

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Petitioner,

vs.

JUSTIN TYLER ANDERSON,

Respondent.

APPENDIX

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INDEX

Index. i

Record on Appeal¹

 Record on Appeal Cover Page and Index..... iii

 Record on Appeal Contents..... 1

 Transcript from Immunity Hearing (January 11, 2023). 1

WITNESS TESTIMONY

Donna Ferguson

 Direct Examination. 8

 Cross-Examination. 16

Kirsten Pickett

 Direct Examination. 20

 Cross-Examination. 31

 Redirect Examination. 56

Justin Anderson

 Direct Examination. 60

 Cross-Examination. 72

Robert Wiestling

 Direct Examination. 81

 Cross-Examination. 96

 Redirect Examination. 108

Deputy Arens Marthone

¹ The Record on Appeals was mistakenly entitled “Appendix” when filed with the Court of Appeals.

Direct Examination.	110
Order Granting Motion for Immunity (filed February 21, 2023).	131
Motion to Reconsider Order Granting Immunity (filed February 24, 2023).	141
Defendant's Reply to State's Motion for Reconsideration (dated March 6, 2023).	154
Order Denying Motion for Reconsideration (filed May 18, 2023).	155
Two-Count Indictment (#2022-GS-46-01559).	156
Arrest Warrants (#2022A4610500019 and #2022A4610500020).	158
Notice of Appeal (filed June 6, 2023).	163
Final Brief of Appellant.	165
Final Brief of Respondent.	194
Court of Appeals Opinion (filed July 16, 2025).	206
Petition for Rehearing (filed September 2, 2025).	211
Order Denying Petition for Rehearing (filed September 10, 2025).	222

****The following exhibits have been transported separately for review:**

Defendant's Exhibit # 1 (Photograph), Defendant's Exhibit # 2 (Photograph), Defendant's Exhibit # 3 (Photograph), Defendant's Exhibit # 4 (Photograph), Defendant's Exhibit # 5 (Photograph), Defendant's Exhibit # 6 (Photograph), Defendant's Exhibit # 7 (Photograph), Defendant's Exhibit # 8 (Photograph), State's Exhibit # 1 (Photograph), State's Exhibit # 2 (Photograph), State's Exhibit # 3 (Photograph), State's Exhibit # 4 (Photograph), State's Exhibit # 5 (911 Call Recording), State's Exhibit # 8 (Photograph), State's Exhibit # 9 (Photograph), State's Exhibit # 10 (Recording), State's Exhibit # 11 (Photograph), Court's Exhibit # 1 (Interview Recording), and Court's Exhibit # 2 (Interview Recording).**

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2023-000943

THE STATE,

Appellant,

vs.

JUSTIN TYLER ANDERSON,

Respondent.

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INDEX

Index.	i
Transcript from Immunity Hearing (January 11, 2023).	1
WITNESS TESTIMONY	
<u>Donna Ferguson</u>	
Direct Examination.	8
Cross-Examination.	16
<u>Kirsten Pickett</u>	
Direct Examination.	20
Cross-Examination.	31
Redirect Examination.	56
<u>Justin Anderson</u>	
Direct Examination.	60
Cross-Examination.	72
<u>Robert Wiestling</u>	
Direct Examination.	81
Cross-Examination.	96
Redirect Examination.	108
<u>Deputy Arens Marthone</u>	
Direct Examination.	110
Order Granting Motion for Immunity (filed February 21, 2023).	131
Motion to Reconsider Order Granting Immunity (filed February 24, 2023).	141
Defendant's Reply to State's Motion for Reconsideration (dated March 6, 2023).	154

Order Denying Motion for Reconsideration (filed May 18, 2023).	155
Two-Count Indictment (#2022-GS-46-01559).	156
Arrest Warrants (#2022A4610500019 and #2022A4610500020).	158

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STATE OF SOUTH CAROLINA

TRANSCRIPT OF RECORD

COUNTY OF YORK

CASE NO. 2022-GS-46-01559
2022-GS-46-01559A

January 11, 2023

BEFORE: The Honorable Eugene C. Griffith, Jr.

State of South Carolina,

Plaintiff,

vs.

Justin Tyler Anderson

Defendant.

APPEARANCES:

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I-N-D-E-X

WITNESS/DESCRIPTION	PAGE NUMBER
---------------------	-------------

Donna Ferguson

Direct by Mr. Greely.....08

Cross by Ms. Robinson.....16

Kirsten Pickett

Direct by Mr. Greely.....20

Cross by Ms. Robinson.....31

Redirect by Mr. Greely.....57

Justin Anderson

Direct by Mr. Greely.....60

Cross by Ms. Robinson.....72

Robert Wiestling

Direct by Ms. Robinson.....81

Cross by Mr. Greely.....97

Redirect by Ms. Robinson.....109

Deputy Mark Marthone

Direct by Ms. Robinson.....110

Court Reporter Certification.....131

1	E X H I B I T S		
2	NO.	DESCRIPTION	PAGE NUMBER
3	D-1	Photo	12
4	D-2	Photo	12
5	D-3	Photo	12
6	D-4	Photo	12
7	D-5	Photo	12
8	D-6	Photo	12
9	D-8	Photo	12
10	S-1	Photo	34
11	S-2	Photo	34
12	S-3	Photo	34
13	S-4	Photo	34
14	S-5	Audio	50
15	D-7	Photo	58
16	S-8	Photo	92
17	S-9	Photo	92
18	S-10	Video	94
19	S-11	Photo	113
20	C-1	Video	128
21	C-2	Video	128
22			
23			
24			
25			

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the hearing,
3 those instances are denoted with "inaudible" in the
4 transcript.)

5 P R O C E E D I N G S

6 MS. ROBINSON: This is going to be State versus
7 Justin Tyler Anderson. He's being indicted for assault and
8 battery of a high and aggravated nature and possession of
9 weapon in commission of a violent crime. He is represented
10 by Leland Greeley, and they have indicated that they are
11 moving for immunity under the Protection of Persons and
12 Property Act.

13 So, Your Honor, I believe it is their burden to
14 show by a preponderance of the evidence that he's entitled
15 to immunity. So I'm not sure if you'll like to hear
16 (inaudible).

17 THE COURT: I think we can do it either way. I
18 don't think there's a set procedure. You can call the chief
19 investigator, give me an overview of the case, and then he
20 can call his witnesses, or ---

21 MS. ROBINSON: Mr. Greeley is okay if I give a
22 quick, short summary for context, and then we can start ---

23 MR. GREELEY: I was going to give a little opening
24 to the Court before we proceeded anyway so that you would
25 have a basis.

1 THE COURT: All right. Since it's your motion,
2 you give me the overview, and then I'll let Ms. Robinson add
3 any context she wishes to supplement. How about that?

4 MS. ROBINSON: That's fine, Your Honor.

5 THE COURT: All right. Mr. Greely, the record's
6 yours.

7 MR. GREELY: May it please the Court.

8 Your Honor, I represent Justin Tyler Anderson.
9 The indictment numbers are 2022GS46011559 and 011559A, which
10 is a Count 2 regarding the use of a deadly weapon with the
11 primary offense on that indictment. We are here asking the
12 Court to allow us to go forward with a hearing under the
13 Protection of Persons and Property Act.

14 Your Honor, this incident occurred in March of
15 this year. It occurred within the County of York, and it
16 occurred at a salon establishment, a business, outside of
17 Tega Cay, South Carolina. It occurred at approximately
18 7:00 p.m. that evening.

19 What happened that evening was that my client is
20 the son of the owner of the salon. His girlfriend, with
21 whom he has been together a number of years, also is in a
22 management -- and works at the salon. The three of them, my
23 client and his girlfriend and the girlfriend's daughter were
24 there that evening.

25 The mother, who owns the salon, had just before

1 this occurred, gone up -- there is a restaurant that is next
2 door to the salon, and it's a rather large restaurant, bar,
3 and it's called 2020 Tavern. It has a very large parking
4 lot out front of that.

5 The owner of our property, the mother of my
6 client, had installed in the parking area of the salon on
7 the side of the building where this incident occurred, three
8 signs that she had made and paid for, that said that the
9 parking there was for salon customers only.

10 That evening she had asked to make sure that those
11 stayed open because she had a client who was still coming,
12 and that the salon had not closed. She is here and will
13 testify to that. A car came and tried to park at the salon,
14 and my client who was outside with his girlfriend at that
15 time, told them that they had to leave.

16 They eventually did leave -- that car. And then
17 immediately after that, the alleged victim in this case,
18 began to back his car up into another parking space of the
19 salon. My client told him he could not park there and
20 pointed to the sign.

21 The person rolled the window down, and my client
22 again told him he would have to move on and could not park
23 there, and that brought about an exchange. And eventually
24 the alleged victim got out of his car and came over to where
25 my client was and they kind of met in the middle.

1 There ended up being exchanges and it ended up
2 being physical, and -- well, I'm not gone go into the
3 absolute particulars. But as a result of that, the alleged
4 victim ended up being stuck with a knife just at the back of
5 his neck below his left ear, one time. The assault ended up
6 ending and the alleged victim went up to the restaurant to
7 seek some medical aid.

8 Law enforcement was called by two people in the
9 restaurant when they saw somebody walking in with blood
10 coming down on their shirt. So the 911 -- there are two 911
11 calls, I'm not going to present those -- and they're called
12 by people who didn't even see the ruckus. But because there
13 was somebody in the restaurant who was bleeding and
14 obviously needed some assistance.

15 The police were called, the police came, the
16 police arrested my client for these charges, and that was
17 that. So we're here making our motion for this Court to
18 enter an order granting him immunity from prosecution of
19 this indictment as well as the actions that are the subject
20 of this indictment. Thank you.

21 THE COURT: Ms. Robinson, any supplemental
22 context?

23 MS. ROBINSON: Your Honor, no, not particularly.
24 We are in agreement to a large part as to what the basic
25 framework of this is. The State's position is that the

1 Defendant is not entitled to immunity and that he is at
2 fault for bringing on the (inaudible). And I believe we
3 will flush out in more detail that obviously is really
4 important in what happened there in the parking lot
5 (inaudible).

6 THE COURT: Very well. All right. Mr. Greely,
7 call your first witness.

8 MR. GREELY: Thank you, Your Honor. Your Honor,
9 I'd call to the stand, Ms. Donna Ferguson.

10 Ms. Ferguson, if you'll go right up to where you
11 see the Bible there, here on the -- right here.

12 (WHEREUPON, Donna Ferguson, having been duly
13 sworn, testified as follows.)

14 DIRECT EXAMINATION

15 BY MR. GREELY:

16 Q. Ms. Ferguson, state your full name for the record,
17 please.

18 A. Donna Renee Ferguson.

19 Q. And you live in York County?

20 A. I do. I live in Tega Cay.

21 Q. Tell me what your connection is with the salon
22 outside of Tega Cay.

23 A. I own the salon.

24 Q. What's the name of the salon?

25 A. It's Bella Cay Salon and Spa.

1 Q. Is there another owner of that salon as well?

2 A. My husband, Rob Ferguson.

3 Q. What is his name?

4 A. Rob Ferguson.

5 Q. Is he here this morning as well?

6 A. Yes.

7 Q. He's seated with you here in the audience?

8 A. Yes.

9 Q. Is your business close to a restaurant/bar called
10 2020 Tavern?

11 A. Yes, walking distance.

12 Q. Does 2020 Tavern have a large parking area?

13 A. Yes, extremely large.

14 Q. Now, describe for the Court, if you would, the
15 parking of the salon.

16 A. I have probably four spaces plus a handicap space
17 in the front, and then I have parking for the employees only
18 in the back of the salon.

19 MR. GREELY: Judge if I can -- the Court will
20 indulge me, I have pictures. And I gave the Solicitor
21 copies of those pictures, but I can't find my original ones.

22 THE COURT: They're up here on the -- you hid them
23 from yourself.

24 MR. GREELY: Short memory loss.

25

1 BY MR. GREELY:

2 Q. Okay. Ms. Ferguson, I'm going to show you what
3 the court reporter, this morning, has marked for
4 identification only ---

5 A. Okay.

6 Q. --- a collection of one, two, three, four, five,
7 six, seven pictures, which are numbered 1 through 6, and
8 then Number 8.

9 A. Okay.

10 Q. Would you take a few minutes and look at each of
11 those pictures?

12 Have you had a chance to look at each of those
13 pictures?

14 A. Yes.

15 Q. Beginning with Picture 1, can you -- and going
16 through 1 through 6, and then Number 8. For each one, if
17 you can tell me what that picture is. Say, "Number 1 is a
18 picture of," and then say what it is.

19 A. Number 1 is the picture -- it's showing the side
20 of the building and also part of the front.

21 Q. And the side of the building would be the salon?

22 A. Yes. And you have three signs that say, "No
23 Parking."

24 Q. Okay. What is Number 2?

25 A. Number 2 is showing my parking lot, just part of

1 the restaurant. You still see the signs.

2 Q. What is Number 3?

3 A. You see the actual sign and where it's saying,
4 "Parking for salon only. Towing at owner's expense." And
5 you also see the other two signs, "No Parking."

6 Q. What is Number 4?

7 A. Number 4 is the side of the building also showing
8 where I have one, two, three, four, five -- sorry, five
9 parking spaces and the handicap, with all three signs.

10 Q. What is Number 5? (Inaudible.)

11 A. Yes. Showing the side of the building and the
12 parking, with the handicap sign and all three signs.

13 Q. What is Number 6?

14 A. Number 6 is showing actually the 2020 Tavern and
15 my Bella Cay Salon Spa sign in the front of the building.
16 And you actually see the UPS truck, which is actually not
17 even parked in my parking side.

18 Q. What is Number 8?

19 A. Number 8 is showing all the parking that 2020 has.
20 It goes all the way back to the gravel.

21 Q. Now after having had looked at Exhibits 1, 2, 3,
22 4, 5, 6, and 8, can you tell me whether or not that
23 accurately represents the condition of your property on the
24 evening that this occurred in 2022?

25 A. Yes.

1 Q. So it does. And each of those, represent the
2 condition of the property?

3 A. Yes. That's all my signs.

4 MR. GREELY: Your Honor, based on that, I'm moving
5 at this time for entry into evidence 1, 2, 3, 4, 5, 6, and
6 8, and I'm showing those to the Solicitor.

7 THE COURT: No objection?

8 MS. ROBINSON: No objection, Your Honor.

9 THE COURT: Admitted for the purpose of today's
10 hearing, 1 through 6 as well as 8.

11 (WHEREUPON, Defendant's Exhibits Numbers 1 through
12 6 and Defendant's Exhibit Number 8 were admitted into
13 evidence.)

14 BY MR. GREELY:

15 Q. I'm showing you Exhibit Number 3, parking for
16 salon from where it shows the sign.

17 A. Yes.

18 Q. Okay?

19 A. Uh-huh.

20 Q. That sign -- I know it shows it on the picture --
21 but is there any -- what does it say specifically?

22 A. It says, "Parking for salon only. Towing at
23 owner's expense." Meaning the owner of the car.

24 Q. Is there anything about hours on there?

25 A. No.

1 Q. Is there anything about whether the salon is open
2 or closed?

3 A. No.

4 Q. Did the -- your company pay for those signs?

5 A. Yes.

6 Q. Did you have them installed?

7 A. Yes.

8 Q. And why did you have to do that?

9 A. Because I've had problems in the past of people
10 parking and coming over, and to taking up my clients' spots,
11 and to where my clients have had to park elsewhere. And we
12 have a lot of elderly people that come and shouldn't have to
13 park far away to come into the business.

14 And if you're not a paying customer, you don't
15 have any business being at my parking, taking up my space
16 from my clients.

17 Q. Now, do you remember the evening that this
18 occurred?

19 A. Yes.

20 Q. Were you at your salon prior to this occurrence?

21 A. Yes.

22 Q. That day?

23 A. Yes.

24 Q. Did you see -- who is your son?

25 A. Sitting there.

1 Q. What's his name?

2 A. Justin Tyler Anderson.

3 Q. He is seated here today, is that correct?

4 A. Yes.

5 Q. Were you with him that evening?

6 A. Yes, I was.

7 Q. Okay. And that was before this incident?

8 A. Yes.

9 Q. Now, did you say anything to him that night?

10 A. I did. I did.

11 Q. What did you say to him?

12 A. I told him I was going next door. I had a client
13 that was there, and I was going to go get her to come -- let
14 her know I was finished with my other client. And that I
15 was going to tell her she could come over now.

16 And I said, "Would you please watch the salon for
17 me while I'm gone," because it was still open. I did not
18 close it. And I said, "Please watch the salon."

19 Q. Does he have the authority at any time to watch
20 the -- to watch the salon?

21 A. Yes.

22 Q. Does he have the authority to watch at any time
23 the parking condition ---

24 A. Yes.

25 Q. --- in the parking lot?

1 A. Yes, that includes the parking.

2 Q. If he is there, he has that authority?

3 A. Yes, he does.

4 Q. Do you know his girlfriend?

5 A. Yes.

6 Q. Who is she to you?

7 A. Kirsten.

8 Q. What is her name?

9 A. Kirsten Pickett.

10 Q. Where does Kirsten work?

11 A. At my salon.

12 Q. Does Kirsten have a daughter?

13 A. Yes, she does.

14 Q. What's her daughter's name?

15 A. Bailey.

16 Q. So that night, if someone who was not allowed to
17 come and park at your parking spot, did you authorize Justin
18 to tell them they could not park there and they needed to
19 move?

20 A. Yes, I did.

21 Q. You were not there when any of this occurred?

22 A. No, I was next door.

23 Q. You were next door at where?

24 A. 2020 Tavern.

25 Q. How many parking spots do you have, do you recall?

1 A. There is five with -- also a handicap, so six
2 total.

3 Q. Six total spots?

4 A. Yes.

5 Q. With the sixth one being handicap?

6 A. Yes.

7 Q. Answer any questions the Solicitor may have.

8 A. Okay.

9 CROSS-EXAMINATION

10 BY MS. ROBINSON:

11 Q. Morning, Ms. Ferguson.

12 A. Good morning.

13 Q. Just a couple questions. In terms of the
14 exhibits, the pictures, those weren't necessarily taken that
15 -- the day of this incident, correct? Those are some other
16 time?

17 A. Yes.

18 Q. So am I correct that those pictures don't show
19 vehicles in the parking lots, for the most part?

20 A. No.

21 Q. There's one with, like, a UPS truck, but for the
22 most part this is empty parking lot?

23 A. Yes.

24 Q. So that's not necessarily reflective of that
25 night?

1 A. No.

2 Q. Did I hear you say correctly -- okay. You have
3 five spots and a handicap spot and those are in front of the
4 salon or to the side of it?

5 A. Yeah. It's right in front.

6 Q. And that's where you anticipate your clients
7 parking when they come?

8 A. Yes.

9 Q. Did I hear you say that you have employee parking
10 as well?

11 A. Yes, and there's signs back there as well.

12 Q. So that's on another side, and it's not shown in
13 these pictures?

14 A. I don't believe so. I'd have to look back at the
15 pictures.

16 Q. If you want to look at them real quick, I'm not
17 familiar with where that area is, so I just want to make
18 sure.

19 A. Oh, yeah. You can see the back in this one
20 picture.

21 Q. Which one? Do you know which one that is?

22 A. Number -- I think it says Number 4. You can see
23 the back and there's signs back there as well.

24 MS. ROBINSON: Your Honor, may I approach? I just
25 want to see where she's at.

1 THE COURT: Sure.

2 THE WITNESS: There are -- which you don't have
3 the picture of, but there's two signs back here and then
4 there's a sign there as well. That's the back. That's
5 employee parking, which it states, "Employee parking only."

6 MS. ROBINSON: Yes, I understand.

7 MR. GREELY: Your Honor, could she identify what
8 number picture that is that she's speaking of?

9 THE WITNESS: 4, I believe it's 4.

10 MR. GREELY: Thank you.

11 BY MS. ROBINSON:

12 Q. Okay. So I think I understand now. So when --
13 the parking for your customers is what you would call the
14 side of the building?

15 A. Yes.

16 Q. So just going a right turn around the building is
17 the back and that's where your employees would park?

18 A. Yes.

19 Q. And you testified that you had to have these signs
20 installed because you were having some problems?

21 A. Yes.

22 Q. Did you continue to have some problems after the
23 signs were installed?

24 A. I don't recall. I'd have to -- only other than
25 this incident.

1 Q. So nothing particular stands out?

2 A. No, nothing like this.

3 Q. Do you recall if you've had to have cars towed
4 from there?

5 A. I don't think so. I've called before, but the
6 people came and removed.

7 Q. Gotcha.

8 A. So they didn't actually have to have it...

9 Q. I understand.

10 A. I went and got them at the restaurant.

11 Q. And then am I correct that this incident occurred
12 on St. Patrick's Day?

13 A. I think. Is it the 17th, was it?

14 Q. March 17th?

15 A. I don't remember, but...

16 Q. You went to 2020 Tavern, you said. You didn't see
17 the actual incident because you were at the tavern, correct?

18 A. No.

19 Q. Was the tavern busy that night?

20 A. Not terribly. It was getting -- it was going to
21 be getting busy, but not at the time.

22 Q. So ---

23 A. When I walked over there was some people outside,
24 but -- and there was some inside, but it wasn't terribly
25 packed yet.

1 Q. You think it was 7ish.

2 A. I think so.

3 MS. ROBINSON: That's it from the State.

4 THE COURT: Any redirect?

5 MR. GREELY: No, Your Honor.

6 THE COURT: Then you may step down.

7 MR. GREELY: Thank you, Ms. Ferguson. May it
8 please the Court, the next witness Kirsten Michelle Pickett.

9 (WHEREUPON, Kirsten Pickett, having been duly
10 sworn, testified as follows.)

11 DIRECT EXAMINATION

12 BY MR. GREELY:

13 Q. Now, Ms. Pickett, I'm gone ask that you speak up
14 because the court reporter's going to need to be able to
15 hear everything you say even though you're close to her
16 there. But everyone else here needs to be able to hear you
17 as well. Okay?

18 A. Yes, sir.

19 Q. Very good. State your full name for the record.

20 A. Kirsten Michelle Pickett.

21 Q. What is your relationship with the salon?

22 A. I have worked there over two years. I do a lot of
23 the manager side of things as far as inventory, cleaning.
24 Also I am a hairstylist and I do the spa side of everything
25 there.

