's pre-trial determination regarding a claim of statutory immunity, an appellate court reviews the circuit court judge's ruling for an abuse of discretion. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2015); see State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("[T]his court reviews [a claim of immunity under the Act] under an abuse of discretion standard of review."). Pursuant to the abuse of discretion standard, the appellate court must affirm the circuit court judge's immunity determination if it is supported by any evidence and not controlled by an error of law. Curry, 406 S.C. at 372, 752 S.E.2d at 267; see Douglas, 411 S.C. at 316, 768 S.E.2d at 237 ("[T]he abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court's assessment of witness credibility."). However, the appellate court is not barred from conducting its own review of the record to determine whether the circuit court judge's decision is supported by the evidence and will reverse when the decision is controlled by a legal error or lacking in evidentiary support. See State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 860 (Ct. App. 2010) ("An abuse of discretion occurs where the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); see also Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " (citation omitted)); cf. Narcisco v. State, 397 S.C. 24, 28, 723 S.E.2d 369, 371 (2012) ("[T]his Court is not barred from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence.").

ARGUMENT

The Court of Appeals reversibly erred by affirming the circuit court judge's order granting immunity to Anderson pursuant to the South Carolina Protection of Persons and Property Act because that order was clearly erroneous since: (1) the circuit court judge granted immunity without making an actual determination on whether the "without fault for the difficulty" element of self-defense had been established as required; (2) Anderson could not have been without fault for the difficulty due to the opprobrious language he used to provoke the physical altercation that occurred with his victim; (3) Anderson did not reasonably need to use deadly force against his unarmed victim at the time he did so; and (4) the circuit court judge erroneously concluded Anderson was only legally required to establish two of self-defense's four elements to be entitled to immunity.

Following an immunity hearing, the circuit court judge granted immunity from prosecution to Anderson on his indicted charges pursuant to the South Carolina Protection of Persons and Property Act ("the Act") after concluding Anderson was only required to establish two elements of self-defense—"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" and "that a reasonable prudent man of ordinary firmness and courage would have entertained the belief of imminent danger"—in order to be entitled to immunity and had, in fact, done so by a preponderance of the evidence, and the Court of Appeals affirmed the circuit court judge's ruling on appeal. Contrary to the decisions of both the circuit court judge and the Court of Appeals, Anderson was not entitled to immunity under the circumstances involved, and the circuit court judge's ruling granting immunity was erroneous as a matter of law for several different reasons. First, the circuit court judge failed to make an actual determination as to whether Anderson established he was without fault for the difficulty as required for him to have been acting in self-defense and, instead, incorrectly conflated that necessary element with the duty to retreat. Second, Anderson could not have been without fault for the difficulty under the circumstances involved because he used opprobrious language to provoke the physical altercation that occurred. Third, Anderson was not acting in self-defense as a matter of law because it was not reasonably

necessary for him to use deadly force against his unarmed victim when he stabbed him. Fourth and finally, the circuit court judge committed a plain error of law by concluding Anderson was only required to establish two of self-defense's four elements in order to be entitled to immunity. Under those circumstances, Anderson was not entitled to immunity, the circuit court judge committed a clear error of law by granting Anderson's request for immunity without fully and properly conducting the necessary analysis, and the Court of Appeals incorrectly failed to reverse the circuit court judge's erroneous ruling on appeal. Accordingly, the State's petition for a writ of certiorari should be granted, the decisions of both the circuit court judge and the Court of Appeals should be reversed, and Anderson's case should be remanded for further proceedings.

Under the mandates of the Act, any law-abiding person who uses deadly force in a manner permitted by the provisions of the Act is immune from criminal prosecution for the use of deadly force. S.C. Code Ann. § 16-11-450(A); see S.C. Code Ann. § 16-11-420(B) ("[I]t 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."). The intent of the legislature in implementing the Act was to "codify the common law Castle Doctrine" and "to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A). In carrying out that intention, the legislature instructed:

> 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 or 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). Additionally, the legislature further instructed:

> 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).