1 Q. Are there any set hours for the salon?

2 A. No. We are commission-based and booth rent, so
3 our hours are very all over the place. I've been there
4 10:00 o'clock at night sometimes.

5 Q. How do you know Justin Anderson?

6 A. We have been together almost three years now.

7 Q. You were there that evening, is that correct?

8 A. Yes, sir.

9 Q. Were you working that evening?

10 A. Yes.

11 Q. And Justin arrived at the salon that evening,
12 correct?

13 A. Yes.

14 Q. With whom did Justin arrive?

15 A. With my daughter. He went and picked her up from
16 school.

17 Q. Who is your daughter?

18 A. Bailey Autry (phonetic).

19 Q. How old is Bailey?

20 A. She's eleven now, she was ten during the incident.

21 Q. Did she witness the incident as well?

22 A. Unfortunately, yes, she did.

23 Q. What is there about Bailey that's different than
24 most children?

25 A. My daughter has cerebral palsy. She is in a

1 wheelchair.

2 Q. And Justin brought your daughter to the salon?

3 A. Yes, he did.

4 Q. How did Justin -- why was he with your daughter?

5 A. He regularly does that when I'm working, to pick
6 her up from school.

7 Q. So had he picked her up from school that day?

8 A. Yes.

9 Q. And had he stayed with her and cared for her
10 during that period?

11 A. Yes, he did.

12 Q. And then he brought her to the salon, is that
13 correct?

14 A. Yes, sir.

15 Q. Now, that evening, before this incident, where --
16 did you and Justin and Bailey end up outside?

17 A. Yes, we did.

18 Q. Where were y'all outside?

19 A. We moved my car to the second parking spot on the
20 side of the building and we were attempting to head home.

21 Q. Where was Bailey, in the back seat?

22 A. Yes, in the passenger side back seat?

23 Q. Does she have use of a chair?

24 A. Yes, it was in the trunk.

25 Q. Did you notice anybody come up to park before this

1 incident occurred?

2 A. Yes. Right before we were about to head out, a
3 white SUV parked on the first parking spot. They kept
4 walking away. We asked them to move their spot. I, myself,
5 called the tow company because we pointed out the signs.

6 Q. You pointed out the signs?

7 A. Yes, sir.

8 Q. Did they essentially move their car?

9 A. Yes. I let her know that I was going to be
10 calling the tow company and she came back and moved her car.

11 Q. Then what happened after that?

12 A. Right after they moved their car, it was probably
13 two minutes later when the other vehicle started to reverse
14 into the -- I believe it was the fourth spot.

15 Q. Into the fourth spot?

16 A. Yes. We had permitted her client to be in the
17 third spot, so there was already a car sitting there at the
18 time.

19 Q. So the client was that she was going to have an
20 appointment with, had arrived?

21 A. Yes.

22 Q. And her car was in the third spot?

23 A. Yes, sir.

24 Q. And the other people began to park in the fourth
25 spot, is that correct?

1 A. Yes, sir.

2 Q. What spot were y'all in?

3 A. We were in the second.

4 Q. So there is another spot and a car between the two
5 of you, is that correct?

6 A. Yes, sir.

7 Q. And what happened then? Did the other car pull in
8 front ways or backwards?

9 A. They started reversing in backwards.

10 Q. To back up?

11 A. Yeah.

12 Q. Into the spot?

13 A. Yes, sir.

14 Q. What did you witness? Did Jason say anything?

15 A. Justin.

16 Q. Justin say anything?

17 A. Justin went towards the middle of that -- the
18 third car and was starting to wave his hands pointing at the
19 sign, because at the time his window was rolled up. So he
20 was letting him know that he shouldn't park there. He
21 didn't even reverse in fully before he parked into the
22 space.

23 Q. Was this similar to the previous car that was done
24 there to where notice was being given?

25 A. Yes.

1 Q. Pardon?

2 A. Yes, sir.

3 Q. So the other people, the window was rolled down?

4 A. It was up at the moment.

5 Q. It was up? Okay. What happened next?

6 A. He had rolled his window down and stopped -- like
7 I said, not fully parked in the parking space -- and asked
8 what the problem was.

9 Q. And what was said?

10 A. He let him know that this is his mother's salon
11 and that he's not able to park here, and yet again, pointed
12 to the signs.

13 Q. Then what happened?

14 A. The other guy proceeded to, I guess assume what
15 our closing hours were, and said that the salon was closed
16 and he was allowed to park there.

17 Q. That's what he told y'all?

18 A. Yes.

19 Q. Do you see that person in the courtroom today?

20 A. Yes, sir.

21 Q. And so he told you he was allowed to park there?

22 A. Yes.

23 Q. Then what happened?

24 A. Then they proceeded to raise voices. He was still
25 in the car at the moment. He asked what Justin's problem

1 was, and he -- they were saying something like, "Come figure
2 it out." And he got out of the vehicle at that time and
3 then started poking at Justin.

4 Q. So it was at that time that they began to argue?

5 A. Yes.

6 Q. And I think you said voices raised?

7 A. Yes.

8 Q. And it was after that, that this person got out of
9 the car?

10 A. Yes.

11 Q. Opened the door, got out of the car, is that
12 correct?

13 A. Yes, sir.

14 Q. Did he shut the door or leave it open?

15 A. He left it open.

16 Q. And did he walk towards Justin?

17 A. Yes.

18 Q. And did Justin walk towards him?

19 A. Justin was standing behind the vehicle that was in
20 between us. So he hadn't moved at that moment.

21 Q. So this person was coming over to him?

22 A. Yes.

23 Q. What was he doing, you said?

24 A. He was poking at his chest and at his nose.

25 Q. At Justin's nose?

1 A. Yes.

2 Q. Justin was not poking at his nose?

3 A. No.

4 Q. And then what happened?

5 A. Justin did start to get angry. He bowed up a
6 little bit. Voices were raised, so I -- it was kind of
7 mumbled, I don't really know a lot of what was said. He --
8 the gentleman, went back to his car.

9 Q. Did you hear any threat?

10 A. When he came back from his car, he said something
11 along the lines of going to fuck him in the ass?

12 Q. So this person said that to Justin?

13 A. Yes.

14 Q. As he was coming back to him?

15 A. Yes.

16 Q. And you were watching all of this?

17 A. Yes.

18 Q. Where were you?

19 A. I was still in my driver's side door. I had --
20 had it open, just sitting there because my daughter was in
21 the car.

22 Q. So you were a few feet away?

23 A. Yeah.

24 Q. And your daughter is in what seat in the car?

25 A. She's in the passenger side back seat.

1 Q. Can she hear this?

2 A. Yes, she can.

3 Q. All right. You said he went back to his car and
4 then he came back?

5 A. Yes.

6 Q. Do you remember anything about anybody spitting?

7 A. After the raised voices, they were bowing up at
8 each other and he spat in Justin's face.

9 Q. Then what happened after he came back from the
10 car?

11 A. He went back to the car again, and then ---

12 Q. The car he came in?

13 A. Yes. He went back to his car and I started to get
14 worried because he kept going back so much. And he just
15 turned around and full lunged at Justin and rammed him into
16 my car.

17 Q. Now, when you're watching, prior to that, at any
18 time, had Justin touched him?

19 A. Not that I can recall, no.

20 Q. And he rammed Justin into y'all's car?

21 A. Yes.

22 Q. On the driver's side?

23 A. On the driver's back door side, yeah.

24 Q. Where would that have been right next to?

25 A. Right in front of Bailey's face, and it was right

1 next to me.

2 Q. Did Bailey respond in any way?

3 A. My daughter was hysterically crying. So I turned
4 to her to make sure she was okay. And then by the time I
5 turned back around, they were away from the vehicle, in
6 arms.

7 Q. Fighting?

8 A. Yeah.

9 Q. After you attended to your daughter and then you
10 looked back and saw them fighting away from the car, what
11 happened after that?

12 A. They were head to head, wrapped in arms. And once
13 they pulled away from each other, I could see that the other
14 guy was bleeding. And I did not -- I did not know why.

15 Q. Okay. Then what happened?

16 A. He went back to his car again, and then left his
17 car and proceeded to walk towards 2020.

18 Q. He was bleeding?

19 A. Yes.

20 Q. Now, what did Justin do?

21 A. Justin ran at him and tackled him to the ground.

22 Q. Ran and tackled him there?

23 A. Yes.

24 Q. What did you do?

25 A. I kicked him in the side to get him ---

1 Q. Who?

2 A. Justin -- to get him off of the guy, and he kind
3 of snapped out of it and got right off of him.

4 Q. Then what did Justin do?

5 A. Justin -- the knife was already out of his hand,
6 because I -- at no point did I even see a knife, even when I
7 kicked him. But after that, he got up off him and took his
8 bloody shirt off.

9 Q. Based upon your observations at the time you
10 kicked Justin, did you see any knife at any -- in his hand
11 at that time?

12 A. Not on the floor or anywhere, no.

13 Q. Justin went back to y'all's car?

14 A. He went back to his work vehicle.

15 Q. His work vehicle?

16 A. Yes.

17 Q. That was parked in what ---

18 A. In the handicap spot?

19 Q. So that was his work van?

20 A. Yes. He had just picked Bailey up, so he parked
21 in that spot to get her wheelchair out.

22 Q. Okay. And what did the other person do?

23 A. He went into 2020. And then I went in as well to
24 go find Donna.

25 Q. Okay. So that's why you went into 2020, was to

1 find Ms. Ferguson?

2 A. Yes.

3 Q. Ms. Pickett, answer any questions the Solicitor
4 may have for you.

5 CROSS-EXAMINATION

6 BY MS. ROBINSON:

7 Q. Good morning, Ms. Pickett. Thank you for being
8 here. So you -- you said you've -- you testified you've
9 been with Mr. Anderson, the Defendant, for three years. Did
10 I hear that right?

11 A. Yes.

12 Q. So it sounds to me, then, you were with him,
13 dating him, and at some point after that you started working
14 at his mom's salon, is that right?

15 A. Yes.

16 Q. So did you make that connection through him and
17 then it worked out that you're in the same industry and you
18 could work for her?

19 A. Yes, it did.

20 Q. Do you still work there today?

21 A. Yes, I do.

22 Q. And you're still with Mr. Anderson?

23 A. (Inaudible.)

24 Q. Now, the day of this incident, do you recall, was
25 it St. Patrick's Day?

1 A. Yes, it was.

2 Q. And do you know approximately what time -- the
3 series of events we're talking about where you're outside in
4 the vehicle -- the first customer comes, about what time of
5 day would that have been?

6 A. I think I made the tow truck call around 6:30.

7 Q. Okay. And you think it was just a few minutes
8 after that person left that the victim came?

9 A. Yes.

10 (WHEREUPON, there was a discussion held off
11 record.)

12 MS. ROBINSON: Your Honor, may I approach?

13 THE COURT: Sure.

14 BY MS. ROBINSON:

15 Q. All right. Ms. Pickett, I'm going to hand you
16 what has been marked as Court's Exhibit 1 through 4. If you
17 could, just take a look at these, and once you've had a
18 chance to look them over, I'll ask you about them.

19 Ms. Pickett, do you recognize what's in those
20 pictures?

21 A. Yes, ma'am.

22 Q. If you look at Exhibit 1, what is that picture
23 showing?

24 A. That's a picture showing my vehicle, Cindy's
25 vehicle, the guy's vehicle, and Justin's.

1 Q. Okay. So who's Cindy?

2 A. That is the client that Donna was waiting on.

3 Q. When you say, "the guy's vehicle," you're
4 referring to the gentleman that got stabbed that night?

5 A. Yes.

6 Q. Then you said, Justin's vehicle?

7 A. Yes, the work vehicle in the back, that is his.

8 Q. I think you testified earlier that he's the one
9 who brought your daughter to you?

10 A. Yes.

11 Q. Would he have brought her in the work vehicle?

12 A. Yes.

13 Q. Okay. Then State's -- or the Court's Exhibit 2,
14 what's that a picture of?

15 A. That is a picture of his vehicle outside of the
16 parking spot, and Justin's work vehicle.

17 Q. And again, by "his vehicle," you mean the
18 gentleman that this confrontation ---

19 A. Yes.

20 Q. --- happened with? Okay. And then do you
21 recognize 3?

22 A. I assume it's just a graph setup of that
23 situation.

24 Q. Does that -- do you recognize that as the layout
25 of the parking lot and kind of the buildings? Does that

1 seem to accurately reflect both where the salon is and the
2 tavern is?

3 A. Yes, ma'am.

4 Q. Then the next one, 4, do you see how that's
5 different from 3?

6 A. I've always assumed I'm good at the find pictures
7 things, but no, I'm not.

8 Q. The parking for the salon.

9 A. Okay.

10 Q. Does one of them show kind of an indication where
11 vehicles may have been parked?

12 A. Yes.

13 Q. Do those ovals, I guess, reflect where vehicles
14 were that evening?

15 A. Yes, ma'am.

16 MS. ROBINSON: Your Honor, I would move to
17 admit -- these were also labeled Court's 1 through 4. I
18 would move to strike them (inaudible) as State's 1 through
19 4.

20 THE COURT: Let's say State's. Started out
21 Defense, that way they'll be distinguishable. So let's let
22 her remark them. Better to get them marked now, rather than
23 later.

24 (WHEREUPON, Court's Exhibits Number 1 through 4
25 were remarked as State's Exhibits Number 1 through 4.)

1 MS. ROBINSON: Your Honor, I would move to admit
2 State's 1 through 4.

3 MR. GREELY: No objection.

4 THE COURT: No objections. State's 1 to 4.

5 (WHEREUPON, State's Exhibits Number 1 through 4
6 were admitted into evidence.)

7 MS. ROBINSON: Your Honor, if I may publish them.
8 I have them as the same pictures in a PowerPoint so I can
9 put them on a screen.

10 THE COURT: Sure. I've been wanting to see them
11 the whole time.

12 (WHEREUPON, State's Exhibits Number 1 through 4
13 were published for the Court.)

14 BY MS. ROBINSON:

15 Q. Okay. Ms. Pickett, can you see it there on the
16 screen in front of you?

17 A. Yes, ma'am.

18 Q. Okay. So this is State's 1, and I believe you had
19 testified that this shows your vehicle, the customer's
20 vehicle that Ms. Ferguson was gonna see, the gentleman that
21 was injured in this case, vehicle, and then the Defendant's
22 work truck?

23 A. Yes, ma'am.

24 Q. Okay. So for clarity, then, you drive a black
25 SUV?

1 A. Yes.

2 Q. Customer has a black sedan of some sort, victim in
3 this case has a white and black sedan, and then
4 Mr. Anderson's vehicle is either a truck or a van, work
5 type?

6 A. Correct.

7 Q. So then in Exhibit 2, this is also a picture from
8 that night, correct?

9 A. Yes, ma'am.

10 Q. And it's just showing kind of the same vehicles
11 from the other side of the victim's vehicle?

12 A. (Inaudible.)

13 Q. And then Exhibit 3, we said this -- so this looks
14 like this is an aerial of the area and you said this
15 accurately reflects the layout of the parking lot. So
16 between -- there's like a gray roof and orangish-reddish
17 roof, which one is the salon?

18 A. The gray roof.

19 Q. So in terms of the parking and the picture we just
20 saw, where those vehicles were, we're talking about where it
21 looks like cement instead of asphalt, would that be
22 accurate?

23 A. Yes, ma'am.

24 Q. Then in this picture, as we discussed in your
25 testimony earlier, those ovals kind of represent those

1 vehicles we just discussed, correct?

2 A. Yes, ma'am.

3 Q. Okay. If I could, I'm going to leave that up
4 while you do the rest of your testimony so you can kind of
5 tell us where things happened as well.

6 So initially -- before we get to the confrontation
7 that really brings us here, you testified that Mr. Anderson
8 brought your daughter. So he came and he -- he's not an
9 employee of the salon, correct?

10 A. (Inaudible.)

11 Q. So he parked there in the customer parking. And I
12 believe you testified, you were done working and getting
13 ready to leave, is that correct?

14 A. I was about to.

15 Q. So because of that, you had moved to the side of
16 the building in the customer parking, is that accurate?

17 A. Yes. He had already put her wheelchair in my car.
18 So to lift her, it's easier to be closer to the door.

19 Q. Okay. So you're preparing to leave and you've
20 moved over here, and you indicated that another individual
21 came -- I believe you said a white SUV -- and parked and
22 they were trying to walk away, is that correct?

23 A. Yes, ma'am.

24 Q. But I think you said it was a different parking
25 spot. Do you know?

1 A. It's the one right next to me, the first spot
2 that's open.

3 Q. Okay. So at the time that happened, were you
4 still in your driver seat of your vehicle?

5 A. Yes, ma'am.

6 Q. And the Defendant was talking to you on that side
7 of the vehicle, is that correct?

8 A. They got out of the car. He was at the passenger
9 side, so he initially said, "You need to move. We're going
10 to tow your car." As they walked in front of my car, I
11 notified her that I would be calling the tow company.

12 Q. Did the Defendant ask you to call the tow company?

13 A. No. That -- that's just what we commonly would do
14 if somebody's not listening to our small warning of please
15 leave.

16 Q. But that night you didn't actually call the tow
17 company on that ---

18 A. Oh, no, I did. I spoke with him. And then they
19 started to come back, I told him it was fine.

20 Q. Did you later tell that woman that you had just
21 pretended to call the tow company?

22 A. No, ma'am.

23 Q. Did you tell her that you just wanted to get the
24 Defendant off your back?

25 A. The Defendant as in my boyfriend, Justin?

1 Q. Yeah. And so you had pretended to call the tow
2 company, but you weren't actually calling?

3 A. No, ma'am. I fully spoke with him, and if that
4 needs to be known, you can talk to him as well, because I
5 even spoke with him later that night as well.

6 Q. Spoke with him, being who?

7 A. The tow company.

8 Q. But Mr. Anderson, he was kind of angry about this
9 other woman parking there, correct?

10 A. Yes.

11 Q. So they started, that other -- was it a woman, a
12 man?

13 A. A woman and a man. A woman was driving, I
14 believe.

15 Q. So the woman came back and ultimately moved the
16 vehicle?

17 A. Yes, she did.

18 Q. All right. So at that point, the first spot is
19 open again?

20 A. Yes.

21 Q. And you think it's within two minutes that the --
22 I think that was your testimony -- that the victim then
23 appeared in the parking lot?

24 A. Yes. I think it was pretty -- pretty quickly
25 afterwards.

1 Q. And you testified that he was pulling into that
2 spot in reverse?

3 A. Yes.

4 Q. And that's reflected in this by the vehicle that's
5 kind of halfway in, halfway out, is that correct?

6 A. Yes, ma'am.

7 Q. And you testified that at first, the Defendant
8 went over, was gesturing for that individual, "Can't park
9 here," pointing at the sign. Was he saying anything at the
10 same time?

11 A. Well, yes. But I don't think he could hear him
12 because his window was up.

13 Q. Was he not trying to be -- I mean, he was aware
14 the window was up as well, right? So he would have been
15 speaking loudly?

16 A. Yes.

17 Q. And you said then there's an exchange about
18 whether the salon is open. Was that directed -- I think you
19 testified that they told you that. Was that directed at you
20 or is that directed at Mr. Anderson?

21 A. I was in my vehicle, so it was not directed at me.

22 Q. And then at some point you heard Mr. Anderson tell
23 the victim to "Get the fuck out," right?

24 A. Yes.

25 Q. But you didn't mention that when you testified

1 just now.

2 A. I said it as well. I didn't think that was a...

3 Q. When that was said, was the victim still in his
4 vehicle or was he out of his vehicle?

5 A. I believe he was still in his vehicle because he
6 had also asked me what's going on, and I said, "Move your
7 fucking car."

8 Q. And you were still in your vehicle in the driver's
9 seat?

10 A. Yes, ma'am.

11 Q. With your daughter in the back seat?

12 A. Yeah.

13 Q. And when you were saying it, where was the victim?
14 Was he still in his car?

15 A. Yes, ma'am.

16 Q. So you're yelling this across the vehicle between
17 you?

18 A. Yes.

19 Q. Okay. And you heard something to the effect of,
20 "What's your problem?"

21 A. Uh-huh.

22 Q. Who was saying that?

23 A. The gentleman.

24 Q. And you testified that Mr. Anderson responded,
25 "Come figure it out"?

1 A. I can't recall the exact words, but something
2 along those lines.

3 Q. And at that point, the victim was still in his
4 vehicle?

5 A. At that point, yes.

6 Q. And the Defendant is where? Is he standing next
7 to your car still?

8 A. I'm getting confused.

9 Q. Your boyfriend, was he still standing next to your
10 car when he said ---

11 A. Was, like, behind the -- the middle car.

12 Q. So behind that other client's car?

13 A. Yes.

14 Q. So he had moved a little bit, because you
15 testified initially, he was kind of at -- right behind where
16 your door was open, speaking to you.

17 A. Initially, when he pulled in, I said that he was
18 standing right behind that car and he didn't move until he
19 got out of the car.

20 Q. All right. I may have just misheard. So after he
21 says -- the Defendant says, "Come figure it out," that's
22 when you saw the victim get out of the -- his vehicle?

23 A. Yes, ma'am.

24 Q. Now, based on where you were sitting in your
25 vehicle, and the fact that there's this other vehicle

1 between you and the victim's vehicle, correct?

2 A. Uh-huh.

3 Q. Was your view obscured in any way of what was
4 happening?

5 A. No, ma'am. Where he had parked in reverse, his
6 driver's door was very visible for me to see.

7 Q. So, this is Exhibit 1.

8 A. Yes, ma'am.

9 Q. And I know -- you're not in this picture, are you?

10 A. No, ma'am.

11 Q. But where -- is that Ms. Ferguson?

12 A. Yes, it is.

13 Q. Where she's standing, just back beyond that in the
14 driver's seat, that's where you're located, right?

15 A. Yes, ma'am.

16 Q. Your testimony is that all of this with
17 Mr. Anderson starts with -- you can't see ---

18 A. I can see.

19 Q. (Inaudible) That black vehicle?

20 A. Yes, ma'am.

21 Q. So you're kind of turned in your seat looking
22 towards the white car that's backing in?

23 A. Yes.

24 Q. When the victim got out of his vehicle, you said
25 he walked towards where your boyfriend was, the Defendant,

1 and there were angry, raised voices, is that correct?