Pursuant to the Act, the burden is on the defendant to establish his entitlement to immunity. State v. Andrews, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019). In analyzing whether that burden has been met, the appropriate analysis involves the court first determining whether the defendant has proved *all* the required elements of self-defense by a preponderance of the evidence. State v. Glenn, 429 S.C. 108, 118, 838 S.E.2d 491, 496 (2019). If so, the defendant would be entitled to a grant of immunity. Id. at 117-118, 838 S.E.2d at 496; see State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120-121 (2018) ("Self-defense is the classic provision of law that justifies the use of deadly force. It was clearly the Legislature's intent that if a person seeking immunity under subsection 16-11-450(A) could prove the elements of self-defense in an immunity proceeding, immunity must be granted."). If not and the failure is based on the defendant's inability to establish the elements of reasonable fear or duty to retreat, the court should then determine whether either Section 16-11-440(A) or Section 16-11-440(C) of the Act is applicable. Glenn, 429 S.C. at 118, 838 S.E.2d at 496.

Regarding self-defense, the following four elements must be present in order for that particular defense to be established in South Carolina:

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

Curry, 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4 (quoting State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984)). As should be obvious from its elements, self-defense is "based upon necessity[.]" State v. Osborne, 202 S.C. 473, __, 25 S.E.2d 561, 563 (1943). Resultantly, a person may not employ deadly force unless there is a reasonable necessity *to kill*. State v. Harvey, 110 S.C. 274, __, 96 S.E. 399, 400 (1918). Likewise, due to the "without fault in bringing on the difficulty" requirement, a person can deprive himself or herself of the right of self-defense through either actions *or* words. State v. Council, 129 S.C. 116, __, 123 S.E. 788, 789 (1924). And, significantly, if even one of the requisite element is lacking, "[i]t is an axiomatic principle of law that the defense has not been established[.]" State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010).

In the case sub judice, Victim was in the wrong by parking in one of the salon's parking spots on the evening of the incident despite not being a salon customer. Similarly, Victim's behavior in response to Anderson's request for him to move from the salon's spot was far from admirable. However, Anderson's own behavior in response to the situation was *also* far from

admirable. More specifically, Anderson responded to Victim's act of improperly parking in the salon's spot by getting into a heated verbal argument with Victim, engaging in an exchange of vulgarities and threats with Victim, and self-admittedly directing provocative statements—including "*Come at me*"—at Victim until Victim did, in fact, come at him. Then, once Anderson had become embroiled in the physical altercation his words could only be construed as inviting, Anderson proceeded to pull out a knife and stab his unarmed victim in the neck as the two merely grappled with one another. Upon being presented with those facts, the circuit court judge somehow concluded Anderson was entitled to immunity from criminal prosecution pursuant to the Act on each of the indicted charges. As a matter of law, the circuit court judge's conclusion in that regard was clearly erroneous for several reasons.

First and perhaps most significantly, the circuit court judge—contrary to the conclusion reached by the Court of Appeals—committed a plain error of law by failing to conduct the appropriate analysis and determine whether Anderson had established self-defense's requisite "without fault for the difficulty" element. Instead of doing so, the circuit court judge began what was identified as an analysis of that particular element, but his analysis ultimately ended not with a determination Anderson was without fault for the difficulty but with a finding Anderson "had no duty to retreat," which was something entirely separate and distinct from the "without fault for the difficulty" element. Therefore, since no true determination was made as to whether Anderson was without fault for the difficulty, the circuit court judge could not properly find Anderson had met his burden of establishing entitlement to immunity, and the circuit court judge's conclusion to the contrary constituted a legal error requiring reversal. See Morris v. BB&T Corp., 438 S.C. 582, 585-586, 885 S.E.2d 394, 396 (2023) (instructing a court must offer an explanation for its decision and instructing "no court is entitled to the deference associated

with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law"); cf. Glenn, 427 S.C. at 123, 830 S.E.2d at 499 (concluding it constituted "reversible legal error" for the circuit court judge to make an immunity ruling without addressing the requisite elements of self-defense as necessary).