2 A. Yes.

3 Q. Was that from one side, the other side, both men,
4 angry, raised voices?

5 A. Both of them.

6 Q. Okay. But at some point after this angry raised
7 voices there, you said the victim went back to his car?

8 A. Yes.

9 Q. Did he get in his car and sit down?

10 A. No. He kind of -- it just looked like he was
11 fumbling with something. I don't know if he was trying to
12 get his phone. I genuinely don't know, but he went back at
13 least three times.

14 Q. Do you know if there was anybody else in that car?

15 A. There was two women in the car with him.

16 Q. Were they still in the car at this time?

17 A. At this time, once he got out of his vehicle, one
18 of the women came up to him and was trying to pull him away
19 from the situation and he kind of shooed her off.

20 Q. Just to clarify, when you say him, one of the
21 women in the victim's car, went to the victim and tried to
22 pull him away?

23 A. Yes.

24 Q. And when the victim went back to his vehicle and
25 you described him fumbling around, where did that woman go?

1 A. She was all over the place. At one point -- which
2 I guess we'll get into a little bit later -- but once he
3 went to lunge at Justin, both of them were trying to pull
4 him back.

5 Q. Okay. But you don't specifically know where she
6 was when the victim went back towards his car?

7 A. I've never dealt with something like this. This
8 -- it's -- yeah, I don't know where they were.

9 Q. That's fine. I'm just trying to make sure I'm
10 keeping track of what's going on.

11 What were you doing at that time?

12 A. I was sitting in my car.

13 Q. Did you -- you said they're trying to pull him
14 back, did you do anything trying to get your boyfriend to
15 stop?

16 A. No. I'm not very good with confrontation.

17 Q. Okay. So at some point you said that you heard,
18 "Going to fuck him in the ass." Who said that?

19 A. The other guy.

20 Q. The gentleman that got hurt?

21 A. (Inaudible.)

22 Q. Did he say that while he was going to his vehicle?

23 A. No. He said that just standing there yelling at
24 him.

25 Q. That was part of the yelling before he went back

1 and fumbled in his vehicle?

2 A. Before the second time, yes.

3 Q. Okay. So he goes to his vehicle, fumbles around,
4 comes back...

5 A. And he's poking at Justin at this point in his
6 chest and his nose and stuff.

7 Q. And that's what you hear him say. Did you hear
8 anything Justin said at that time?

9 A. I believe probably along the lines of, "Suck my
10 dick."

11 Q. So they're both being loud?

12 A. (Inaudible.)

13 Q. You have to answer verbally for the record.

14 A. Yes. Sorry.

15 Q. And they're both angry?

16 A. Yes.

17 Q. Both vulgar?

18 A. Yes.

19 Q. But you didn't tell -- when you talked to police
20 that night, you didn't tell them about this statement from
21 the victim, did you?

22 A. No. I was more concerned about my crying daughter
23 that night.

24 Q. Who's still in on the passenger side of the
25 vehicle, correct, in the back?

1 A. Yes.

2 Q. So the victim goes back to his vehicle a second
3 time and then at some point he turns and lunges at your
4 boyfriend, is that what you testified?

5 A. He spat in his face.

6 Q. Okay. Did that happen -- when -- which of the
7 times -- how many times had he been back to his car?

8 A. So he went back to his car, he's poking at him,
9 they're saying vulgar things, he spat in his face, he went
10 back to his car, at that time he came back and lunged at
11 Justin.

12 Q. Okay. And you didn't mention to police about the
13 victim spitting in Justin's face, did you?

14 A. I'm -- I've not seen the statement since that
15 night. Like I said, I was worried about Bailey.

16 Q. Would you like to see your written statement or
17 statements you made to the police?

18 A. Sure.

19 MS. ROBINSON: Your Honor, I don't know if we
20 would need to take a quick break so I can show Mr. Greely.
21 There's two video statements and a written statement from
22 Ms. Pickett.

23 THE COURT: Okay. Short break?

24 MR. GREELY: That's fine.

25 (WHEREUPON, a short recess was taken.)

1 THE COURT: Your name?

2 THE WITNESS: Kirsten.

3 THE COURT: Last name?

4 THE WITNESS: Pickett.

5 THE COURT: Pickett. Ms. Pickett, you're still
6 under oath.

7 MS. ROBINSON: Your Honor, if I may jump back.

8 BY MS. ROBINSON:

9 Q. We talked earlier about whether or not you called
10 the tow company on the first woman who parked there, is that
11 correct?

12 A. Yes.

13 MS. ROBINSON: Your Honor, I've marked as State's
14 Exhibit 5, a 911 call from this incident, and I would
15 request to play it for the Court and to confront Ms. Pickett
16 about a prior statement.

17 MR. GREELY: Your Honor, I would ask for the State
18 to first ask the question to Ms. Pickett if she told
19 somebody else that the call was a fake call.

20 MS. ROBINSON: I did ask that earlier, Your Honor,
21 she denied that.

22 MR. GREELY: Okay.

23 THE COURT: I think she did ask something along
24 those affects.

25 MR. GREELY: Okay.

1 MS. ROBINSON: Your Honor, may I ---

2 THE COURT: Yeah, hurry up. Play it.

3 MR. GREELY: Your Honor, and I would ask for the
4 Solicitor to try to keep it as best she can to the point of
5 the video -- or the call.

6 THE COURT: Uh-huh.

7 MS. ROBINSON: Just for conduct, Your Honor, it's
8 a 911 caller in the restaurant, as you heard Mr. Greely
9 describe earlier, who calls. It's not an eye witness to the
10 stabbing, so I'm going to jump to the end of the call.

11 THE COURT: Okay.

12 (WHEREUPON, an audio recording was played for the
13 Court.)

14 MS. ROBINSON: I could play it one more time, Your
15 Honor.

16 THE COURT: I don't need to hear it one more time.
17 I, mean, I heard it.

18 BY MS. ROBINSON:

19 Q. Ms. Pickett, did you hear it clearly?

20 A. Yes, ma'am, I did.

21 Q. Was that your voice in the background?

22 A. Yes, it was.

23 Q. And were you speaking to the woman who had been in
24 the white SUV?

25 A. Yes, I was.

1 Q. Is that you telling her you just fake called the
2 tow company?

3 A. That's me telling her that, yes.

4 Q. And telling her that it -- you were fake calling
5 because you wanted to get your boyfriend off your back?

6 A. I -- like I said before, I don't do well in
7 confrontation. I was worried that I was about to be in
8 another altercation, so I said what I needed to. But I
9 fully made that tow company call, and like I said, he -- we
10 even spoke later that night as well.

11 Q. But you did say that to a third party on scene?

12 A. Now hearing it, I do remember that.

13 MS. ROBINSON: Your Honor, I would move to admit
14 State's Exhibit 5.

15 MR. GREELY: And that is?

16 MS. ROBINSON: The 911 call.

17 MR. GREELY: No objection.

18 THE COURT: Number 5's in without objection.

19 (WHEREUPON, State's Exhibit Number 5 was admitted
20 into evidence.)

21 BY MS. ROBINSON:

22 Q. Ms. Pickett, right before the break, what we have
23 last talked about was that, you didn't tell any of the
24 officers in -- on scene that night, or in your written
25 statement, about the victim making the statement -- the

1 vulgar statement. I have to get my notes, I don't have it.

2 "I'm going to fuck him in the ass." You did not
3 tell the officers about that?

4 A. No.

5 Q. And where we really got hung up is I asked, I
6 said, you didn't tell the officers about the victim spitting
7 in your boyfriend's face, did you?

8 A. No.

9 Q. And ---

10 A. But all of those, I gave a very, very, summary of
11 what happened, so.

12 Q. Okay. But in -- in the statements that you gave
13 to the officers verbally, even though it's summary, you
14 don't mention anything that the victim said to the
15 Defendant, did you?

16 A. No, I don't really mention anything that was said
17 at all.

18 Q. But you did mention that your boyfriend said, "Get
19 the fuck out"?

20 A. I said pretty much like, "Get the fuck out."

21 Q. And you told them that -- you told them that the
22 Defendant, your boyfriend, kept running his mouth?

23 A. Yes.

24 Q. In fact, every time you mentioned to officers that
25 the victim went back to his car, it was followed by, "But my

1 boyfriend said things or kept running his mouth."

2 A. If that's the way you're taking that. I feel like
3 that was only said once, but okay.

4 Q. So you don't think you said that?

5 A. I said I did say it. I feel like that was only
6 said once. Whenever I was talking to the police officer,
7 yes, he was running his mouth.

8 Q. But you aren't telling police officers that the
9 victim was running his mouth.

10 A. Yes, I've never been in this situation. I thought
11 I was supposed to tell what he was doing, while he was being
12 detained and nobody was talking to him.

13 Q. Even though what the victim said was so egregious.

14 A. Okay.

15 THE COURT: Let's get by that. I got it. She
16 didn't say it to police, but you don't have to keep
17 repeating it.

18 BY MS. ROBINSON:

19 Q. And you didn't tell them about the spit?

20 A. No, I did not.

21 Q. And you told them that your boyfriend, the
22 Defendant, is the one who said, "What are you gonna do?" Or
23 "Come at me."?

24 A. Yes.

25 Q. So your boyfriend was taunting the victim?

1 A. After he had asked him what his fucking problem
2 was, yeah. I guess if you want to take it that way.

3 Q. And then it's after your boyfriend was taunting
4 the victim, that the victim did push him into your vehicle?

5 A. They were both taunting each other. It was after
6 he spat in his face that he got pushed into the vehicle,
7 yes.

8 Q. But after -- you testified earlier that he spat in
9 his face and then he went back to his car?

10 A. Yes.

11 Q. So that's when your boyfriend is still saying ---

12 A. Don't you think that's taunting as well?

13 Q. I'm asking you a question. The spitting happened,
14 the victim goes to his vehicle ---

15 A. And then he comes back.

16 Q. --- Defendant says more, victim comes back?

17 A. Yes.

18 Q. And are you still in your vehicle?

19 A. Yes.

20 Q. And I believe you testified that that startled
21 your daughter who's on the back side, but on the passenger
22 side?

23 A. Yes, ma'am.

24 Q. So you would have turned to check on her?

25 A. Yes.

1 Q. And so in that moment there's a little bit of
2 action you're not visually seeing?

3 A. I didn't see anything after I turned.

4 Q. And the next time you see them, they're locked up?

5 A. Yes, ma'am.

6 Q. How long are they locked up, that you recall?

7 A. I mean they -- they were together for a little
8 while. I don't know if I could really give time -- 20,
9 30 seconds.

10 Q. Okay. That's a pretty long time for them to be
11 locked up. Like, if we ---

12 MR. GREELY: Objection. Gonna ask her to ask a
13 question.

14 THE COURT: Yeah.

15 MS. ROBINSON: I'm not sure ---

16 THE COURT: Rephrase your question, because...

17 MS. ROBINSON: So 20 seconds ---

18 THE COURT: We don't have a jury here.

19 MS. ROBINSON: I know.

20 BY MS. ROBINSON:

21 Q. Can you count to 20 in your head and see does that
22 feel right?

23 A. No, I guess I'm counting fairly fast.

24 Q. Okay.

25 A. Yeah. So probably like, ten seconds.

1 Q. A quick interaction?

2 A. Yeah.

3 Q. I think you testified, you never did see the knife
4 that night?

5 A. No. I did not. I didn't see it until it was
6 later on in the night and it was sitting on the van as
7 pictures were taken.

8 Q. Okay. And so after they lock up for a brief
9 period, they both pull away? How does that happen?

10 A. I believe so. Like, both kind of push each other
11 off?

12 Q. Push off?

13 A. Yeah, I believe so.

14 Q. And where did your boyfriend go at that point?

15 A. He, believe, was still standing at the same area.
16 The other gentleman began to walk to his car, and then left
17 his car and started heading to 2020. And that's when he had
18 said something, and then Justin went and tackled him.

19 Q. Where were you -- you look back at your daughter,
20 you look back, they're locked up. Did you stay in your
21 vehicle?

22 A. No. I'm out of my vehicle now. I'm -- I'm
23 probably behind -- in the middle, but like in -- I don't
24 even know how to say this. In the middle of both the black
25 cars, but more leaning towards her car.

1 Q. More leaning towards -- when you say her, that
2 unfilled oval, the customer's car?

3 A. Yes, ma'am.

4 Q. Are you behind, relative to your boyfriend and the
5 victim, are you...

6 A. At this point, I believe Justin's kind of in
7 behind my car, kind of in the street. And then the
8 gentleman is at his white car at this point.

9 Q. So you were kind of between them in terms of ---

10 A. After that happened, I ran out of the car, yeah.

11 Q. Do you recall where the -- you testified earlier
12 there's females with the victim, do you know where they
13 were?

14 A. No. That was just such a crazy moment, I really
15 don't know.

16 Q. Okay. But you testified the victim starts heading
17 towards the tavern?

18 A. Yes.

19 Q. And that's when your boyfriend tackles him again?

20 A. Yes.

21 MS. ROBINSON: Beg the Court's indulgence. Your
22 Honor, no further questions.

23 THE COURT: Anything on redirect?

24 MR. GREELY: Briefly.

25 REDIRECT EXAMINATION

1 MR. GREELY: If you could bring up on the display
2 there, Number 3, I think? Or let's see, State's Exhibit
3 Number 2.

4 BY MR. GREELY:

5 Q. Now, the State has showed you this picture, which
6 is State's Exhibit Number 2, correct?

7 A. Yes, sir.

8 Q. Now, that was some time after this incident, when
9 that picture was taken, wasn't it?

10 A. Yes, sir.

11 Q. So given the state of daytime, at that point in
12 that picture, is that the way it was when this incident
13 occurred?

14 A. No. It was more sunset.

15 Q. Did you take a picture of the car, yourself?

16 A. Yes, I did.

17 Q. That night, after the incident?

18 A. Yes, I did.

19 Q. I'm going to show you what's been marked as
20 Defense Exhibit Number 7. Is that the picture of the car?

21 A. Yes, sir, it is.

22 Q. Did you take that picture after the incident had
23 happened?

24 A. Yes, I did.

25 Q. Is that picture reflective of daylight at that

1 time?

2 A. Yes, sir, it is.

3 MR. GREELY: I move for this to be entered into
4 evidence.

5 MS. ROBINSON: Without objection.

6 THE COURT: Evidence is entered.

7 (WHEREUPON, Defendant's Exhibit Number 7 was
8 admitted into evidence.)

9 BY MR. GREELY:

10 Q. So at the time that the incident occurred, when
11 somebody would be pulling into the parking lot, would the
12 signs be readable from the daylight?

13 A. Yes, they would.

14 MR. GREELY: That's all I have your Honor.

15 THE COURT: All right. You may step down.

16 MR. GREELY: Your Honor, at this time, I intend to
17 call my client. My client is currently under indictment in
18 this case. I would ask for the Court to give him an
19 instruction about his right not to testify in any
20 proceedings.

21 THE COURT: All right. It's Mr. Anderson?

22 MR. GREELY: You're going to need to speak loudly,
23 he's going to ask you questions.

24 THE COURT: Yes, sir. Mr. Anderson, you
25 understand that the Constitution affords you a right to

1 remain silent. And if you don't testify or offer any
2 evidence to the -- to anyone in a court proceeding, your
3 silence cannot be used against you in any fashion
4 whatsoever. Do you understand that?

5 THE DEFENDANT: Yes, sir, I do.

6 THE COURT: So meaning, if this case went to trial
7 and you chose to not testify, during the trial, the State's
8 restricted from using that silence against you in any way.
9 You understand that?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: Particularly, the State's not allowed
12 to say in front of a jury, "Well, if he was innocent, he'd
13 get up here and say so. He'd have gotten -- taken the
14 witness stand and said, 'I didn't do this.'"

15 Now, you understand they can't say that?

16 Additionally -- the State's not allowed to argue
17 to the jury that in any fashion. And, additionally, if you
18 don't testify at any time ever, then as the Court would
19 instruct the jury in deliberation, the jury's instructed to
20 not consider a person invoking their right to remain silent
21 in any fashion whatsoever -- they can't consider it in their
22 decision whether State's proven its case or not.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir, I do.

25 THE COURT: If you offer testimony, sworn

1 testimony, it's considered sworn testimony. And so the
2 State potentially could use anything you say against you in
3 a future court proceeding.

4 You understand that?

5 THE DEFENDANT: Yes, sir, I do.

6 THE COURT: And you've been over all this with
7 Mr. Greely?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you understand your rights?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. It's your decision whether
12 you wish to testify or not.

13 THE DEFENDANT: I do.

14 THE COURT: Okay. There you are.

15 MR. GREELY: Given my client wishing to testify in
16 this matter, Your Honor, I call to the stand Justin Tyler
17 Anderson.

18 THE COURT: All right. Mr. Anderson, come forth
19 to the center, be sworn, and have a seat.

20 (WHEREUPON, Justin Anderson, having been duly
21 sworn, testified as follows.)

22 DIRECT EXAMINATION

23 BY MR. GREELY:

24 Q. Mr. Anderson, state your full name for the record,
25 please.

1 A. It's Justin Tyler Anderson.

2 Q. How old are you, Mr. Anderson?

3 A. I'm about to be 33 in February.

4 Q. Where do you live?

5 A. In Rock Hill, South Carolina.

6 Q. With whom do you live?

7 A. Kirsten Michelle Pickett and Bailey.

8 Q. What do you do for a living, Mr. Anderson?

9 A. I'm a low voltage technician.

10 Q. A low voltage technician?

11 A. Yes, sir.

12 Q. Tell the Court what a low voltage technician does.

13 A. So I do music and stuff for fast food restaurants,
14 and headset systems and stuff.

15 Q. So if somebody at a fast food restaurant is having
16 trouble with their drive thru, is that when they call you?

17 A. Yes, sir, it is.

18 Q. And you work for a company that does those things?

19 A. Yes, sir.

20 Q. You've seen some pictures here. We've got a
21 picture that's up right now, there's a -- that's police.

22 But anyway, there was a van there. Was that your work van
23 that was parked?

24 A. Yes, sir, it is.

25 Q. And you use that van during your work?

1 A. Yes, sir.

2 Q. There is a knife involved in this case. Where did
3 that knife come from?

4 A. From my pocket.

5 Q. And what type of a knife is it?

6 A. It's a utility knife.

7 Q. A utility knife. And why did you have it in your
8 pocket.

9 A. I use it for work.

10 Q. And who makes the knife?

11 A. Milwaukee.

12 Q. Milwaukee. It's a tool manufacturer, is that
13 correct?

14 A. Yes. Yes, sir.

15 Q. So is this knife for weaponry or is it for actual
16 use in your work?

17 A. Actual work.

18 Q. Do you keep it in your pocket every day when you
19 do your work?

20 A. Yes, when I work.

21 Q. Why do you have to have that knife?

22 A. To open boxes or cut acoustic foam or anything
23 like that?

24 Q. Is it one of your tools?

25 A. Yes, sir, it is.

1 Q. Now, how do you know Donna Ferguson?

2 A. That is my mother.

3 Q. You're familiar with her salon, of course. Is
4 that correct?

5 A. Yes, sir.

6 Q. And are you over there frequently?

7 A. Yes.

8 Q. Is this the first time ever that you've been
9 involved in looking out for the salon or the parking?

10 A. No, other times.

11 Q. So you have been given authorization for this
12 before?

13 A. Yes, sir, I have.

14 Q. And did you have a discussion with your mother
15 that evening about the parking lot?

16 A. Yes, sir.

17 Q. What was that discussion you had with her?

18 A. She told me to just make sure everything was all
19 right, no cars come in there and park unless they're a
20 client?

21 Q. Was this before she went to 2020 -- the
22 restaurant?

23 A. Yes, sir.

24 Q. Now, how did you get to the restaurant and for
25 what -- I mean, how did you get to the salon and for what

1 reason that day?

2 A. I got in my work van after picking up Bailey.

3 Q. You picked her up in your work van?

4 A. Yes, sir, I did.

5 Q. Where does she go to school?

6 A. Ebinport Middle -- Elementary.

7 Q. Ebinport in Rock Hill, South Carolina?

8 A. Yes, sir.

9 Q. And then after you picked her up, where did you
10 go?

11 A. I went to the salon.

12 Q. So was this after you had worked that day?

13 A. Yes, sir, it is.

14 Q. After your mom went up to the tavern, tell the
15 Court what you recall happening when you and Ms. Pickett and
16 Bailey were in y'all's car.

17 A. When we were in the car? The one -- the SUV
18 that's beside us, they pulled up as I had the door kind of
19 cracked. We were about to leave. So they parked. I got
20 out, told them that they need to move or Imma call a tow
21 truck. All right? So a minute or two later, this guy in a
22 Toyota starts backing in.

23 Q. Okay. So did the people start to walk away?

24 A. Yes, they did.

25 Q. The first people?

1 A. Yes.

2 Q. So they started to walk away and ignore you?

3 A. Yes, they did.

4 Q. What did you say to them after they started to
5 ignore you and just walk away?

6 A. I didn't say anything, I just let them go.

7 Q. Okay. Did you say anything about a tow truck?

8 A. I did say a tow truck, yeah. Sorry.

9 Q. Did they decide to come back rather than have the
10 tow truck?

11 A. No.

12 Q. The people in the SUV, the first?

13 A. Yeah, they did not, they went to the restaurant.

14 Q. Did they ever come back and move ---

15 A. Yes, they did.

16 Q. All right. So there was a period of time to where
17 they did come back and move their car?

18 A. Yeah, they did. They did come back.

19 Q. Okay. Now, after they came back and moved their
20 car -- and did they -- of course they went back up to the
21 tavern and parked, is that correct?

22 A. Yes, sir, they did.

23 Q. Tavern has a lot of parking, don't they?

24 A. Yeah, a lot. Over 30 spots.

25 Q. So then what happened, when the other car came in?

1 A. The Toyota?

2 Q. Yes.

3 A. I walked to the front of the Nissan, I waved my
4 hands like this, pointed at the signs. He rolled his window
5 down. I told him that, "Hey, you can't park here."

6 Q. When you say you walked in front of the Nissan,
7 you're talking about the car that was in between the two of
8 y'all?

9 A. Yes, the one beside my girlfriend's car.

10 Q. And you waved?

11 A. Yes.

12 Q. And you pointed to the sign?

13 A. Yes, sir, I did.

14 Q. And you even told them that they couldn't park?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes, sir.

18 Q. And your mom had asked you to do that, is that
19 correct?

20 A. Correct.

21 Q. She's the owner?

22 A. Yes.

23 Q. So what happened then?

24 A. He proceeded to say why he can't park there if
25 they're closed or whatnot. I said, "That doesn't matter,

1 they're still open. You cannot park here, you're not a
2 client."

3 He said he did not like my attitude, apparently.
4 I said, "Okay. What's it matter to you?" Then he kept ---

5 Q. Was it beginning to get heated?

6 A. Yes.

7 Q. Was he questioning your authority and your ability
8 to ask him to move?

9 A. Yes, he was.

10 Q. And so what happened then?

11 A. He decided to open the door and get out and come
12 towards me.

13 Q. Decided to open the door, get out, and come to
14 you.

15 A. Yes, he did.

16 Q. And what happened then?

17 A. He kept running his mouth and putting his fingers
18 in my face, and some other things were said. I said, "You
19 just need to get the fuck out," something like that.

20 Q. Is there any doubt that you cursed at him that
21 day?

22 A. Oh, I definitely -- I definitely did, yes.

23 Q. Okay. All right. So, you told him to, "Get the
24 fuck out?"

25 A. Uh-huh. To leave.

1 Q. To leave? Well, that -- yeah.

2 A. I just want to specify.

3 Q. A little bit more forceful, isn't it?

4 A. Yeah.

5 Q. What'd he do?

6 A. He came right at me, like I said, getting in my
7 face again. And then after that, some words were said. He
8 went back to his car, fumbling around, came back at me
9 again, getting in my face.

10 Then some other things were said, and then he went
11 back to his car again, came back towards me. So I kinda got
12 a little closer, 'cause I don't know what he's grabbing out
13 of his car. I don't know if it was a weapon or not.

14 Q. All of this is going on, on whose property?

15 A. My mother's property, right there in the parking
16 lot.

17 Q. And had he refused to leave your mother's property
18 when he was told to?

19 A. Yes.

20 Q. Then what happened?

21 A. He decided to spit in my face after the third time
22 of going to his car. And then ---

23 Q. What did you do about that?

24 A. I told him something -- "Let's go," or something
25 like that.

1 Q. Okay.

2 A. And then after that I ---

3 Q. Did that anger you?

4 A. Oh, yeah. He spit right in my face, so.

5 Q. Okay.

6 A. And then he started a lunge towards me. That's
7 when he hit me against the car.

8 Q. At some point in time, did you reach into your
9 pocket and pull out the Milwaukee utility knife that you had
10 in your pocket?

11 A. Yes, sir, I did.

12 Q. Do you remember about when that was?

13 A. After I got pushed against the car, and I remember
14 his fist coming up towards my head.

15 Q. So he swung at you?

16 A. Yes, he did. He hit ---

17 Q. Did you swing at him?

18 A. No, I did not swing. I just put my hands up like
19 that.

20 Q. Okay. So you put your hands up. Did you have the
21 knife in your hand?

22 A. Yes, sir, I did.

23 Q. Did you come in contact with the back of his head
24 or his neck?

25 A. Yes, the side of his neck.

1 Q. Okay. All right. And then after that, what
2 happened?

3 A. He grabbed his neck. He said, "You just fucking
4 stabbed me." He went back to his car and I thought he was
5 grabbing maybe a gun or something. So he started running
6 back to the 2020 Tavern. And adrenaline was pumping, I
7 chased him down, tackled him to the ground.

8 Q. Did you have the knife when you tackled him?

9 A. No. No. I threw the knife on the hood of the
10 van.

11 Q. You put the knife where?

12 A. On the hood of the van.

13 Q. The van?

14 A. On my work van.

15 Q. Okay. Was that before you tackled him?

16 A. Yes, sir.

17 Q. So is that why it was in the windshield wiper bay?

18 A. Yep.

19 Q. So you got rid of the knife before you tackled him
20 that last time?

21 A. Yes, sir, I did.

22 Q. Then what do you remember?

23 A. After tackling him? Going back to my van and
24 taking my shirt off. I had blood all over me.

25 Q. And that was from him to where he had been stuck?

1 A. Yes, sir.

2 Q. Then what'd you do?

3 A. Nothing. I went to my girlfriend, checked on
4 them. Made sure Bailey was okay, and she was hysterical,
5 so.

6 Q. You waited?

7 A. Yeah.

8 Q. Eventually you were arrested by detectives?

9 A. Yes, sir.

10 Q. Have you ever seen him before?

11 A. No, sir, I haven't.

12 Q. Didn't know who he was?

13 A. No, sir.

14 Q. How many times have you been attacked when you
15 told somebody they couldn't park there?

16 A. Never.

17 Q. Was that the first time?

18 A. Yes, sir, it was.

19 Q. Did you have any idea what he may do?

20 A. I had no idea.

21 Q. Did he make any threats to you?

22 A. Yes, the whole time.

23 Q. What type of threats were they? Did they -- were
24 they threats to harm you seriously?

25 A. Yeah. Yes, sir.

1 Q. And did you make a threat back at him?

2 A. Yes, I did.

3 Q. Prior to him lunging and hitting you and knocking
4 you up against the car, did you lay a hand on him in any
5 way?

6 A. No, sir, I didn't.

7 Q. Answer any questions Solicitor may have.

8 CROSS-EXAMINATION

9 BY MS. ROBINSON:

10 Q. Okay. Mr. Anderson, I think you testified that
11 you had at times been watching out for the salon and the
12 parking lot before, is that correct?

13 A. Yes, ma'am.

14 Q. And specifically on this night, your mom had told
15 you, "Please be aware of the property tonight"?

16 A. Correct.

17 Q. On prior occasions -- I know you said you have not
18 been attacked in a prior occasion. Were there prior
19 occasions besides these two people tonight that you've had
20 to talk to people about the parking?

21 A. No, not before.

22 Q. Were you aware that it was St. Patrick's Day on
23 this ---

24 A. Yes, I was.

25 Q. Were you aware that the tavern might be busier on

1 a St. Patrick's Day, holiday?

2 A. Yes, I figured that.

3 Q. Was that part of why your mom asked you to watch
4 that night, you think?

5 A. No. Just there dropping Bailey off -- or getting
6 Bailey.

7 Q. Now, do you recall telling Deputy Marthone, when
8 you -- after you were arrested that night, that you had had
9 a few beers?

10 A. Yes.

11 Q. When in the context of the day did you have those
12 beers?

13 A. After I got to the salon.

14 Q. Okay. So you got to the salon -- did you go to
15 the tavern or you had them at the salon?

16 A. I had them at the salon.

17 Q. So after you brought Bailey to the salon, you were
18 there for enough time to hang out and have a few beers.

19 A. I had a beer.

20 Q. But you told Deputy Marthone you had a few or two.

21 A. Yes, I did. But I had one.

22 Q. So, do you know about what time it was when you
23 were packing up Ms. Pickett's vehicle with Bailey and
24 getting ready to leave?

25 A. I don't recall.

1 Q. But it's still -- as we've seen some of the
2 images, it was still sunlight?

3 A. Yes.

4 Q. Just before dusk, maybe?

5 A. Yeah.

6 Q. And that's when the white SUV comes?

7 A. Yes. Yes.

8 Q. And I think you mentioned this, were you in
9 Ms. Pickett's vehicle when they parked?

10 A. Yes, I was in the passenger seat.

11 Q. In the front passenger seat?

12 A. Yes.

13 Q. Was Bailey already in the vehicle at that point?

14 A. Yes, she was.

15 Q. You said something about your door. What was
16 going on between you and the woman who parked there?

17 A. My door was cracked.

18 Q. Was that an issue? Did she park too close or was
19 there an issue there?

20 A. (Inaudible.)

21 Q. Okay. But when she pulls in there, did you then
22 get out of the vehicle -- of Ms. Pickett's vehicle?

23 A. I just kind of opened the door and waited for them
24 to get out. I don't remember -- y'all said the window was
25 closed, but I don't remember -- I don't recall that.

1 Q. No, I'm asking, just trying to figure out it came
2 to be that you interacted with her.

3 So, when she parked, did you wait until she out of
4 the vehicle to say something to her about not parking there?

5 A. (Inaudible.)

6 Q. So it's as she, and her male person with her were
7 walking away, that you point out the signs to this person?

8 A. They were in front of their car.

9 Q. Okay. And they just kept right on going?

10 A. Yeah.

11 Q. At first anyway?

12 A. I guess they didn't believe me or something.

13 Q. So, you said you didn't say anything to her. When
14 you mentioned the tow truck, was that you talking to
15 Ms. Pickett?

16 A. I told her to call the tow truck.

17 Q. You told Ms. Pickett to call the tow truck?

18 A. Yes.

19 Q. Presumably, that person would have heard you
20 calling out to Ms. Pickett?

21 A. Oh, yeah, I'm sure.

22 Q. Were you a little bit heated about that situation?

23 A. Yeah, I guess.

24 Q. You told the officer that night that she had
25 almost hit Bailey.

1 A. Hit Bailey?

2 Q. Yes.

3 A. I don't recall.

4 Q. Okay. That -- and that is why you were very upset
5 with that woman. Do you remember saying that?

6 A. No, I don't recall.

7 Q. So, that woman went to the tavern, came back and
8 moved the vehicle. I know you testified that it was about a
9 few minutes later that this vehicle -- the Toyota backs in.
10 Are you saying a few minutes later after the first woman
11 moved?

12 Had the first woman moved her vehicle when this
13 vehicle started backing in?

14 A. Yes, I believe so.

15 Q. So they had already gone -- the first woman had
16 already gone to tavern, come back, moved, and here comes
17 this next one?

18 A. Yes.

19 Q. And you went to the front of, I believe you said
20 the Nissan, which is the black, customer's vehicle?

21 A. Yes.

22 Q. That's between Ms. Pickett's vehicle and where
23 he's trying to park?

24 A. Yes, ma'am.

25 Q. And you -- you testified that there are words

1 exchanged, curse words. You were pretty aggressive with him
2 right out the gate, weren't you, about not parking here?

3 A. I was pretty nice at first.

4 Q. But then when he said, "Well, it's not open," that
5 made you mad?

6 A. Yeah.

7 Q. So before he's out of his vehicle, there's cursing
8 going back and forth?

9 A. Yes.

10 Q. And you testified that he is back and forth a
11 couple times and then he spits on you?

12 A. Yes, in my face.

13 Q. Was this like he reels back and spits at you, or
14 is this you guys are in your face screaming?

15 A. Oh no, he reeled back and spit in my face. He was
16 in front of the Nissan.

17 Q. And so, at this point, he's not moving his car out
18 of that space?

19 A. Right.

20 Q. He spits in your face and goes back to his
21 vehicle, right? But not -- from your perception, he's not
22 going to move it?

23 A. Right. Exactly.

24 Q. So then you called the tow truck?

25 A. I don't know when the tow truck was called.

1 Q. You didn't call a tow truck?

2 A. She did. I heard her on the phone.

3 Q. Did you call 911 for him spitting at you?

4 A. No.

5 Q. No.

6 A. Are you supposed to do that?

7 Q. You just continued yelling back and forth with
8 him, correct?

9 A. Yes.

10 Q. Both of you being vulgar?

11 A. Yes.

12 Q. And you told police that he went back to his car,
13 you said some things, including, "Fuck you." Is that what
14 you told police?

15 A. Yes, I did.

16 Q. At some point you said something like, "Come at
17 me," or, "What are you gonna do"?

18 A. Something like that. I don't recall exactly.

19 Q. So he did come towards you?

20 A. Oh, yeah, he did.

21 Q. And you testified that he -- he pushed you back
22 into Ms. Pickett's vehicle, is that correct?

23 A. Yes.

24 Q. And then that's when you got your knife out?

25 A. After he tried to swing -- he was, like, mid

1 swinging at me.

2 Q. He was swinging at you? Did he strike you?

3 A. Kind of hit the side of my head right here.

4 Q. What did he strike you with?

5 A. His hand.

6 Q. Did he have anything in his hand?

7 A. I don't know.

8 Q. Did you suffer any injuries to the side of your
9 head?

10 A. No.

11 Q. And then what did you do?

12 A. I put my hands up as he was swinging and that's
13 when I accidentally got him in the neck.

14 Q. And once that happened, once you got him in the
15 neck, what's the very next thing?

16 A. He ran to his car.

17 Q. So he backed away immediately after getting stuck?

18 A. Yeah. And I stayed right where I was. I didn't
19 follow him or anything.

20 Q. At least initially?

21 A. Yes.

22 Q. And then he's yelling about being stuck?

23 A. Uh-huh.

24 Q. And you testified that he did then go to his car
25 and then went towards the tavern?

1 A. Yeah.

2 Q. And that's when you decided to tackle him?

3 A. He looked like he was fumbling for something in
4 his car again.

5 Q. But not -- he's not in his car if he's going
6 towards the tavern, correct?

7 A. After he got stabbed in the neck, he went to his
8 car fumbling, and then went to the tavern.

9 Q. And then you tackled him?

10 A. Yes.

11 Q. And you didn't have any bleeding of your own that
12 night?

13 A. No, ma'am.

14 Q. Any blood that was on your body or shirt, that was
15 the victim's blood?

16 A. Yes.

17 Q. And you had no visible injuries from the
18 confrontation?

19 A. No, ma'am.

20 MS. ROBINSON: Beg the Court's indulgence. No
21 further questions.

22 THE COURT: Any redirect?

23 MR. GREELY: None, Your Honor.

24 You may come down.

25 THE COURT: You may step down.

1 MR. GREELY: Defense rests.

2 THE COURT: All right. Ms. Robinson?

3 MS. ROBINSON: Your Honor, the State would call
4 Robert Wiestling to testify. He's the victim in this case.

5 THE COURT: I was wondering what his name was.
6 That's the first time y'all said it.

7 MS. ROBINSON: May it please the Court?

8 THE COURT: Sure.

9 (WHEREUPON, Robert Wiestling, having been duly
10 sworn, testified as follows.)

11 DIRECT EXAMINATION

12 BY MS. ROBINSON:

13 Q. Could you please state your name for the record?

14 A. Robert Wayne Wiestling.

15 Q. And if you could, could spell your last name for
16 the court reporter?

17 A. W-I-E-S-T-L-I-N-G.

18 Q. Okay. Mr. Wiestling, where do you live?

19 A. In Waterstone.

20 Q. What area is that?

21 A. About three miles (sic) away from the -- where the
22 accident happened at.

23 Q. Is that Tega Cay, Fort Mills?

24 A. Tega -- well, it's Fort Mills address.

25 Q. Okay. And on St. Patrick's Day of last year,

1 that's the day we're talking about, correct?

2 A. Yes, ma'am.

3 Q. What were your plans for that evening?

4 A. Go do some dancing, have a couple of drinks, eat
5 and then go home.

6 Q. Okay.

7 A. Like every Friday.

8 Q. Were you with anyone that night?

9 A. I was with my wife and her girlfriend.

10 Q. Do you recall roughly what time it was that you
11 were going out for dancing, dinner, drinks?

12 A. My wife gets off at 7:00, so it had to be after
13 7:00.

14 Q. And you said you just live about three miles from
15 where this took place?

16 A. Probably three minutes.

17 Q. Three minutes. Okay. And so some time after
18 seven you just hop over there pretty quickly?

19 A. Yes, ma'am.

20 Q. When you got there, was there anyone in the
21 parking lot that you saw?

22 A. I mean, I wasn't paying attention to anybody
23 there. I mean, I just saw an empty spot and I backed into
24 the spot.

25 Q. And you've been with us in court today, and so

1 you've seen this image before, correct? This is State's 4.

2 A. Yes.

3 Q. And when you say you saw a spot, where did you see
4 the spot?

5 A. It was beside a white van and a Nissan.

6 Q. So that's over more in front of the salon?

7 A. Yes.

8 Q. Rather than the tavern?

9 A. I've parked there before. I mean, I've lived
10 there for four years. I mean, I've parked there once or
11 twice before in the evening.

12 Q. So coming in from the street, those are the first
13 spots that you are passing by, is that correct?

14 A. Yes.

15 Q. So you see one and you begin backing into it?

16 A. I backed into it.

17 Q. What happened next?

18 A. My wife and I and her girlfriend got out of the
19 car, and immediately Justin proceeded to start cussing and
20 saying that you can't park there. "This is my mom's parking
21 spot." Maybe he was pointing toward the signs and I'm,
22 like, telling him that it's kind of late. I mean, the
23 salon's closed. I mean, what does it really matter.

24 Q. You said you got out along with your wife?

25 A. We all got out.

1 Q. So had you finished parking?

2 A. I was already finished parking and gonna go in
3 when he -- when he started talking.

4 Q. So we've seen these pictures in court, and I'll go
5 up to State's 2. That's your vehicle there that's not fully
6 in a spot, correct?

7 A. That's after I was pulling out and then another
8 incident happened as I was pulling out.

9 Q. So your testimony is: You got there, you and your
10 wife and her friend had all gotten out? You were fully
11 parked?

12 A. We was fully parked and out of the car.

13 Q. And that's when you were confronted by the
14 Defendant.

15 A. Yeah. Well, I was verbally abused. He was very
16 belligerent. Like, everything that was coming out of his
17 mouth was a curse word. I understood that it was his mom's
18 parking space. And we jumped in the car and then we
19 proceeded to leave.

20 Q. Did it get physical when you were first out of the
21 car?

22 A. No, ma'am. It was just -- just a bunch of verbal
23 abuse.

24 Q. So then you got back in your car and you were
25 going to leave?

1 A. We were pulling out.

2 Q. Were you going to leave the tavern completely or
3 just go park somewhere else?

4 A. Gonna go park somewhere else, because I didn't
5 want him to damage my car.

6 Q. Gotcha. And so, you said your wife and her
7 friend, they also got back in the car?

8 A. Yes.

9 Q. Okay. So what happened as you are trying to move
10 the vehicle?

11 A. As I'm pulling out, he said, "That's right you son
12 of a bitch, you better fucking leave." And that's when I
13 stopped the car where the car is stopped at right there, and
14 I opened my door and I asked him, I said, "What is your" --
15 I said, "What is your F" -- "fucking problem," like that.

16 And then that's when he started cussing me back.
17 And again, and that's where I started cussing him and he was
18 cussing me.

19 Q. Okay. Let me slow you down just a second. When
20 you said that to him, "What's your f'ing problem," were you
21 still in your vehicle or you had gotten out?

22 A. I was still in my -- still in there with the
23 window down at that point.

24 Q. The cursing continues between the two of you?

25 A. Yes.

1 Q. So at some point, you do get out?

2 A. I stepped out of the car.

3 Q. Okay. And what happened?

4 A. He kept on cussing, and I'm like, telling him, I
5 was already pulling out and leaving. I'm like -- said,
6 "What is your problem?" I even asked the girl, "What is his
7 problem?" I mean -- and ---

8 Q. Where was his girlfriend?

9 A. She was sitting in the driver's seat of the car --
10 of her car. He was standing right there beside of her.

11 Q. So he's standing next to the girl -- his
12 girlfriend's car?

13 A. Yes.

14 Q. And you said, "What is his problem," is that
15 right?

16 A. Right.

17 Q. So, then what happened next?

18 A. We just started talking back and forth, I mean,
19 tit for tat. Him cussing me, I'm cussing him.

20 Q. Okay. And what happened next?

21 A. He's telling me, like I said -- I mean, I did
22 spit. I didn't spit in his face. I was on the opposite
23 side of the Nissan when I spit, but I didn't spit at -- I
24 didn't spit on him or in his face.

25 Q. Okay. So ---

1 A. And then he said -- he basically wanted me to come
2 on over there, I'm like -- so I walked up to him. I said,
3 "Now, I'm here. What now?"

4 Q. So your testimony is that when you spit, you're
5 standing ---

6 A. I'm standing over by the passenger seat -- or by
7 the passenger side of that Nissan that was pulled in.

8 Q. So kind of between on these ovals here, we've got
9 one that's not filled in, in the gray outline with the
10 white, that's your vehicle?

11 A. I was standing between my car and the Nissan.

12 Q. Next to you?

13 A. Yes.

14 Q. And he's on the other side of the Nissan?

15 A. He's on the other side.

16 Q. So, your recollection is that he said what at that
17 point?

18 A. He invited me to come on over there if I had a
19 problem.

20 Q. And then you testified you did go over there?

21 A. I did. I walked over there.

22 Q. And what happened there?

23 A. I said, "I'm here. Now what?"

24 Q. And then what happened?

25 A. And that's when he hit me in my mouth. I grabbed

1 him and it only lasted a few seconds. He hit me in the
2 neck. I didn't know what it was. I -- like I said, it was
3 just a shock to me when it happened. And I let go of him,
4 and I step back, and I walk back over to my car. I get in
5 my car and then my wife is saying, "Honey, you're bleeding."

6 Q. Do you know where ---

7 A. I grab hold of my neck and I could feel the blood
8 squirting out of my neck. And I look over there at him, I
9 said, "You stabbed me for a fucking parking space." And
10 then I looked across the street. I seen four or five people
11 over there. I said, "Someone call 911. I've been stabbed."

12 Q. Okay.

13 A. And then I wanted to go to the tavern to get help
14 because ---

15 Q. Let me slow you down. Let me back you up, we'll
16 get through all of it.

17 When you went -- when he said, "Come over here,"
18 you went over there, do you know where your wife was at that
19 time?

20 A. They were in the car.

21 Q. They were still in the car. Then, you said he hit
22 you in the face?

23 A. I was standing in front of him when he hit me,
24 when I got right in front of him.

25 Q. What did he hit you with?

1 A. His fist.

2 Q. Where did he hit you?

3 A. In my lip.

4 Q. Okay. Were you injured then?

5 A. I mean, everything happened so fast down there. I
6 know I was hit, that's why I grabbed a hold of him after he
7 hit me.