Second and relatedly, Anderson could not have been without fault for the difficulty as a matter of law because he readily contributed to and provoked the physical altercation with Victim that led to the supposed need to use deadly force. That is true because Anderson admittedly exchanged vulgar language and *threats* with Victim before any physical contact occurred between the two. See State v. Brooks, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969) ("[I]f in the exercise of the right by a proprietor to eject a trespasser from his premises, the proprietor is assaulted by the trespasser and subjected to the danger of losing his life or of receiving serious bodily harm as would justify the killing of the assailant under the right of self-defense, obviously, he would have the right to stand on that defense and, if, in fact, engaged in the legitimate exercise in good faith of his right to eject, he would in such case be without fault in bringing on the difficulty, and would not be bound to retreat." (citation omitted)); cf. State v. Wiggins, 330 S.C. 538, 547, 500 S.E.2d 489, 494 (1998) (concluding a business proprietor's act of threatening to kick his victim's and his victim's sister's asses raised a question of fact as to whether the business proprietor truly "was exercising good faith in attempting to eject when the shooting occurred"); State v. Starnes, 213 S.C. 304, 316, 49 S.E.2d 409, 123 (1948) ("We think that whether or not Starnes was acting in good faith in attempting to evict a trespasser would be determinative of his rights in the premises, and that *if his acts were not in good faith, then he would not be without fault in bringing on the difficulty*." (emphasis added)). In fact, Anderson even beckoned Victim to "come at [him]," which was an act starkly inconsistent with a genuine

good-faith effort to get Victim to *leave* the premises and could only reasonably be construed as an invitation for the physical confrontation that predictably ensued in response to it. See State v. Marshall, 428 S.C. 11, 20, 832 S.E.2d 618, 623 (Ct. App. 2019) (recognizing one who provokes an assault cannot escape criminal liability by asserting self-defense); cf. United States v. O'Neal, 36 C.M.R. 189, 192-193 (C.M.A. 1966) ("A plea of self-defense is a plea of necessity. It is generally not available to one who engages with another in mutual combat. Mere words of censure may not amount to provocation for an assault, but the accused's language went beyond critical comment. He invited the others to try to whip him. Both parties to a mutual combat are wrongdoers, and the law of self-defense cannot be invoked by either, so long as he continues in the combat." (citations, internal quotations, and brackets omitted)); State v. Strickland, 389 S.C. 210, 215, 697 S.E.2d 681, 684 (Ct. App. 2010) (concluding Strickland's statement of "shut your fucking mouth" to his victim created a jury question as to whether that particular language might reasonably have been expected to bring on the difficulty that ensued). Therefore, even accepting Anderson's account of the incident as entirely true, Anderson could not validly claim to be without fault for the difficulty because the language he conceded he used contributed to, encouraged, and incited the physical confrontation with Victim that led to the stabbing.[7] See State v. Rowell, 75 S.C. 494, __, 56 S.E. 23, 29 (1906) ("[T]he plea of self-defense is not available to one who uses language so opprobrious that a reasonable man would expect it to bring on a physical encounter, and which did actually contribute to bringing it on."); see also United States v. Peterson, 483 F.2d 1222, 1231 (D.C. Cir. 1973) ("It has long been accepted that one cannot support a claim of self-defense by a self-generated necessity to kill. The right of homicidal self-defense is granted only to those free from fault in the difficulty; it is denied to

[7] In his order granting immunity, the circuit court judge found Victim's "truthfulness" and "candor" were "slightly less" than that of Anderson and the other witnesses. (App'x p. 147).