8 Q. Okay. You grabbed a hold of him, and then what?
9 He punches you ---

10 A. He punches me, I grab a hold of him, and I see his
11 hand sit down there. And then all I feel is something
12 stabbing me in my neck, or being tased. It felt like a tase
13 at first, I wasn't sure.

14 Q. So then you immediately let go and back ---

15 A. I let go 'cause I didn't know what happened.

16 Q. Okay. And you testified you went to your vehicle?

17 A. I went straight to my vehicle. I sat down in the
18 driver seat. My wife looked at me, she said, "Honey, you're
19 bleeding." I reached up there and the blood was running
20 out, and I'm sitting here trying to hold it, 'cause now I
21 know I'm bleeding out, and I can't let the blood come out.
22 And then I looked over at him and I said, "You stabbed me
23 for a fucking parking space?"

24 Q. Were you still in your vehicle when you said that
25 or did you get back out?

1 A. I don't remember. Could've been still in the car,
2 or getting out, and then wanting to get help at this point.

3 Q. And then you said you yelled to somebody to call
4 police?

5 A. The people that were standing across from me. I
6 could see about four or five people standing over there. I
7 wanted to let somebody know that I had been stabbed, to go
8 ahead and call -- call the ambulance.

9 Q. Okay. And then where did you go?

10 A. I started walking toward the car when he started
11 coming over there and confronting me, so I couldn't leave to
12 -- I mean, I'm already out partly in the road, kind of. And
13 I'm wanting to go to Hickory Tavern -- or 2020 to get help
14 when he comes over there and stops me and starts swinging on
15 me.

16 He swung on me, I'm sitting over here. I tried to
17 swing at him. We both missed each other. There wasn't even
18 contact. He disappeared. I don't know where he went, and I
19 started going toward 2020. I probably made it a hundred
20 feet away, and my wife says, "Honey, look out." And then I
21 see him running toward me.

22 He did not tackle me. When he got to me, I stood
23 there. And right before he got there, I jumped up and
24 throwed my foot out in front of me and put my foot into his
25 chest and knocked him down. And then I jumped back up and

1 went into Hickory Tavern. He never tackled me.

2 Q. Okay. But earlier you swung at each other and
3 missed, is that right?

4 A. We swung at each other and both of them were
5 misses.

6 Q. So you went into the tavern and then you got help
7 from there, correct?

8 A. Correct. I asked them for a towel and then I put
9 the towel on my neck. And then another lady came over
10 there, and she held it on my neck even tighter to stop the
11 bleeding.

12 Q. Okay. Give us just a moment, I'm going to have
13 the court reporter mark some of these.

14 Mr. Wiestling, I've handed you what's been marked
15 as State's 8 and 9. Can you take a look at those?

16 Do you recognize those?

17 A. Yes.

18 Q. What is State's Exhibit 8?

19 A. 8. That's me in the tavern holding the compress
20 against my neck.

21 Q. And what is 9?

22 A. That's where I got stabbed in the back of the
23 neck.

24 Q. Do those fairly and accurately depict you that
25 night right after the incident?

1 A. Yes.

2 MS. ROBINSON: Your Honor, State would move to
3 admit State's 8 and 9.

4 MR. GREELY: No objection.

5 THE COURT: 8 and 9 are in without objection.

6 (WHEREUPON, State's Exhibits Number 8 and 9 were
7 admitted into evidence.)

8 BY MS. ROBINSON:

9 Q. Is this State's Exhibit 8 on the screen,
10 Mr. Wiestling?

11 A. Yes.

12 Q. And that's a picture of you, correct?

13 A. Yes, ma'am.

14 Q. What's happening in this picture?

15 A. I'm holding the rag against my neck. Well, I
16 don't think I'm holding anything now. I think two other
17 people in this picture are already holding it for me.

18 Q. Okay. And it looks like there's a mark on your
19 lip, what's that?

20 A. That's where I got hit in the mouth.

21 Q. So is that blood from your neck that's been ---

22 A. That's blood from my -- that's blood where I got
23 hit in the mouth.

24 Q. And then this is State's Exhibit 9, what's that?

25 A. That's a puncture wound in the side of my neck.

1 Q. So I know your ear's not in this picture, but it's
2 -- your ear is right on that left edge of the picture there?

3 A. So a couple -- maybe an inch and a half, two
4 inches away.

5 Q. They've cleaned -- obviously we can see the wound,
6 there's no blood on you really at that moment.

7 A. No, 'cause they clotted -- it clotted up.

8 MS. ROBINSON: Beg the Court's indulgence.

9 BY MS. ROBINSON:

10 Q. All right. Mr. Wiestling, I've handed you what's
11 been marked as State's 10. Is that a video that you've
12 watched before?

13 A. Yes.

14 Q. How do you know you've watched it before?

15 A. Because I initialed it.

16 Q. And what's on that video?

17 A. The confrontation.

18 Q. The whole confrontation?

19 A. Just a short part of it.

20 Q. About when in the events does that take place?

21 A. After I was stabbed, and I'm trying to -- and I
22 had told him, you stabbed me for a f'ing parking space, and
23 I'm ready to -- and I'm ready to go get some help from 2020,
24 and he's standing in front of my car stopping me from going
25 to 2020.

1 Q. Okay. So for the limited time that it does
2 reflect, does it fairly and accurately depict what happened
3 that night?

4 A. Exactly, and tells you what happened.

5 MS. ROBINSON: Your Honor, the State would move to
6 admit State's Exhibit 10.

7 MR. GREELY: No objection as long as it's on --
8 State's Exhibit 10 is as represented.

9 THE COURT: Admitted subject to the clarification
10 it's a limited portion of the confrontation.

11 (WHEREUPON, State's Exhibit Number 10 was admitted
12 into evidence and was played before the Court.)

13 THE COURT: That is a limited portion.

14 MS. ROBINSON: It is a very limited portion, Your
15 Honor.

16 BY MS. ROBINSON:

17 Q. The person yelling in that video, do you know who
18 that is?

19 A. My wife is in front of me right at that picture.

20 Q. Did you hear someone say, "You stabbed me."

21 A. Well, I was saying, "I've been stabbed, you
22 stabbed me."

23 Q. Did you hear that on here? You want me to play it
24 one more time?

25 A. I heard it, but...

1 Q. In this image, is one of those people in that
2 background you?

3 A. I'm the fareset [sic] one in the back left.

4 Q. I'm going to use the mouse, hopefully so everyone
5 can see. Is this who you're -- when you say back left ---

6 A. Yes, ma'am. That's me.

7 Q. Who's this?

8 A. That's Justin.

9 Q. Who are these folks?

10 A. That's my wife.

11 Q. And so you testified this is after you've been
12 stabbed, you're getting ready to head towards the tavern, is
13 that correct?

14 A. After I got stabbed and my wife seen, she jumped
15 out of the car, and I'm jumping out of the car. And I said,
16 "You stabbed me for a f'ing parking space." Now I'm wanting
17 to go get help. And that's when he come over there, stop me
18 from going over there.

19 At this point here we took a swing at each other.
20 Somewhere at the point of this right here, we both swung at
21 each -- well, he swung at me, and then I swung back, but we
22 both missed.

23 Q. Okay. But the swinging's not captured on this,
24 right?

25 A. No, ma'am.

1 MS. ROBINSON: If I could, Your Honor, I'd like to
2 play it one more time. I know it's super quick.

3 (WHEREUPON, the video was played for the Court.)

4 BY MS. ROBINSON:

5 Q. All right. So after that is when you got into
6 additional swinging. Ultimately, you make it to the tavern.

7 A. After I got away from this point, that's when I
8 went ahead and I started going toward 2020. I might have
9 been about 100 feet away, when I heard my wife tell me he's
10 coming, or "Watch out." And that's when I see him.

11 I'm standing there holding my neck. I'm waiting
12 for him to get there because I see he's running straight at
13 me. As soon as he gets to me, I run -- I jump up and throw
14 my left -- right foot out in front of me, and it hit him in
15 his chest, groin -- I don't know where it hit him.

16 It's just enough for him to knock him down. I
17 went down, and then I got up immediately. And run and I
18 said, "I've been stabbed. Call 911." And getting
19 somebody's attention to help me.

20 Q. All right. If you could please answer any
21 questions from Defense counsel.

22 MR. GREELY: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25

1 BY MR. GREELY:

2 Q. Sir, would you pronounce your last name again, so
3 I ---

4 A. Wiestling.

5 Q. Wiestling. Mr. Wiestling, what do you do for a
6 living?

7 A. I'm a fence contractor.

8 Q. And were you doing that for a living during this
9 period of time in March of 2021 -- '22.

10 A. I've been doing it since 1980.

11 Q. So you've been doing it a long time?

12 A. Long time.

13 Q. You dug a lot of holes, haven't you?

14 A. I have.

15 Q. And do you now work with an auger or do you use a
16 fence post?

17 A. I use them both.

18 Q. Use them both.

19 A. I'm too old now to really handle the auger, so I
20 just do the cleaning of the holes, and I do the lining up.
21 I do all the smart stuff, and let my other guys that are
22 younger and stronger, do all the heavy lifting.

23 Q. Okay. But you did all the heavy lifting for a
24 long time, didn't you?

25 A. Yes, I did.

1 Q. And what time did you get off of work that day?

2 Do you recall?

3 A. Probably around 1:30, 2:00 o'clock.

4 Q. In the afternoon?

5 A. It was a short day.

6 Q. You and your wife, had y'all planned on going out
7 for St. Patrick's Day that night at Tavern 2020 [sic]?

8 A. My wife always wants to go out.

9 Q. And you go with her, don't you?

10 A. Yes, I do.

11 Q. You don't stay home and let her go, do you?

12 A. No.

13 Q. Okay. And y'all were planning on going out, is
14 that correct?

15 A. Yes.

16 Q. And she gets off of work, you say, at 7:00?

17 A. She gets off at 7:00 every evening. Sometimes if
18 she knows she's going out, she'll get off a little earlier.

19 Q. And y'all were planning on going for dinner,
20 having some drinks, and dancing that night, correct?

21 A. Yes.

22 Q. And you had five hours from the time you got off
23 of work, til your wife was gone come home for y'all to go
24 dancing and partying, correct?

25 A. Yes.

1 Q. What's your drink of choice?

2 A. Michelob Ultra.

3 Q. Did you have any Michelob Ultras before y'all went
4 to Tavern 2020, that night?

5 A. When I got off of work, I met with my brother and
6 we had a couple of beers at Hickory Tavern.

7 Q. In Rock Hill?

8 A. Yes.

9 Q. And that was about 2:00 or 3:00?

10 A. Yeah, 2:00 and 3:00, somewhere. Well, it was
11 like -- it was around 2:00. We left about 3:00, 3:30.

12 Q. So you got there about 3:30?

13 A. No, we left at 3:30.

14 Q. Left at 3:30. You had a couple beers then.
15 Where'd you go after that?

16 A. I went home.

17 Q. Went home. Did you take a nap?

18 A. No.

19 Q. And so eventually your wife got there. Who was
20 her friend?

21 A. Her name was Foo [phonetic].

22 Q. What was it?

23 A. Foo.

24 Q. Foo. What's her last name?

25 A. She's Vietnamese, I can't pronounce it.

1 Q. She American-Asian?

2 A. Yes. She's Vietnamese.

3 Q. Vietnamese. Is your wife Vietnamese?

4 A. Vietnamese also.

5 Q. And so Foo and you and your wife were gonna go to
6 2020 that night. How many times had you been to 2020 before
7 that night? You stated earlier that you had parked there
8 two or three times before in the evening.

9 A. Probably 25, 30 times.

10 Q. Okay. So you would frequent 2020 Tavern to go and
11 have some drinks and dance?

12 A. They got good food. They got a live band. And
13 they're only three minutes from my house.

14 Q. And that helps when you going home, doesn't it --
15 isn't it?

16 A. Not necessarily, because my wife usually drives.

17 Q. Oh, okay. So she's the DD?

18 A. She's designated driver.

19 Q. She's the designated driver because you're going
20 to have drinks that night, correct?

21 A. I am.

22 Q. And you planned on having drinks that night,
23 weren't you?

24 A. Like I said, I'll probably drink about four or
25 five.

1 Q. And you already had some earlier in the day, you
2 just testified?

3 A. I had two.

4 Q. Now, what is your wife's name?

5 A. Lim [phonetic].

6 Q. Lim?

7 A. (Inaudible.)

8 Q. Is your wife, and her friend who was there, are
9 they here for court today?

10 A. No.

11 Q. So you had parked at the salon two or three times
12 before this incident, correct?

13 A. Yes.

14 Q. Had you ever met Ms. Ferguson?

15 A. No, ma'am. Or no, sir.

16 Q. That's okay. I'm old.

17 A. Looking at her and I'm talking to you.

18 Q. I get called lots of things.

19 You've never met her?

20 A. No, sir.

21 Q. Had you ever met her husband, Mr. Ferguson?

22 A. No. Like I said, if I had, it could have been at
23 the club and just -- but never noticed -- never really
24 recognized him.

25 Q. Had you ever met Mr. Anderson before this night?

1 A. Never.

2 Q. Well, how about Ms. Pickett?

3 A. Never.

4 Q. You had never met any of them?

5 A. (Inaudible.)

6 Q. So who had you talked to at the salon to get
7 permission to park in their parking spot?

8 A. Never talked to anybody.

9 Q. What's your level of education?

10 A. Ninth grade.

11 Q. Ninth grade? Okay. And so -- and you are a fence
12 contractor, correct?

13 A. Correct.

14 Q. You understand contracts?

15 A. Yes.

16 Q. You pretty good at math, too, you gotta be, right?

17 A. Yes.

18 Q. I want to show you what's been marked as Defense
19 Exhibit Number 3. Will you look at that, sir?

20 Is there a sign in that picture?

21 A. Yes, it is.

22 Q. Are you able to read what's written on that sign?

23 A. Yes, I am.

24 Q. Back in March of 2022, were you able to read what
25 is written on that sign?

1 A. I didn't see the sign.

2 Q. You had been there before, two or three times, and
3 parked there, is that correct?

4 A. I've been there a couple times, yeah.

5 Q. And it was sunlight when this incident occur,
6 didn't it?

7 A. Yes.

8 Q. So you'd been there two or three times before ---

9 A. Right.

10 Q. --- correct?

11 You've parked there, correct, two or three times?

12 A. Correct.

13 Q. You were able in March of 2022, to read that sign,
14 correct?

15 A. Correct.

16 Q. And what does that sign say?

17 A. It says, "No Parking."

18 Q. What else?

19 A. "For salon only."

20 Q. Were you at the salon -- were you coming to get
21 your hair cut that night?

22 A. No.

23 Q. You'd never met any of these people, had you?

24 A. No.

25 Q. You didn't have authorization to park in that

1 parking lot, did you?

2 A. No.

3 Q. But you had parked in it before, correctly --
4 correct?

5 A. Yes.

6 Q. I'm going to show what's marked as Exhibit
7 Number 4 and ask that you will look at that, Defense Exhibit
8 Number 4.

9 The sign that you just read, in that picture, do
10 you see more than one of those signs located along the
11 parking area that you attempted to park in?

12 A. I see three of them.

13 Q. In that picture, from that far away, you're able
14 to see three of those signs, is that correct?

15 A. Yeah, because you just showed it to me in this
16 picture.

17 Q. You're telling the Court here today that you
18 never, at any time, saw those three signs on the property?

19 A. I never paid them attention.

20 Q. Now, when Mr. Anderson first told you, "You can't
21 park here. You've got to move," however he may have said
22 it, you were then told that you couldn't park there, weren't
23 you?

24 A. I was cussed out and told I couldn't park there.

25 Q. As I said, however he may have said it.

1 A. Okay.

2 Q. He told you, you couldn't park there, correct?

3 A. Correct.

4 Q. So you had noticed at that point in time that you
5 needed to leave the property, didn't you, sir?

6 A. I started pulling away.

7 Q. Okay.

8 A. I got in my car and I started pulling away.

9 Q. Now, you've told the Court that Mr. Anderson was
10 the first one to hit anybody, is that correct?

11 A. Correct.

12 Q. You said that he hit you in the mouth?

13 A. In the mouth.

14 Q. Okay. And you then said -- all right. So he hit
15 you in the mouth, and he hit you in the mouth with what, his
16 right arm?

17 A. His fist, yeah.

18 Q. Fist. His right fist. Okay. You then told the
19 Court that he then stabbed you with the knife, correct?

20 A. I grabbed him and he stabbed me.

21 Q. You grabbed him and he stabbed you?

22 A. After he hit me.

23 Q. Okay. So according to you, as soon as he hit you,
24 you grabbed him, correct?

25 A. Yes.

1 Q. I mean, you're not gonna sit there and wait a few
2 seconds and say, "Oh, I better grab him," are you?

3 A. No.

4 Q. So you grab him immediately, didn't you?

5 A. Immediately.

6 Q. And according to your statement, he then stabbed
7 you?

8 A. Immediately.

9 Q. Immediately. And you just said it before I could,
10 immediately after you grabbed him, correctly?

11 A. Correct. Like he already had the knife out ready
12 for me.

13 Q. Right. Well, why didn't the knife cut you in the
14 mouth when he allegedly hit you with that same right hand
15 that he allegedly stabbed you with?

16 A. Well, I don't know.

17 Q. Now, Mr. Wiestling, I'm sure that this was a
18 traumatic experience for everybody, including you, correct?

19 A. Yes.

20 Q. And for you, it turned out okay. You were cut,
21 but it ended up to where you were okay?

22 A. I was blessed that night.

23 Q. You were okay?

24 A. Yes.

25 Q. Three days later, you called the York County

1 Sheriff's Department, didn't you?

2 A. Because I didn't hear nothing from the police
3 about what had been going on.

4 Q. Right. They didn't talk to you ---

5 A. Nobody contacted me.

6 Q. They didn't talk to you that night, did they?

7 A. No.

8 Q. They didn't make -- get a statement from you at
9 all, did they?

10 A. No.

11 Q. The first statement they got from you as to what
12 allegedly occurred, was three days later over the telephone
13 when you called them, correct?

14 A. Correct.

15 Q. Fortunately, you were able to tell them that it
16 was all fixed with three stitches, correct?

17 A. Correct.

18 Q. You were able to go to Starbucks next morning?

19 A. Yep. And EMT that treated me was working at
20 Starbucks that ground my coffee.

21 Q. And saw you, isn't that right?

22 A. Yeah.

23 Q. And isn't it true that towards the end of the
24 conversation, you told the officer that, "You know, all of
25 this probably wouldn't have happened if I'd have just gone

1 on and left the property, and not parked -- or tried to park
2 there." Isn't that true?

3 A. Probably.

4 Q. And that is true, isn't it, sir?

5 A. A lot true, yes.

6 Q. Yes, sir. If you had stayed in your car and gone
7 and parked somewhere else, this would have probably -- all
8 of this probably would not have happened, would it?

9 A. It probably could have not happened, yes.

10 Q. If you had done as you were told to do, to not
11 park your vehicle on their property, and stayed in your car,
12 and driven somewhere else, that's what most would probably
13 not have happened, correct?

14 A. Well, if he would have kept his mouth shut, I
15 would've kept on going.

16 Q. That's why you got out of the car, isn't it?

17 A. He called my mama a son of a bitch. What would
18 you do?

19 Q. Okay.

20 A. Okay. My mama ain't here no more.

21 Q. I understand.

22 MR. GREELY: I don't have anything further, Your
23 Honor.

24 MS. ROBINSON: Just a brief question, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. ROBINSON:

2 Q. Mr. Wiestling, at any point that night, did you
3 have a weapon in your hands or present a weapon to the
4 Defendant?

5 A. No.

6 Q. Did you have a firearm in your vehicle?

7 A. No.

8 Q. Did you have a knife?

9 A. No.

10 MS. ROBINSON: No further questions.

11 THE COURT: One question as to what I heard you
12 say. Did you say during your initial questioning, that you
13 parked at the salon two or three times, or 25 or 30 times?

14 THE WITNESS: Say that again.

15 THE COURT: I thought I heard you say you parked
16 at the salon numerous times, 25 or 30.

17 THE WITNESS: Oh, I been to the club 25 or 30
18 times, yeah.

19 THE COURT: And parked at the salon?

20 THE WITNESS: Yes. I've parked in multiple places
21 there, wherever a spot was open.

22 MS. ROBINSON: Your Honor, if I may? I believe
23 he's been to the tavern 25 to 30 times.

24 THE WITNESS: Yes.

25 MS. ROBINSON: And two or three of those

1 occasions, you've parked at the salon.

2 THE WITNESS: Yeah, a couple a times.

3 MS. ROBINSON: Is that correct?

4 THE COURT: That's what I misunderstood. I wanted
5 to make certain. I understood him to say 25 to 30 times at
6 the salon.

7 MS. ROBINSON: I don't believe so, Your Honor.

8 THE COURT: Step down.

9 MS. ROBINSON: Your Honor, the State would call
10 Deputy Marthone.

11 (WHEREUPON, Deputy Aarons Marthone, having been
12 duly sworn, testified as follows.)

13 DIRECT EXAMINATION

14 BY MS. ROBINSON:

15 Q. If you could state your name for the record.

16 A. Aarons Marthone.

17 Q. And can you spell your last name for the Court?

18 A. M-A-R-T-H-O-N-E.

19 Q. And where do you work?

20 A. York County Sheriff's office.

21 Q. And what is your job there?

22 A. I work for the traffic enforcement unit,
23 specifically DUI enforcement.

24 Q. How long have you worked at the sheriff's office?

25 A. A little over three years.

1 Q. So you're a sworn officer, is that correct?

2 A. Yes, ma'am.

3 Q. Have you always been the DUI enforcement?

4 A. September of last year.

5 Q. September of last year. What were you before
6 September of last year?

7 A. I was assigned to Patrol District IV, which is
8 Fort Mill on Charlie Shift.

9 Q. In District IV, does that include this area where
10 there's a salon and a tavern right by it?

11 A. Yes, ma'am.

12 Q. And were you called out to the salon on
13 St. Patrick's Day, March 17th, of last year?

14 A. Yes, ma'am.

15 Q. What were you responding to?

16 A. At the time it was assist other agency, because it
17 was believed that the stabbing had occurred at the 2020
18 Tavern, which is in the Tega Cay Police Department's
19 jurisdiction.