slayers who incite the fatal attack, encourage the fatal quarrel or otherwise promote the necessitous occasion for taking life. . . . This body of doctrine traces its origin to the fundamental principle that a killing in self-defense is excusable only as a matter of *genuine necessity*." (emphasis added and footnotes omitted)). And, since Anderson could not establish self-defense's "without fault for the difficulty" element, Anderson was not entitled to immunity from prosecution as a matter of law. See Bixby, 388 S.C. at 554, 698 S.E.2d at 586 ("It is an axiomatic principle of law that the defense has not been established *if any one element is disproven*." (emphasis added)); cf. State v. Bryant, 336 S.C. 340, 345-346, 520 S.E.2d 319, 322 (1999) ("[Bryant]'s statements fail to establish the elements of self-defense entitling [Bryant] to a self-defense charge. . . . Accordingly, [Bryant] was not entitled to a self-defense charge and the trial judge correctly refused the charge."). Therefore, the circuit court judge reversibly erred by finding Anderson was entitled to immunity, and that is particularly true in light of the fact the circuit court judge never analyzed or explained how the provocative language Anderson admittedly used would or could support a finding he was free from fault and acting in good faith. Cf. Morris, 438 S.C. at 588, 885 S.E.2d at 398 ("This 'thought process' requires analysis, and the 'discretion' standard we employ for reviewing the commission's analysis requires the analysis be explained. Because the commission offered no explanation for its decision, we find the commission did not act within its discretion in refusing to reinstate Proffitt's appeal.").

Third, the circuit court judge erred by finding Anderson was entitled to immunity pursuant to the Act because Anderson could not and did not establish it was reasonably necessary for him to use deadly force against Victim as was required for him to have a viable self-defense claim. Demonstrating that fact, nothing presented during the immunity hearing established Victim did *anything* that would reasonably suggest he was armed or even attempting

to arm himself with a deadly weapon, and the only thing Anderson could point to to suggest otherwise was the simple fact Victim returned to his vehicle a few times. Notwithstanding the fact Pickett interpreted the same occurrence as a sign Victim was attempting to retrieve his phone, Victim returning to his vehicle was the precise thing Anderson supposedly was trying to get Victim to do. Meanwhile, Anderson readily admitted he did not know if anything was in Victim's hands at the time the two became embroiled in a physical altercation, and Anderson certainly did not state he saw an object that could have reasonably led him to believe Victim, who—accepting Anderson's account as true—had merely shoved and attempted to punch Anderson, was armed at that time. See State v. McGreer, 13 S.C. 464, 466 (1880) (explaining the question of whether self-defense was applicable is dependent on more than just the defendant's own beliefs); cf. State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) (concluding Fuller was entitled to an "act on appearances" jury instruction because he testified he thought he saw a shiny object in one of the victims' hands). Under those circumstances, Anderson could not possibly establish it was reasonably necessary for him to stab his unarmed victim in order to defend himself from death or great bodily harm, and, thus, he could not validly claim his use of deadly force was objectively reasonable, justified, or proper. See Harvey, 110 S.C. at 277, 96 S.E. at 400 ("Tillman Harvey might have been without fault in provoking the difficulty, and still there might have been no necessity to kill. . . . While a man may take life in defense of himself or another, yet the slayer, or the person in whose behalf the slayer strikes, must not only be without fault in provoking the difficulty, but *there must be a necessity to kill*." (emphasis added)); cf. State v. Mincey, 14 So. 3d 613, 616 (La. Ct. App. 2009) (holding a rational factfinder could have concluded Mincey did not kill his victim in self-defense because "responding to an oncoming punch by shooting the other person in the chest is an excessive

response"); Lambert v. State, 519 A.2d 1340, 1346 (Md. Ct. Spec. App. 1987) (recognizing "the question whether the force used in a given case was unreasonable is usually one for the trier of fact" and concluding Lambert was *not* entitled to have the issue of self-defense submitted to the jury because he used a knife against an unarmed victim and the victim's initial unarmed attack upon him "may have afforded a reasonable basis for a conclusion that the victim intended to inflict *some* harm" but "did not provide a reasonable basis for the belief he intended to inflict serious bodily harm or death or that deadly force was needed to prevent such harm"); State v. Walker, 966 P.2d 883, 889 (Wash. 1998) ("Any reasonable person standing in [Walker]'s shoes would have perceived that only 'an ordinary battery is all that was intended,' in which case the use of deadly force was unjustified." (citation and brackets omitted)). Therefore, because Anderson could not legally establish yet another required element of self-defense, he was not entitled to immunity pursuant to the Act, and the circuit court judge committed a clear legal error by reaching a contrary conclusion. See State v. Jones, 416 S.C. 283, 301, 786 S.E.2d 132, 141 (2016) ("[T]he defendant must demonstrate the elements of self-defense, save the duty to retreat, by a preponderance of the evidence.").

Fourth and finally, the circuit court judge committed a clear reversible error of law by erroneously concluding Anderson was only legally required to establish two elements of self-defense—"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" and "that a reasonable prudent man of ordinary firmness and courage would have entertained the belief of imminent danger"—in order to be entitled to immunity. Contrary to that conclusion, it was unquestionably necessary for the circuit court judge to—at a minimum—*also* find Anderson had established self-defense's "without fault for the difficulty" element in order for it to be possible to validly

grant immunity from prosecution in Anderson's case. Cf. State v. Cervantes-Pavon, 426 S.C. 442, 449, 827 S.E.2d 564, 568 (2019) ("To warrant immunity, a movant must show *he was without fault in bringing on the difficulty*, he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, and a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. He may also show that he actually was in imminent danger and the circumstances would have warranted a man of ordinary firmness and courage to strike the fatal blow to save himself from serious harm or death. Section 16-11-440(C) provides the movant has no duty to retreat if, at the time of the attack, he was in a place where he has a legal right to be." (emphasis added and citations omitted)). Therefore, since no such finding was made and, instead, the circuit court judge determined he did *not* even have to make such a finding, the circuit court judge erred by conducting an incomplete analysis.

For all the foregoing reasons, the circuit court judge—contrary to the conclusion reached by the Court of Appeals—abused his discretion and committed a clear error of law by finding Anderson was entitled to immunity on the indicted charges without properly addressing or ruling upon all the necessary elements of self-defense, which—based on Anderson's own admissions—could not be established as required. See State v. Oates, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017) (recognizing an abuse of discretion occurs when a circuit court judge's immunity ruling is based on an error of law); cf. Glenn, 427 S.C. at 123, 830 S.E.2d at 499 (concluding the trial judge reversibly erred by ruling upon an immunity request without addressing the elements of self-defense and remanding with instructions for *all* the elements of self-defense to be analyzed). Accordingly, the State's petition for a writ of certiorari should be granted, the decisions of both the circuit court judge and the Court of Appeals should be reversed, and Anderson's case should be remanded for further proceedings.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

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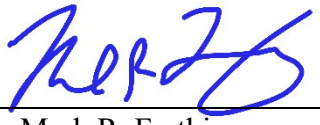
BY: 
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ATTORNEYS FOR PETITIONER

September 17, 2025

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Court of Appeals Appellate Case No. 2023-000943

THE STATE,

Petitioner,

vs.

JUSTIN TYLER ANDERSON,

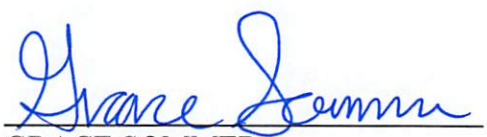
Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify I have served the Petition for Writ of Certiorari and accompanying Appendix on Respondent by sending electronic copies via email to the address listed in AIS for the following individual:

Leland B. Greeley, Esquire
Post Office Box 2981
Rock Hill, South Carolina 29732

I further certify all parties required by Rule to be served have been served.
This 17th day of September, 2025.



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