20 It was when we were on the scene, we discovered
21 that the stabbing at the 2120 Gold Hill Road, which is York
22 County Sheriff's Office, jurisdiction.

23 Q. So after some initial confusion, it's determined
24 that this is your jurisdiction, and what did you do?

25 A. I assumed control.

1 Q. What does that mean, you assumed control?

2 A. Got all the evidence I needed. And suspect was
3 previously detained by Tega Cay Police Department, and once
4 we established that it was our jurisdiction, you know, they
5 were comfortable with us taking all charges. The CID was
6 notified, but they were comfortable in patrol handling the
7 charges.

8 Q. So you became what we sometimes call the case
9 agent of this case?

10 A. Yes, ma'am.

11 Q. So, I think you testified you gathered the
12 evidence, is that correct?

13 A. Yes, ma'am.

14 Q. Does that include taking pictures?

15 A. Yes, ma'am.

16 MS. ROBINSON: Your Honor, may I approach?

17 THE COURT: Sure.

18 BY MS. ROBINSON:

19 Q. Deputy Marthone, I've handed you what's been
20 marked as State's 11. Do you recognize that?

21 A. Yes, ma'am.

22 Q. What is it?

23 A. Photo I took of the weapon in the windshield wiper
24 cowl of Mr. Anderson's work van.

25 Q. Is that where it was found during your

1 investigation?

2 A. (Inaudible.)

3 Q. Had anyone on scene from law enforcement moved it
4 before you took that picture?

5 A. (Inaudible.)

6 MS. ROBINSON: Your Honor, the State would move to
7 admit State's Exhibit 11.

8 MR. GREELY: No objection.

9 THE COURT: No objection. State's 11's in.

10 (WHEREUPON, State's Exhibit Number 11 was admitted
11 into evidence.)

12 BY MS. ROBINSON:

13 Q. Deputy Marthone, this is State's 2. Is the
14 vehicle where you found this knife in the picture?

15 A. Yes, ma'am.

16 Q. Which one is that?

17 A. It's gonna be the white Chevy van to the left of
18 the Toyota.

19 Q. So the one in the left of the -- the white vehicle
20 to the left of the picture?

21 A. Yes, ma'am.

22 Q. And you said the knife was where?

23 A. Found in the windshield wiper cowl.

24 Q. Okay. So where the hood dips down and then goes
25 up to the windshield?

1 A. (Inaudible.)

2 Q. That's State's 11 that you're holding?

3 A. Yes, ma'am.

4 Q. We've heard testimony before this was a, what,
5 Milwaukee knife of some type?

6 A. Milwaukee utility knife.

7 Q. How did that work? Is it one where you push the
8 blade up or does it swivel open? Do you know?

9 A. Not too sure on the operation. Due to evidentiary
10 purposes, I did not fondle it.

11 Q. Did you talk to the Defendant that night?

12 A. Yes, ma'am.

13 Q. Was he in custody at the time that you talked to
14 him?

15 A. (Inaudible.)

16 Q. Did you read him his Miranda rights?

17 A. Yes, ma'am.

18 Q. Did he seem to understand his Miranda rights? Did
19 he indicate he wanted to talk to you?

20 A. Yes, ma'am.

21 Q. Did you talk to him about the knife in particular
22 during that conversation?

23 A. Yes, ma'am.

24 Q. Did he tell you how he was holding it at the time
25 that this incident went down?

1 A. (Inaudible.)

2 Q. Can you describe that for the Court?

3 A. After I'd advised Miranda, I talked to him about
4 how he was holding the knife, and he was explaining to me
5 that he accidentally stuck Mr. Wiestling in the neck.

6 I used my pocket knife that I carry on me every
7 day as an example at how he was holding the knife. He was
8 holding it upright.

9 Q. So when you mean upright, can you demonstrate?
10 Did he have his fist around the handle or what was...

11 A. This manner.

12 Q. Okay. Someone holding -- so, if I could describe
13 it for the Court's record, he's got his fist around he
14 handle part and then the blade sticks up.

15 MR. GREELY: Your Honor, I don't mind if he will
16 show the Court how my client may have allegedly said he held
17 the knife, but I would not want him to use his knife,
18 because it's a completely different knife.

19 THE COURT: He did this?

20 THE WITNESS: Correct. And I used -- and my body
21 camera video will depict that I used the same example I just
22 did.

23 THE COURT: The blade toward the gentleman's
24 knuckles?

25 THE WITNESS: Correct.

1 THE COURT: The butt in the palm.

2 MS. ROBINSON: Right. And sticking out from the
3 -- he's got a fist, and the blade comes straight out from
4 the top of his fist.

5 BY MS. ROBINSON:

6 Q. Would it be possible for him to punch somebody,
7 holding the knife that way, without cutting them?

8 A. Be a really good puncher.

9 Q. Even if he's punching straight on?

10 A. I would imagine. (Inaudible.) I mean, if his
11 hand slides either way up his face, it could have
12 (inaudible) him anywhere.

13 Q. You said that it's -- when he had it like that,
14 that he came around and it went in the victim's neck?

15 A. (Inaudible.)

16 Q. Now, in your investigation that night, did you --
17 did you or other officers talk to other witnesses on scene?

18 A. Yes, ma'am.

19 Q. Were there any people on scene who witnessed what
20 happened who were not people we heard from today?

21 A. (Inaudible.)

22 Q. Okay. Did any of those individuals give
23 statements to law enforcement that was captured on body
24 camera?

25 A. Yes.

1 Q. Were you in the courtroom when the very short
2 video that captured five seconds, I think, of the incident
3 occurred?

4 A. (Inaudible.)

5 Q. How did that video get into the possession of the
6 State?

7 A. The person that recorded it sent it to
8 (inaudible).

9 Q. Okay. So is that somebody you interacted with
10 there on scene that night?

11 A. Yes, ma'am.

12 Q. Was she with anyone?

13 A. She was with her husband.

14 Q. So did her husband speak to you as well?

15 A. Officer Dailey with Tega Cay Police Department,
16 and I, were talking to them. And she was showing us the
17 video. And when she was done, he had made a statement.

18 MS. ROBINSON: There is body cam video of this
19 couple interacting with law enforcement providing that. I
20 was going to move to admit this. Mr. Greely has a legal
21 objection. I have some argument I'd like to make regarding
22 that.

23 THE COURT: This is a conversation between this
24 gentleman and the person who videoed the lengthy four second
25 video?

1 MS. ROBINSON: Yes, Your Honor.

2 THE COURT: What's the purpose of that? I
3 mean ---

4 MS. ROBINSON: Your Honor, there's some -- their
5 commentary of explaining the video and what they're seeing,
6 gives context to what happened from a third-party's
7 perspective who had -- doesn't know either of these parties.

8 Your Honor, as you're probably very aware, the act
9 that gives right to these hearings, doesn't define how these
10 hearings are supposed to take place. It's kind of up for
11 debate whether the Rules of Evidence even apply to these
12 hearings.

13 This is more akin to pretrial matters, and the
14 Court often can look at things that wouldn't be admissible
15 in front of a jury in consideration of these matters.

16 Recently, in a case ---

17 THE COURT: Well, how about this, I can't make a
18 ruling without seeing it either way. And I'm tasked with
19 not considering it if it's not relevant, or considering it
20 relevant. Either way, I've got to see it to make that
21 evaluation.

22 MS. ROBINSON: Yes, Your Honor.

23 THE COURT: So I've got to hear it to hear y'all's
24 rulings.

25 MR. GREELY: Your Honor, if I may?

1 THE COURT: Uh-huh.

2 MR. GREELY: Well, you are also the fact-finder in
3 this -- in this hearing. This defies the Rules of Evidence
4 in regards, not only to hearsay coming out, but it also does
5 not allow us our Constitutional right to cross-examine these
6 people.

7 And so it's like -- it's a creative argument
8 saying -- and it's true that these proceedings have not
9 really been -- they keep being defined case by case as they
10 come along. But I do believe that in our Circuit Courts,
11 the rules -- South Carolina Rules of Evidence are going to
12 apply in these cases. I would think, anyway. So it's ---

13 MS. ROBINSON: Your Honor ---

14 MR. GREELY: --- not like a preliminary hearing.
15 I mean, this is a hearing that can resolve the case. So
16 it's a final -- asking for a final resolution. And I
17 believe that the Rules of Evidence should at least apply in
18 that regard.

19 THE COURT: All right. But how do I this, because
20 when I was a young judge, I heard a murder case in full. It
21 was a bench trial, and I've got to consider the
22 introduction, objection, then view it in camera and make a
23 decision legally to is it in or is it out. But either way,
24 I can't say you're right or you're wrong without seeing it.

25 MS. ROBINSON: May I address a few things, Your

1 Honor, of his argument?

2 THE COURT: Well, I mean, I'm flying blind still.

3 MS. ROBINSON: I know, I just ---

4 THE COURT: Y'all can keep going on and I agree
5 with both of you. It may be a confrontation issue, it may
6 be you're right, and it may be the rules on ---

7 MS. ROBINSON: I have a proposal, Your Honor.

8 THE COURT: I mean, I'm not gone make a ruling if
9 I don't get to see the thing. And, you know, y'all can keep
10 talking about it. But how can I say, "You're right,"
11 without hearing it, or "You're right," without hearing it.

12 MS. ROBINSON: If I could just address some of the
13 legal arguments. There was -- State v. Manning came out.
14 It is from the Supreme Court. It is 418 S.C. 38. And in
15 that case, the Defendant wanted the Court to require a full
16 evidentiary hearing, and the Court declined and said that
17 they agreed with the State, that there was -- a flexible
18 approach should be taken in immunity determinations. And
19 the Court can tailor the needs to each case to save judicial
20 resources.

21 And then in response to his claim about it being a
22 hearing and he would have the right to confront witnesses,
23 if we go to trial, you know, this witness would need to come
24 in and he would still have that Constitutional right at that
25 time. But this is not a trial, and they've said this is a

1 -- not a full evidentiary hearing, necessarily.

2 MR. GREELY: If I may, briefly.

3 THE COURT: Sure.

4 MR. GREELY: In regards to State versus Manning,
5 Your Honor, actually that's a very interesting, because in
6 that particular case you got -- it was a murder case. And
7 they did do a Protection of Persons and Property
8 introduction of evidence.

9 But what the Defendant did in that case was, I
10 guess he tried to take both -- a bite at both apples. He
11 introduced a written statement that he had given to the
12 police. And that's all that was introduced at the Persons
13 and Property hearing was his written statement. He never
14 took the stand.

15 And then when they ruled against him in regards to
16 that, he asked that -- kind of had a -- he wanted -- his
17 attorneys wanted them to overturn it and say you have to do
18 a full hearing. And, of course, the Supreme Court wasn't
19 going to have that.

20 And so, that's why I say that in this particular
21 case, State versus Manning doesn't address our issue, so.

22 MS. ROBINSON: Your Honor, I'd ask that you watch
23 the video and then in your findings in this case, can decide
24 whether -- can rule on whether you considered it, didn't
25 consider it, found it credible or not, however you choose

1 to ---

2 THE COURT: I think that's how you do it, is: I
3 view it in camera, make a decision. It's either admissible
4 or not. If it's not, then it's not considered. If it is,
5 then it's considered.

6 MS. ROBINSON: Your Honor, so if I could have this
7 marked for -- for viewing purposes.

8 THE COURT: It was interesting. In that trial I
9 had, is the lawyers would talk among one another about
10 whether they were gonna show me something or not. And they
11 caught on, well, if they show it to me, I had to consider
12 it, or not consider it. But they would kind of do this
13 (indicates) and talk to one another, and they'd turn it back
14 over.

15 It was very interesting how the -- unlike a jury
16 trial, I was kind of playing both roles. It was a big
17 challenge.

18 MS. ROBINSON: Yes, Your Honor. Similar challenge
19 here.

20 THE COURT: Uh-huh. Very similar.

21 BY MS. ROBINSON:

22 Q. Deputy Marthone, I handed you what's been marked
23 as State's 12. Is that right? Is that the number we...

24 A. Yes, ma'am.

25 Q. Have you seen that before?

1 A. Yes, ma'am.

2 Q. How do you know you've seen it before?

3 A. My initials are on it.

4 Q. Do you know what's on that disc?

5 A. I believe this is the video of the couple that was
6 showing me the video they recorded.

7 Q. And they somehow sent it to you and we watched it
8 earlier?

9 A. (Inaudible.)

10 MS. ROBINSON: Your Honor, I would at this time,
11 ask permission to publish it for the Court (inaudible).

12 MR. GREELY: And I just maintain my objection.
13 But the Court will make its decision.

14 (WHEREUPON, a State's Exhibit Number 12 was
15 published for the Court.)

16 BY MS. ROBINSON:

17 Q. Okay. Deputy Marthone, I know the video equipment
18 is not the best here, but -- so that was the woman who sent
19 you the video, and her husband speaking to you, and he
20 commented, is that correct?

21 MR. GREELY: Objection. Video speaks for itself.

22 THE COURT: I'm gone sustain that. I watched the
23 video and the pieces you showed, and she identified who was
24 on her video, which we've seen before in the half second
25 video.

1 So far, nothing's been presented -- unless y'all
2 tell me different -- been presented about who stabbed whom.
3 Blue shirt, striped shirt, everybody agrees. And you've got
4 a video from this lady. What else is -- what else is there?

5 MS. ROBINSON: The husband in the background was
6 telling you that they were holding him back, the stabber
7 back, and he continued to go after him, is that correct?

8 That's at the tail end of that video.

9 THE COURT: I must have missed that.

10 MR. GREELY: Was that the gentleman with the beer?

11 MS. ROBINSON: Yes.

12 THE COURT: Okay. That might be for what it's
13 worth.

14 MS. ROBINSON: Your Honor, that was -- the purpose
15 of that video was that there is somebody confirming that
16 somebody -- that the Defendant was being held back and
17 continued to go after him.

18 THE COURT: All right.

19 MS. ROBINSON: So I would move to admit that as
20 State's Exhibit 12.

21 THE COURT: We'll admit it subject to the
22 objection, and I'll determine how much of that to consider.

23 (WHEREUPON, State's Exhibit Number 12 was admitted
24 into evidence.)

25 MS. ROBINSON: Yes, Your Honor. If I may

1 approach?

2 BY MS. ROBINSON:

3 Q. Deputy Marthone, that's been marked as State's
4 Exhibit 13. Have you seen that before?

5 A. Yes, ma'am.

6 Q. And how do you know you've seen it?

7 A. My initials are on it.

8 Q. And what's on that disc?

9 A. This is a witness statement from a Christopher
10 Suc -- Souc [phonetic].

11 Q. Was he there on scene that night?

12 A. Yes, ma'am.

13 Q. So this video is from that night after the fact?

14 A. Yes, ma'am.

15 Q. From your understanding, did he appear to know
16 either of these individuals?

17 MR. GREELY: I'm going to object to anything that
18 was said during the statement. Hearsay. Also can't
19 confront. And they're not here.

20 MS. ROBINSON: So, Your Honor, again I would -- I
21 would ask that the Court watch this and determine whether to
22 consider it as admissible for purposes of an immunity
23 hearing.

24 THE COURT: I kind of got lost about where it was.
25 I got the lady took the video, seemed clear, but...

1 MS. ROBINSON: This is another witness on scene
2 that night.

3 THE COURT: We haven't seen a video from this
4 person?

5 MS. ROBINSON: No, Your Honor. This is video of
6 him speaking with the officers.

7 MR. GREELY: Am I characterizing it correctly by
8 saying it's merely a recorded witness statement?

9 MS. ROBINSON: Essentially, Your Honor. Yes, it's
10 the body cam of the witness telling the officers what he
11 said.

12 MR. GREELY: Judge, that's hearsay. It's, we
13 can't confront. It's -- I mean, otherwise we don't even
14 need anybody to do trials anymore. All we need is the
15 police video, put all that up, and make a determination.

16 THE COURT: I'm going to watch it, but I'm --
17 let's play it. Seems like there's going to be a
18 conversation issue on this one.

19 MS. ROBINSON: Just for the record, I'm seeking to
20 admit it on the grounds that Manning doesn't require the
21 full Rules of Evidence to apply.

22 THE COURT: All right. That's your argument,
23 that's fine.

24 (WHEREUPON, State's Exhibit 13 was published for
25 the Court.)

1 BY MS. ROBINSON:

2 Q. Deputy Marthone, on body cameras, is it possible
3 to turn microphones on and off?

4 A. Yes, ma'am.

5 Q. If an officer turns a microphone off, is it silent
6 on the video for a while?

7 A. Yes, ma'am. Usually if you turn your body camera
8 on and off, there's a 30-second window until you activate it
9 manually.

10 Q. So it's not uncommon for there to be a 30-second
11 delay in audio on that video?

12 A. No, ma'am.

13 (WHEREUPON, State's Exhibit 13 continued to play
14 for the Court.)

15 MS. ROBINSON: Your Honor, I would move to admit
16 State's 13, subject to your ruling on whether it's
17 permissible to consider it.

18 MR. GREELY: And we continue with our objections.

19 THE COURT: I'm going to consider that. I've not
20 decided that one, yet. But it's admitted subject to my
21 ruling. Not admitted into evidence. It's being considered
22 whether to be admitted or not, so it's in the record as a
23 Court's exhibit currently.

24 MS. ROBINSON: Would you like me to change the
25 label to Court's Exhibit?

1 THE COURT: Yes. That'll be Number 1. Is that
2 right, Ms. Love? Did we number those first few?

3 Okay. Court's Exhibit 1.

4 MS. ROBINSON: Your Honor, do you want the other
5 one to be a Court's exhibit?

6 THE COURT: Yes. I want to do them both ways.
7 Let's do it in the proper order. The interview with the
8 lady would be 1. And the interview with the gentleman will
9 be 2.

10 (WHEREUPON, Court's Exhibits Number 1 and 2 were
11 marked for the record.)

12 THE COURT: All right. Deputy Marthone, if you
13 could answer any questions from Mr. Greely.

14 MR. GREELY: I don't have any questions, Judge.

15 THE COURT: Okay. You may step down.

16 MS. ROBINSON: Your Honor, the State has no
17 further witnesses.

18 THE COURT: Okay. All right. What do y'all want?
19 Do y'all want to summarize this, or do y'all want to submit
20 proposed orders? How do y'all want to handle it right here?
21 That's all we got.

22 MR. GREELY: Your Honor, I would ask if we could
23 submit proposed orders?

24 THE COURT: I don't mind that because y'all don't
25 disagree on facts a whole lot. Both of them were

1 aggressive, there were a lot of harsh words. We know who
2 had a knife, we know who got cut. It's just a matter of
3 applying the statute to the facts that's found by the Court.

4 MS. ROBINSON: I'm certainly fine to making a
5 proposed order. I don't know if you want to hear today some
6 of the case law that probably supports our opinions.

7 THE COURT: No, just put it in the order. Put it
8 in the order, that's fine. Because it's similar case law
9 that I've heard ---

10 MS. ROBINSON: Yes, Your Honor.

11 THE COURT: --- and some of these others that I've
12 just recently cited, so.

13 MS. ROBINSON: Yes, Your Honor.

14 MR. GREELY: Just so the Judge knows, one of the
15 cases that I'm going to be relying on is State versus
16 Brooks, 1969 case. Has to do with the ejectment of a
17 trespasser, so -- and it was written by Justice Joseph Moss.

18 THE COURT: Well, I'll be dog.

19 MR. GREELY: Yep.

20 MS. ROBINSON: Yes, Your Honor. And I'm familiar
21 with what cases you're referring to.

22 THE COURT: All right. Y'all put in whatever case
23 law y'all want me to consider.

24 MS. ROBINSON: Your Honor, can we have until the
25 end of next week to ---

1 THE COURT: Sure. Y'all take whatever -- I mean,
2 it's y'all's -- I'm not gonna put a timeline on you. I'll
3 read them when I get them, but two weeks is fine.

4 MR. GREELY: Thank you.

5 MS. ROBINSON: Yes, Your Honor.

6 THE COURT: All right. Then we'll stand at ease.
7 It's now 12:40.

8 (WHEREUPON, end of requested transcript.)

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
The State,)
v.)
Justin Tyler Anderson,)
Defendant.)

FILED-RECEIVED
2023 FEB 21 PM 3:03
DAVID HAMILTON
C.O.C.P. & C.S.
YORK COUNTY, SC

IN THE COURT OF GENERAL SESSIONS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

**ORDER GRANTING DEFENDANT'S
MOTION FOR IMMUNITY**

Case: **2022-GS-46-011559; 011559A**

This matter came before the Court on motion of the Defendant seeking an Order granting the Defendant immunity pursuant to South Carolina's Protection of Persons and Property Act (S.C. Code Ann. §16-11-410, et seq.).

A hearing was held on Wednesday, January 11, 2023, at 10:00 a.m. Present were the Defendant, Justin Tyler Anderson; his attorney of record, Leland B. Greeley of the York Bar; and Senior Solicitor Leslie Robinson of the Sixteenth Judicial Circuit Solicitor's Office.

The Defendant presented testimony from Ms. Kirsten Michelle Pickett, Donna Renee Ferguson, as well as testifying himself. The State presented testimony from the alleged the Victim Robert Wayne Wiestling and Deputy Arens Marthone of the York County Sheriff's Department.¹ Both the Defendant and the State introduced photographs of the scene, including the parking lots and properties. The State introduced photographs of the wound of Mr. Wiestling.

¹ The State also attempted to admit into evidence over the objection of the Defendant two video interviews of alleged witnesses at the scene. However, the Court took the admission under advisement.

APPLICABLE LAW

Immunity under the Act is to be determined by the Circuit Court as a pretrial ruling. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In making such a ruling, this Court applies a preponderance of the evidence standard with the burden on the Defendant to demonstrate that he is entitled to immunity. *Id.* at 411, 709 S.E.2d at 765. Recent appellate court decisions emphasize that this Court sits as fact-finder in making the immunity determination under the Act. *See McCarty*, 437 S.C. at 374, 878 S.E.2d at 912 (2022). As such, this Court is required to weigh evidence, assess credibility, and make factual findings. *Id.* "The relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence." *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019).

FINDINGS OF FACT

1. On August 14, 2022, the York County Grand Jury returned a true bill indictment against the Defendant alleging two charges arising from an incident occurring in York County on March 17, 2022. Those charges are Assault and Battery of a High and Aggravated Nature and Possession of a Deadly Weapon While Committing a Violent Offense. The Victim named in the indictment is Robert Wayne Wiestling.
2. The incident occurred in the parking lot of a hair salon owned by Donna Renee Ferguson and her husband.
3. The incident occurred at approximately 7:00 p.m. before sunset.
4. The Defendant, who was 32 years of age at the time of the incident, is the son of

the owner of the salon. The Defendant's girlfriend, Kirstin Michelle Pickett, works at the salon as a cosmetologist and a manager.

5. The salon is located next to a restaurant and bar named "2020 Tavern". The two businesses are serviced by an access road leading past the salon toward the interior property where the restaurant and bar is located with its own large parking lot. The salon has six parking spaces located perpendicularly between the access road and the salon building.
6. The incident occurred on March 17, 2022.
7. Shortly before the incident Ms. Ferguson asked the Defendant and Ms. Pickett to monitor the salon.² Ms. Ferguson then walked up to 2020 Tavern to meet a client and let the client know Ms. Ferguson was ready for the client to come to the salon for the client's appointment.
8. Ms. Ferguson had some months earlier placed four professionally painted signs along the parking area to notify the public that parking in the six spaces beside the Salon was allowed only for salon patrons. The signs read: For Salon Customers Only. Towing at Owner's Expense.
9. After Ms. Ferguson left to retrieve the client from 2020 Tavern, a car attempted to park in the salon parking lot. The Defendant and Ms. Pickett were outside in the parking lot at Ms. Pickett's car. The Defendant told the driver that the driver could not park there and that the driver needed to read the signs. Initially the occupants of the car paid no attention to the Defendant and parked in a salon spot. However,

² The Defendant is Ms. Ferguson's son.



the driver did return shortly thereafter and moved the car.

10. The Defendant and Ms. Pickett remained at their car in the second parking space preparing to transport Ms. Pickett's 11-year-old daughter who suffers from a disability and is wheel chair bound, to their home.
11. Shortly after the first car left the parking spot, Mr. Wiestling, with his wife and a friend, began to back into spot number 4 of the salon parking. Mr. Wiestling, his wife, and the friend were going to 2020 Tavern for an evening of dinner, drinks, and dancing.
12. The Defendant began to speak loudly telling Mr. Wiestling that he could not park in the salon space and also pointed to the no-parking signs. Mr. Wiestling began to yell at the Defendant about his "poor attitude" and the Defendant yelled back. Mr. Wiestling stopped his car halfway in the parking spot. The Court heard conflicting testimony regarding the final parking location of the Victim's car.³ The Defendant testified that the Victim stopped prior to parking fully before the exchange occurred.
13. As both continued to confront one another, Mr. Wiestling opened the driver's door, got out of the vehicle, and began moving toward the Defendant in a threatening manner. Both men continued to yell at the other.
14. Mr. Wiestling approached the Defendant by moving around the back of Mr. Wiestling's car to confront the Defendant at the back of parking spot #3. More than

³ The Victim's version is that upon parking his car fully in to the parking space, that he rolled down his window and both began exchanging comments with the Defendant. Conversely, the Victim testified that upon one of his returns to his car that he decided to depart and move his car to the larger lot; but he abruptly stopped because he perceived and heard threatening comments from the Defendant and got out to address the comments directly with the Defendant.



once the Victim returned to the Victim's car and then came back to confront the Defendant who remained at the back of the third parking spot.

15. The testimony on both sides consistently affirmed that oral threats were being made. The threats did involve what could result in great bodily injury. Additionally, the Defendant indicated that Mr. Wiestling spat in the Defendant's face. This was corroborated by Ms. Pickett. Mr. Wiestling admitted that he had spat during the confrontation, but said he had not spat on the Defendant.
16. Mr. Wiestling then charged the Defendant, knocking the Defendant against Ms. Pickett's car. Both the Defendant and Mr. Wiestling then began swinging and grappling at one another.
17. The Defendant indicated that at the time he was knocked against the car, the Defendant then reached into the Defendant's pocket for the Defendant's work utility knife. The Defendant opened it and did strike Mr. Wiestling with the knife on Mr. Wiestling's neck behind Mr. Wiestling's ear when the pair were engaged in the grappling.
18. When Mr. Wiestling noticed he had been cut, Mr. Wiestling backed away, as did the Defendant. Mr. Wiestling moved back toward to in the parking spot. The Defendant threw the utility knife into the wiper trough of the Defendant's work van.
19. The Victim and the Defendant presented different versions of the battery. The Victim presented testimony that he was struck by the Defendant in the mouth while the Defendant was holding the knife. The Defendant testified that he retrieved the knife during the struggle and struck the Victim in the neck area. The testimony of



the Victim regarding the dynamics of the punch with the knife in the hand of the Defendant and the Victim's resulting minimal injury in the face and mouth are not consistent with the actual injury the Victim received in the neck area.

20. After the last confrontation near the cars, the Victim began moving toward 2020 Tavern to seek aid. Both men testified that the Defendant approached Mr. Wiestling from the rear as Mr. Wiestling began to walk toward 2020 Tavern. The Defendant testified that the Defendant tackled Mr. Wiestling to the ground. Mr. Wiestling testified that he heard the Defendant coming, then turned and kicked the Defendant in the chest, knocking the Defendant to the ground. Both men testified that Mr. Wiestling then went up to 2020 Tavern and the Defendant returned to Ms. Pickett's automobile.
21. The Court finds that the Victim's version of events to be strained. The Victim's testimony lacks credibility when considered in light of common sense and experience. Particularly, the Victim testified that the Defendant struck him in the mouth with the right hand with the hand holding a knife. If the Defendant had any item in his hand, the injuries would have been more than a swollen lip. Further, the Victim testified that he heard the Defendant coming from the rear, turned, and kicked the Defendant in the chest to the ground as the Victim was departing to seek aid at the adjoining bar and restaurant. The Defendant and Ms. Pickett testified that the Defendant tackled the Victim from the rear to the ground and that Ms. Pickett kicked the Defendant to disengage him from the affray.
22. The Court observed and heard the testimony of all of the witnesses. The Court

observed all of the witnesses were nervous while testifying. The Court noticed that the Victim was excited, changed volume and tone of his responses, and seemed to exaggerate his version of the facts. The Court finds the Victim's truthfulness and candor to be slightly less than the other witnesses.

23. The Court took under advisement the admission of a body-cam video of an interview of an eye-witness who was walking by the fray as it occurred.

Notwithstanding the objection of the defense, the Court accepts the testimony of the witness and finds the testimony consistent with the version that the Victim was the aggressor. The witness's comments to the deputy on scene were that the Victim could have left, but went back to confront the Defendant. The witness's comments also describe the witness's perception was that the Victim was "showing off" for the two ladies the Victim had in his company. The witness was unbiased as he was a stranger to the incident.

24. Subsequently, the Defendant was charged by the York County Sheriff's Department with the charges for which he was indicted.

ANALYSIS

Immunity under the Act is to be determined by the Circuit Court as a pretrial ruling. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In making such a ruling, this Court applies a preponderance of the evidence standard with the burden on the Defendant to demonstrate that he is entitled to immunity. *Id.* at 411, 709 S.E.2d at 765.

There are four elements that must be established to justify the use of deadly force

as self-defense. *State v. Dickey*, 469*469 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). The elements of self-defense are:

(1) The defendant was without fault in bringing on the difficulty; (2) The defendant... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief...; and (4) 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. *Dickey*, 394 S.C. at 499, 716 S.E.2d at 101 (quoting *State v. Wiggins*, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998)).

DISCUSSION

Fault in Bringing on the Difficulty

In considering the fault element of self-defense, this Court recognizes that a business proprietor has the right to eject trespassers from the premises.⁴ *State v. Brooks*, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969). That right, however, is not without limitation. A proprietor is without fault in bringing on the difficulty only if "engaged in the legitimate exercise in good faith of his right to eject." *Id.* (citing *State v. Rogers*, 130 S.C. 426, 126 S.E. 329 (1925)); see also *State v. Starnes*, 213 S.C. 304, 316, 49 S.E.2d 209, 213 (1948). Whether a proprietor legitimately exercised the right to eject a trespasser in good faith can turn on language used during the interaction. See *State v.*

⁴ The Defendant is not, in fact, the proprietor of the salon. The Court accepts, however, that the Defendant acted as an agent of Ms. Ferguson, his mother and the proprietor, in attending to the business in her absence.

Wiggins, 330 S.C. 538, 546-47, 500 S.E.2d 489, 493-94 (1998).

In the facts of this case, the Defendant 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. The Defendant 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 the Defendant had no duty to retreat.

Belief in or Actual Imminent Danger

Weighing the evidence as a whole, the Court also finds that the Defendant establish by a preponderance of the evidence that the Defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or that he actually was in such danger. Both men testified about the repeated approaches and retreats by the Victim to the Victim's car. The Defendant testified that he was unsure of why or for what reason the Victim retreated. The Defendant testified that he was concerned that the Victim could have obtained a weapon from his vehicle.

Reasonably Prudent Man of Ordinary Firmness

The third requirement looks to whether a reasonably prudent man of ordinary firmness would have believed there to be imminent danger of serious bodily injury or death or, if such danger actually existed, the circumstances warranted such a man to use deadly force to save himself. Considering the Defendant's testimony, the physical confrontation was initiated by the Victim. The consistent testimony of all of the witnesses

was that the Victim retreated no less than twice to his car. The Court finds, then, that the Defendant established the third requirement of self-defense.

And so under the current law, the Defendant, 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.

CONCLUSION

Based on the facts found by this Court and the law of this State, the Defendant has met his burden of proof in this case and his motion for immunity from prosecution should be granted. Having considered and weighed the evidence presented in this matter, the Court finds that the Defendant proved that he is entitled to immunity under the Act by a preponderance of the evidence.

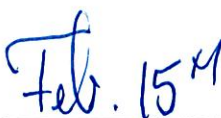
Therefore, **IT IS ORDERED:**

1. That the Defendant's motion is hereby granted for immunity; and,
2. The State shall hereby immediately cease its prosecution of the Defendant on the above-referenced indictment and the facts contained therein.

AND IT IS SO ORDERED.



 Eugene C. Griffith, Jr.
 Presiding Judge
 Sixteenth Judicial Circuit Court

 2023
 York, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT

2023 FEB 24 PM 12:12

State of South Carolina,

vs.

Justin Tyler Anderson,
Defendant.

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

MOTION TO RECONSIDER
ORDER GRANTING IMMUNITY

2022-GS-46-01559

2022-GS-46-01559A

The State, by and through Senior Solicitor Leslie Robinson, hereby moves that the Court reconsider its Order Granting Defendant's Motion for Immunity, withdraw said Order, and issue an order denying immunity. This matter initially came before the Court on the defense's motion seeking a ruling that Justin Tyler Anderson ("Defendant") is immune from prosecution pursuant to the Protection of Persons and Property Act ("Act"). S.C. Code Ann. § 16-11-410 *et seq.*¹ The Court held a hearing regarding this matter on January 11, 2023. Leland Greeley, Esq., represented Defendant. Senior Solicitor Leslie Robinson represented the State. The Court signed the Order Granting Defendant's Motion for Immunity on February 15, 2023, and a copy of the Order was sent to counsel on February 16, 2023.

BACKGROUND

This case arises from a dispute regarding a parking space during which Defendant stabbed the victim, Robert Wiestling ("Victim") in the neck with a utility knife. The parties in this case largely agree on the facts. This incident took place in the evening hours of St. Patrick's Day, March 17, 2022. The scene of the incident includes two neighboring businesses with adjoining parking lots in the Tega Cay area of York County. The first business is the Bella Cay Salon and Spa owned by Defendant's mother, Donna Ferguson. The second business is 2020 Tavern, a restaurant and bar

¹ The Defendant is indicted for assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime.

frequented by Victim. While these businesses have adjoining parking lots, evidence demonstrated that six parking spaces along the side of the salon are dedicated to salon customers.² Several signs bought, paid for, and installed by the salon in front of those spaces read: "PARKING FOR SALON ONLY—TOWING AT OWNERS EXPENSE." The tavern, meanwhile, offers a large parking area for its customers. Because the salon is physically located closer to the street, tavern patrons drive past the salon's customer parking spaces before reaching tavern parking.

Testimony established that Defendant's girlfriend, Kirstin Pickett, also works at the salon. On the day of the incident, Defendant picked up Pickett's daughter from school and met Pickett at the salon. Defendant parked his vehicle in the salon's customer spaces. While at the salon, Defendant consumed two beers. When Pickett finished working for the day, she pulled her vehicle to the customer parking area to load her vehicle.³ Meanwhile Ferguson advised that she was walking to the tavern to retrieve her next client and asked that Defendant keep watch over the business in her absence. Ferguson's customer had already parked in the salon's customer parking but had opted to wait at the tavern for her appointment.

While Defendant and Pickett were finishing up preparations for Pickett to leave, a tavern patron parked in the salon parking spot along the passenger side of Pickett's vehicle. Defendant, on that side of the vehicle to assist Pickett's daughter, advised the patron as she got out of her vehicle that she was not allowed to park there. Defendant testified that this patron disregarded his comment and walked with a male companion to the tavern. As they walked away, Defendant advised Pickett to call the tow company. That tavern patron ultimately returned and moved her vehicle.

² The salon has separate parking spaces along the back of the building for employees.

³ Pickett's daughter requires the use of a wheelchair, so Pickett moved her vehicle to enable her and Defendant to more easily load her daughter and her daughter's belongings for the trip home.

Within a few minutes of the first patron moving, Victim pulled into the lot and began backing into salon parking one space away from the driver's side of Pickett's vehicle. At this time, Defendant was standing along the driver's side of Pickett's vehicle, speaking to Pickett through the open driver's door. Parked directly next to Pickett was the vehicle of Ferguson's client that had gone to the tavern, placing one vehicle between Pickett and Victim. When Victim began backing into the space, Defendant moved to the area behind the other customer's vehicle, making gestures to the no parking sign and calling out that Victim could not park there. Accounts vary at this point whether Victim completed parking and got out of his vehicle with his wife and his wife's friend, or whether Victim stopped his vehicle while only halfway in the spot to confront Defendant. In either event, though, parties agree that there was an exchange where Victim challenged Defendant's assertion, particularly arguing that the salon was closed or closing. That caused the confrontation to escalate and, rather than calling for the tow truck, Defendant and Pickett admitted making profanity-laced demands that Victim move his vehicle.

The escalating verbal confrontation set the stage for the physical interaction that followed. Pickett testified that Victim asked her what Defendant's problem was and that Defendant responded by inviting Victim to "come figure it out." Both Defendant and Pickett described at least two occasions during which Defendant and Victim argued with each other face-to-face with raised voices and profanity and vulgarity used by both men. On the first occasion, Pickett described Victim as poking at Defendant's face and nose. After returning to his vehicle briefly, Defendant and Pickett testified that Victim returned for a second face-to-face confrontation during which Victim spit in Defendant's face.⁴ Defendant and Pickett testified that Victim returned to his vehicle again after spitting. Defendant conceded that, throughout this time, threats were sent back

⁴ Victim denied spitting in Defendant's face but admitted spitting in Defendant's direction with a parking space between them.

and forth between the parties. No one involved in the confrontation, though, called for law enforcement assistance.

The next phase of the confrontation escalated beyond threatening words and posturing to physical violence. Defendant testified that, while Victim was at his vehicle, he (Defendant) said something to the effect of, "Let's go!", and Pickett similarly testified that Defendant continued using taunting language. According to Defendant and Pickett, Victim then charged at Defendant and pushed him back into Pickett's vehicle.⁵ Defendant pulled his work utility knife from his pocket while Victim took a swing at Defendant's head. Defendant testified that he was putting his hands up to defend himself when he accidentally stuck Victim in the neck, just behind and below Victim's ear. Victim promptly backed away toward his vehicle. Once Victim realized he was bleeding, he began running toward the tavern for help. Defendant and Pickett testified that Defendant then chased Victim and tackled him in the parking lot.⁶ Pickett testified that she kicked Defendant in the ribs to get Defendant to disengage, allowing Victim to get away.

Evidence before the court for purposes of this hearing included testimony from Ferguson, Pickett, and Defendant during the defense's presentation and testimony from Victim and Deputy Marthone of the York County Sheriff's Office during the State's presentation. Both parties admitted pictures of the parking lot. The State additionally admitted a 9-1-1 call, a short video taken by a third party after Victim had been stabbed but before Victim made it to the tavern, pictures of Victim's injuries, and a picture of Defendant's utility knife. The State additionally sought to admit two officer body camera videos that captured witnesses describing the incident to

⁵ Victim recalled this exchange differently. Victim testified that Defendant told him to come over and, when he did, Defendant punched him in the mouth, causing Victim to grab at Defendant in response. Defendant then struck Victim in the neck. Victim initially thought Defendant had used a taser on him but would soon realize that he was bleeding. Pictures from Victim being treated that night show that Victim suffered both the knife wound and a bloody lip.

⁶ Victim denied actually being tackled after he had been stabbed but testified that Defendant came after him again while he retreated toward the tavern, and that they both went to the ground when Victim kicked in Defendant's direction to keep him away.

responding officers. Defendant objected to the admission of these exhibits as hearsay and violating his right to confrontation. The exhibits are in the record as Court's Exhibits 1 & 2.

APPLICABLE LAW

As it pertains to this case, the Act 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" S.C. Code Ann. § 16-11-440(C). There are no allegations in this case that Defendant was unlawfully on the grounds of the salon or engaged in unlawful activity at the time of the confrontation with Victim. Immunity under the Act in this case therefore turns on whether Defendant has a valid claim of self-defense, excepting the duty to retreat. *State v. McCarty*, 437 S.C. 355, 368, 878 S.E.2d 902, 909 (2022). The relevant elements of self-defense then are:

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.

Id. at 369, 878 S.E.2d at 909-10 (citations omitted). Use of deadly force in self-defense is permissible only if all of the elements are met. *See State v. Glenn*, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019). A person validly acting in self-defense, however, is not entitled to continued use of deadly force once there is no longer an imminent threat of serious harm. *State v. Rosenbaum*, Op. No. 5928 (S.C. Ct. App. Filed August 3, 2022).

Immunity under the Act is to be determined by the Circuit Court as a pretrial ruling. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In making such a ruling, the Court applies a preponderance of the evidence standard with the burden on Defendant to demonstrate that he is entitled to immunity. *Id.* at 411, 709 S.E.2d at 765. Recent appellate court decisions emphasize that the Court sits as fact-finder in making the immunity determination under the Act. *See McCarty*, 437 S.C. at 374, 878 S.E.2d at 912 (2022). As such, the Court is required to weigh evidence, assess credibility, and make factual findings. *Id.* And “the relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence.” *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019).

ANALYSIS

The State seeks reconsideration of the Order Granting Defendant’s Motion for Immunity on grounds that the Order fails to fully analyze or reach a conclusion regarding Defendant’s fault in bringing on the difficulty, improperly conflated the analysis of Defendant’s subjective beliefs with those of a reasonably prudent man, and erroneously concluded that Defendant needed to establish only two of the four traditional elements of self-defense to obtain immunity.

Fault in Bringing on the Difficulty

In the Order Granting Defendant’s Motion for Immunity the Court included a section titled “Fault in Bringing on the Difficulty.” After setting forth some of the established law for this element of self-defense, the Order concludes the section stating, “The Court finds that the Defendant had no duty to retreat.” Fault in bringing on the difficulty, however, is a separate element of self-defense than the duty to retreat. The Court failed to reach a conclusion on this element and additionally failed to consider more recent law analyzing fault in the context of a

business proprietor ejecting a trespasser. A full consideration of the law alongside admissions by Defendant at the hearing shows that Defendant was at fault in bringing on the difficulty and, therefore, is not entitled to immunity from prosecution.

As to the fault element of self-defense, the Order states:

In considering the fault element of self-defense, this Court recognizes that a business proprietor has the right to eject trespassers from the premises. *State v. Brooks*, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969). That right, however, is not without limitation. A proprietor is without fault in bringing on the difficulty only if “engaged in the legitimate exercise in good faith of his right to eject.” *Id.* (citing *State v. Rogers*, 130 S.C. 426, 126 S.E. 329 (1925)); *see also State v. Starnes*, 213 S.C. 304, 316, 49 S.E.2d 209, 213 (1948). Whether a proprietor legitimately exercised the right to eject a trespasser in good faith can turn on language used during the interaction. *See State v. Wiggins*, 330 S.C. 538, 546-47, 500 S.E.2d 489, 493-94 (1998).

(Footnote omitted). After this legal recitation, the Order acknowledged a heated verbal exchange occurred between Defendant and Victim, without considering the content of the exchange, and then concluded that Defendant had no duty to retreat.

As noted in the Order, the language used by Defendant to eject Victim from the parking space has legal implications in the self-defense and immunity analysis. In *State v. Wiggins* the supreme court reviewed the conviction of a bar owner attempting to eject a patron from a parking lot. There the supreme court held that there was evidence from which a fact-finder could conclude there was a lack of good faith where “evidence was presented by the State that Victim was in the process of leaving and told Appellant he did not want any trouble. Furthermore, Appellant threatened to kick ‘both [Victim’s and Sister’s] asses.’” *Id.* (alteration in original). In holding that such conduct could be grounds for fault, the supreme court cited with approval the proposition that “one can bring on difficulty by using ‘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.’” *Id.* at 547, 500 S.E.2d at 494 (citing *State v. Woodham*, 162 S.C. 492, 502, 160 S.E. 885, 889 (1931)).

Later the supreme court would cite *Wiggins* for the counter proposition that the absence of threatening words or posture requires a conclusion that a proprietor's agent was "exercising his right to eject trespassers in good faith and, as a matter of law, he was without fault in bringing about the difficulty." *State v. Dickey*, 394 S.C. 491, 500-01, 716 S.E.2d 97, 102 (2011). In *Dickey*, tenants requested the aid of an apartment security guard in removing a previously invited guest that had become hostile. *Id.* at 495, 716 S.E.2d at 98-99. Upon locating the individual, the security guard identified himself as such and requested that the individual leave. *Id.* That person responded by shouting expletives, insisting that he could not be made to leave, retreating inside the apartment he was visiting, and slamming the door. *Id.* The security guard "knocked on the door and again asked [him] to leave, without making any threatening comments or gestures or raising his voice." *Id.* at 495-96, 716 S.E.2d at 99. The now-trespasser again slammed the door in the security guard's face. *Id.* The security guard then called for law enforcement assistance, sent the residents that had requested help to open the building door for responding officers, and waited in the hallway of the apartment building. *Id.* at 496, 716 S.E.2d at 99. Ultimately the trespasser was convinced by another friend to leave the premises and, when they did so, the security guard "kept his distance and the parties did not exchange any words." *Id.* When the trespasser and his friend took the elevator down, the security guard opted for the stairs and, once in the lobby, continued to remain several feet away. *Id.* Outside the building, the security guard watched silently in the vicinity of the apartment building doormat as the trespasser and friend began walking down the street. *Id.* The security guard intended to advise responding officers of their direction of travel. *Id.* Unfortunately, the trespasser turned back and began charging the security guard while reaching under his shirt, prompting the security guard to shoot and kill the trespasser. *Id.* at 497-98, 716 S.E.2d at 99-100. When the trespasser dropped to the ground, the security guard immediately

called 9-1-1 and cooperated with officers who were starting to arrive on scene due to his prior call. *Id.* at 497, 716 S.E.2d at 100. Under these circumstances, the supreme court found no fault in the security guard's actions and concluded that his conduct reflected a good faith, legitimate exercise of a proprietor's right to eject a trespasser. *Id.* at 500-01, 716 S.E.2d at 101-02.

Defendant's admitted words and conduct in this case stand in stark contrast to those reviewed in *Dickey*.⁷ Here Defendant advised Victim not to park in the designated salon space but received pushback regarding the hours of the salon. Unlike the security guard that calmly responded to the aggression in *Dickey*, Defendant and Pickett conceded that the exchange immediately escalated with both *Defendant* and Pickett using profanity to demand that Victim move. Defendant testified that there were multiple face to face confrontations between him and Victim, with *both* men yelling at each other, and Victim returning to his vehicle between confrontations. Quite tellingly, Defendant never called 9-1-1, unlike the security guard in *Dickey*, and never called a tow truck between these confrontations, even after Victim allegedly spit in Defendant's face during one of the exchanges. Instead *Defendant* by his own admission continued using vulgar, profane, and taunting language toward Victim while Victim was at his vehicle.⁸ Every time Victim walked away, *Defendant* encouraged him to come back and fight.⁹ A reasonable man would expect such language to bring on a physical encounter because the language literally invites such an encounter. Defendant admits, then, that he failed to exercise the right to eject in good faith and he is therefore

⁷ In the Order, the Court found Victim to be slightly less credible than other witnesses. Defendant's testimony alone, however, establishes that he failed to exercise good faith in his effort to eject Victim and, therefore, Defendant is at fault in brining on the difficulty by his own admission.

⁸ In the Order the Court found credible the account of an unbiased third party that witnessed the altercation. This third party described *Defendant* as feeling "empowered to tell this guy [Victim] in not the nicest way to get out of here. . . . He [Defendant] was being a dick." Court's Exhibit 2.

⁹ This series of events also stands in contrast to Defendant's interaction with the other tavern patron that parked in a salon space. There the patron disregarded Defendant's statement that she could not park there and continued on to the tavern. Rather than further engaging with that patron, verbally or otherwise, Defendant requested that Pickett call a tow truck. That comment alone diffused and resolved the situation because the patron ultimately moved her vehicle from the parking space without further incident.

at fault in bringing on the difficulty in this case. Having failed to establish the first element of self-defense by a preponderance of the evidence, Defendant's motion for immunity should be denied.

Belief in Imminent Danger

As applied to this case, the second and third elements of self-defense require proof by a preponderance of the evidence that Defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury *and* that a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. The Order concludes that Defendant met these burdens by testifying that Victim *could* have armed himself during the times that Victim returned to his car between the face-to-face confrontations. Even if the Court finds credible Defendant's testimony that he actually believed himself in imminent danger on account of Victim's return trips to his vehicle,¹⁰ that conclusion alone does not dispense with the requirement that a reasonably prudent man of ordinary firmness and courage would have entertained the same belief that loss of life or serious bodily injury was imminent.

The Order failed to consider relevant law and the totality of the circumstances in concluding that a reasonably prudent man of ordinary firmness would have believed that Victim presented an imminent threat of serious bodily injury or death to Defendant. In considering the actions of a reasonably prudent man, the law requires that "the quantum of force which one may use in self-defense is proportional to the threat which he reasonably apprehends." *U.S. v. Black*, 692 F.2d

¹⁰ The State maintains that Defendant's testimony on the whole fails to establish that Defendant actually feared death or serious bodily injury. In contrast to Defendant's testimony that Victim *could* have armed himself is testimony from *Defendant* that he shouted at Victim, "Let's go!", after Victim returned to the vehicle. Such an invitation to additional confrontation is inconsistent with a genuine belief that Victim armed himself with a deadly weapon. Additionally, Defendant admitted to pursuing Victim after the stabbing while Victim was retreating towards the tavern for help, suggesting that Defendant's conduct was motivated by anger and an intention to harm rather than by fear and a need to prevent death or great bodily injury. Moreover, any right to act in self-defense had abated by that point but Defendant nonetheless continued pursuing Victim.

314, 318 (4th Cir. Ct. App. 1982). This proportionality assessment necessarily requires consideration of the threat presented. In cases where the use of lethal force was found to be justified, courts cite facts in evidence that could corroborate a belief in the presence of a deadly weapon, such as prior presentation of a weapon by the victim or the presence of a shiny object in the victim's hand. *See State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) (noting that Fuller saw the victims open the trunk of their vehicle and saw a shiny object in one of the victim's hands); *State v. Nichols*, 325 S.C. 111, 117, 481 S.E.2d 118, 121 (1997) (noting that the victim previously pointed a rifle at Nichols and that Nichols observed a shiny object or gun in the victim's hand before Nichols shot the victim). In contrast, courts considering scenarios in which a defendant uses a firearm or a knife in response to an unarmed assailant have found the use of deadly force unreasonable. *See State v. Mincey*, 14 So. 3d 613, 616 (La. Ct. App. 2009) (“[R]esponding to an oncoming punch by shooting the other person in the chest is an excessive response.”); *Lambert v. State*, 519 A.2d 1340, 1345 (Md. Ct. Spec. App. 1987) (concluding the use of a knife against an unarmed assailant was unreasonable) (“While the first blow struck by the victim may have afforded a reasonable basis for a conclusion that the victim intended to inflict *some* harm, it 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.”).

In concluding that a reasonably prudent man of ordinary firmness would have believed himself to be in imminent danger of serious bodily injury or death, the Order focused on two facts: (1) that Victim initiated the final physical confrontation and (2) that Victim had twice retreated to his vehicle before the final physical confrontation. Those facts alone, however, do not reasonably justify the use of deadly force. Pursuant to Defendant's testimony, the ultimate physical confrontation was initiated by Victim shoving and then taking a swing at Defendant only *after*

Defendant shouted “Let’s go!” to Victim. And though Defendant testified that Victim *could* have obtained a weapon from his vehicle, neither the pushing nor the swing from Victim involved the use of a deadly weapon.¹¹ What is more, neither Defendant nor Pickett testified to seeing Victim with a weapon or even a shiny object during those actions. Finally, the Court found credible the account of a third party, unbiased eye-witness who told police, “It’s not like he [Defendant] pulled his knife and he was in imminent danger.” Court’s Exhibit 2. Taking all these circumstances into account, a reasonably prudent man of ordinary firmness would not have believed himself to be in imminent danger of serious bodily injury or death.

Required Elements of Self-Defense

Despite including a section regarding fault in bringing on the difficulty, the Order later states:

And so under current law, the Defendant, 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 danger; and that a reasonable prudent man of ordinary firmness and courage would have entertained the belief of imminent danger.

As discussed above and acknowledged earlier in the Order, though, the right of a business proprietor to eject a trespasser does not eliminate the fault element of self-defense from consideration. *See State v. Brooks*, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969). Instead that element must be analyzed to ascertain whether the business proprietor exercised the right to eject in good faith. *Id.* Because it was legal error to excuse Defendant from proof that he was without fault in bringing on the difficulty, the State requests that the Court reconsider its Order.

¹¹ In the Order the Court took issue with Victim’s credibility, specifically noting that, if Defendant had the knife in his hand when Victim claims that Defendant punched him in the face, Victim would have suffered more than a bloody lip from the punch. Along the same reasoning, though, if Victim truly retrieved a weapon from his vehicle, one would expect it to have been visible and/or used during the time that Victim pushed, swung at, and grabbed for Defendant. No such testimony was elicited, however, to explain the alleged fear of a weapon beyond the simple fact that Victim returned to his vehicle. And, notably, victim had returned to his vehicle on prior occasions without producing a weapon.

CONCLUSION

The Court's Order failed to fully consider the elements of self-defense that are prerequisite to a grant of immunity under the Act. Specifically, the Order erroneously concluded that Defendant need not demonstrate that he was without fault in brining on the difficulty, and failed to reach a conclusion for that element. Additionally, having found that Defendant actually believed that he was in imminent danger of serious bodily injury or death, the Order failed to fully consider in the context of relevant law whether such a belief would have been entertained by a reasonably prudent man of ordinary firmness and courage. The State therefore seeks reconsideration and issuance of an order denying Defendant's motion for immunity.

I SO MOVE,



Leslie Robinson, 80151
Senior Solicitor
16th Circuit Solicitor's Office

York, South Carolina

February 24, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
State of South Carolina	)	
	)	DEFENDANT'S REPLY TO STATE'S
	)	MOTION FOR RECONSIDERATION
v.	)	
	)	Case: 2022-GS46-011559; 011559A
Justin Tyler Anderson,	)	
	)	
Defendant	)	

On February 24, 2023, the State of South Carolina, by and through Assistant Solicitor Leslie Robinson, filed a Motion for Reconsideration by this Court regarding its ruling in the above-captioned matter whereby this Court granted the Defendant immunity from prosecution pursuant to South Carolina's Protection of Persons and Property Act.

Defendant submits this Court did not abuse its discretion in its findings of facts in the Order. This being a case of trespassing by the alleged victim, to be analyzed consistent with the law of the Protection of Persons and Property Act, the record contained more than sufficient evidence for the Court to make the factual findings it did, and to find that the Defendant satisfied the preponderance of evidence burden of proof, thus allowing the Defendant immunity from prosecution.

Therefore, Defendant respectfully requests that the Court deny the State's Motion for Reconsideration.

Respectfully submitted,

s/Leland B. Greeley

Leland B. Greeley
LELAND B. GREELEY, PA
Post Office Box 2981
128 East Main Street, Suite 102
Rock Hill, South Carolina 29732
leland@lbgreeleylaw.com
S.C. Bar #: 7850
Attorney for Defendant

March 6, 2023

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK)
2023 MAY 18 PM 3:12) FOR THE SIXTEENTH JUDICIAL CIRCUIT

State of South Carolina)
v.)
Justin Tyler Anderson,)
Defendant)
Case: 2022-GS-46-011559; 011559A

This matter came before the Court on the State's Motion to Reconsider the February 15, 2023 Order Granting the Defendant immunity pursuant to South Carolina's Protection of Persons and Property Act (S.C. Code Ann. §16-11-410, et seq.).

After careful consideration of the motions submitted to the Court, the Motion to Reconsider is respectfully denied.

AND IT IS SO ORDERED.


Eugene C. Griffith, Jr.
Presiding Judge
Sixteenth Judicial Circuit Court

May 18th 2023
York, South Carolina.

WITNESSES

YCSO

Witnessing Officer: *Ellis*

ARREST WARRANT NUMBER

COUNT ONE 2022A4610500019
COUNT TWO 2022A4610500020

ACTION OF GRAND JURY

TRUE BILL

Heather Boehmske
Foreperson of Grand Jury
Date: *8/4/2022*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2022-GS-46-01559
2022-GS-46-01559A

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 4, TERM 2022

THE STATE

VS.

JUSTIN TYLER ANDERSON

INDICTMENT FOR

COUNT ONE - ASSAULT & BATTERY OF
A HIGH AND AGGRAVATED NATURE

SC Code: § 16-03-0600(B)(1)
CDR Code: 3411

COUNT TWO - POSSESSION OF A
WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME

SC Code: § 16-23-0490
CDR Code: 0549

After being fully advised as to my legal
rights, I hereby waive presentment to
the Grand Jury.

Defendant

I _____
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

APP'X 156

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on August 4, 2022, the Grand Jurors of York County present upon their oath:

COUNT ONE - ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE

The defendant, Justin Tyler Anderson, did on or about March 17, 2022, in York County, South Carolina, unlawfully injure Robert Wiestling and did accomplish that injury by means likely to produce death or great bodily injury. All in violation of 16-03-0600(B)(1), *Code of Laws of South Carolina*, (1976, as amended).

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

The defendant, Justin Tyler Anderson, did on or about March 17, 2022, in York County, South Carolina, while committing the violent crime of attempted murder, possess a knife. All in violation of 16-23-0490, *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



LESLIE D. ROBINSON
ASSISTANT SOLICITOR

ARREST WARRANT

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

2022A4610500019

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant
being duly sworn deposes and says that defendant

James M Ligon

on 3/17/2022

State of South Carolina (or ordinance of

☒

County/ ☐ Municipality of

York

who violate the criminal laws of the

THE STATE

against

Justin Tyler Anderson

Address:

Rock Hill, SC

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5'10" Weight: 130

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: James M Ligon - S00189

Offense: Assault / Assault & Battery of a High &

Aggravated Nature

Offense Code: 3411

Code/Ordinance Sec: 16-03-0600(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

York

The accused

to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

3/18/22

Justin Anderson

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions

1675 York Hwy

York, SC 29745

ORIGINAL

ORIGINAL

ORIGINAL

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ORIGINAL

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ORIGINAL

AFFIDAVIT

Justin Tyler Anderson

3/17/2022

County/ ☐ Municipality of

York

DESCRIPTION OF OFFENSE: Assault / Assault & Battery of a High & Aggravated Nature

3411

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant willfully violated the SC Code of Laws by stabbing the victim, Robert Wayne Wiestling, in the neck with a knife. The defendant stabbed the victim after a verbal and physical altercation in a parking lot over a parking spot. The defendant admitted to stabbing the victim, under Miranda. This incident occurred at 2120 Gold Hill Road, Tega Cay, York County, SC. Probable cause is based on police investigation, defendant's admissions, witness statements, victim's statement, and witness video.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address

1675 York Hwy

York, SC 29745-

Affiant's Telephone

(803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/17/2022

defendant

Justin Tyler Anderson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

York

) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery of a High & Aggravated Nature

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 3/18/2022

Signature of Issuing Judge

Douglas W Sexton

Judge Code: 7273

Judge's Address

201 South Main Street

Clover, SC 29710-1420

Judge's Telephone

(803)675-6040

Issuing Court: ☒ Magistrate

☐ Municipal

☐ Circuit

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APP'X 158



WITNESSES

Name: _____
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Name: _____
Address: _____

Telephone: _____

CODEFENDANTS

BAIL set by

Judge _____
on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

ACQUITTAL
C.C.C.B. & C.C.
DAVID H. WITTE
JUL 1985 SI 1110-SP
RECEIVED

Form Approved by
S.C. Attorney General
March 11, 2003
SCCA 919

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

ARREST WARRANT

2022A4610500020

FILED-RECEIVED

James M Ligon

being duly sworn deposes and says that defendant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

Justin Tyler Anderson

Justin Tyler Anderson

3/17/2022

2022 MAR 21 AM 10 28

violate the criminal laws of the

DAVID HAMILTON
C.C.C.P. & GS

Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in the following particulars:

THE STATE
against

Address: Rock Hill, SC

YORK COUNTY, SC

DAVID HAMILTON
C.C.C.P. & GS

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Phone: [redacted] SSN: [redacted]
Sex: M Race: W Height: 5 10 Weight: 130
DL State: SC DL #: [redacted] Agency ORI #: SC0460000
DOB: [redacted]
Prosecuting Agency: York County Sheriff
Prosecuting Officer: James M Ligon - S00189

The defendant willfully violated the SC Code of Laws by possessing a knife during the commission of Assault and Battery of a High and Aggravated Nature, a violent crime. The defendant stabbed the victim in the neck with a knife. This incident occurred at 2120 Gold Hill Road, Tega Cay, York County, SC. Probable cause is based on police investigation, defendant's admissions, witness statements, victim's statement, and recovery of physical evidence.

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death
Charge Code: 0549
Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

York

Signature of Affiant

1675 York Hwy
York, SC 29745-
(803)628-3059

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

Signature of Judge

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

RETURN
A copy of this arrest warrant was delivered to
defendant Justin Anderson
on 3/18/22

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/17/2022 defendant Justin Tyler Anderson

Signature of Constable/Law Enforcement Officer

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ ☒ Municipality of York) as set forth below:

Signature of Constable/Law Enforcement Officer

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Signature of Constable/Law Enforcement Officer

Sworn to and subscribed before me

on 3/18/2022

Signature of Constable/Law Enforcement Officer

Signature of Issuing Judge

Douglas W Sexton

Signature of Constable/Law Enforcement Officer

Judge Code: 7273

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Signature of Constable/Law Enforcement Officer

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Telephone: _____

CODEFENDANTS

BAIL set by

Judge _____
on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

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DAVID HAMILTON

CERTIFICATE OF COUNSEL

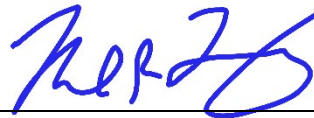
Counsel for Appellant certifies this Record on Appeal contains all material proposed to be included by the parties and not any other material and this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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April 24, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Court Judge

Case Nos. 2022-GS-46-01559 & -01559A

THE STATE OF SOUTH
CAROLINA,

Appellant,

v.

Justin Tyler Anderson,

Respondent.

NOTICE OF APPEAL

The State of South Carolina hereby appeals to the Court of Appeals the written order of the Honorable Eugene C. Griffith, Jr., dated February 15, 2023, granting Defendant's Motion for Immunity, and the subsequent written order dated May 18, 2023, which denied the State's Motion to Reconsider the Order Granting Defendant's Motion for Immunity (filed February 24, 2023). Appellant received written notice of entry of the order denying the motion to reconsider on June 6, 2023.

June 6, 2023



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
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Case Nos. 2022-GS-46-01559 & -01559A

THE STATE OF SOUTH
CAROLINA,

Appellant,

v.

Justin Tyler Anderson,

Respondent.

PROOF OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal in the above-referenced matter upon Leland Greeley by US Mail and e-mail in accordance with the provisions of Rule 262(b) of the South Carolina Appellate Court Rules.

Served this day,
June 6, 2023



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2023-000943

THE STATE,

Appellant,

vs.

JUSTIN TYLER ANDERSON,

Respondent.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW	11
ARGUMENT	12
The circuit court judge committed a clear error of law by granting immunity to Anderson pursuant to the South Carolina Protection of Persons and Property Act because: (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.	12
CONCLUSION.....	23

TABLE OF AUTHORITIES

South Carolina Cases:

<u>Narcisco v. State</u> , 397 S.C. 24, 723 S.E.2d 369 (2012).	11
<u>Reed v. Becka</u> , 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).	11
<u>State v. Andrews</u> , 427 S.C. 178, 830 S.E.2d 12 (2019).	14
<u>State v. Bixby</u> , 388 S.C. 528, 698 S.E.2d 572 (2010).	15, 18
<u>State v. Brooks</u> , 252 S.C. 504, 167 S.E.2d 307 (1969).	16
<u>State v. Bryant</u> , 336 S.C. 340, 520 S.E.2d 319 (1999).	18
<u>State v. Cervantes-Pavon</u> , 426 S.C. 442, 827 S.E.2d 564 (2019).	21
<u>State v. Council</u> , 129 S.C. 116, 123 S.E. 788 (1924).	15
<u>State v. Curry</u> , 406 S.C. 364, 752 S.E.2d 263 (2013).	11, 15
<u>State v. Davis</u> , 282 S.C. 45, 317 S.E.2d 452 (1984).	15
<u>State v. Douglas</u> , 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2015).	11
<u>State v. Elders</u> , 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010).	11
<u>State v. Fuller</u> , 297 S.C. 440, 377 S.E.2d 328 (1989).	19
<u>State v. Glenn</u> , 429 S.C. 108, 838 S.E.2d 491 (2019).	14, 16, 22
<u>State v. Harvey</u> , 110 S.C. 274, 96 S.E. 399 (1918).	15, 19
<u>State v. Jones</u> , 416 S.C. 283, 786 S.E.2d 132 (2016).	20
<u>State v. Marshall</u> , 428 S.C. 11, 832 S.E.2d 618 (Ct. App. 2019).	17
<u>State v. McGreer</u> , 13 S.C. 464 (1880).	19
<u>State v. Oates</u> , 421 S.C. 1, 803 S.E.2d 911 (Ct. App. 2017).	22
<u>State v. Osborne</u> , 202 S.C. 473, 25 S.E.2d 561 (1943).	15
<u>State v. Rowell</u> , 75 S.C. 494, 56 S.E. 23 (1906).	18

APP'X 168

<u>State v. Scott</u> , 424 S.C. 463, 819 S.E.2d 116 (2018).	14
<u>State v. Starnes</u> , 213 S.C. 304, 49 S.E.2d 409 (1948).	17
<u>State v. Strickland</u> , 389 S.C. 210, 697 S.E.2d 681 (Ct. App. 2010).	18
<u>State v. Wiggins</u> , 330 S.C. 538, 500 S.E.2d 489 (1998).	17
<u>Other State and Federal Cases:</u>	
<u>Lambert v. State</u> , 519 A.2d 1340 (Md. Ct. Spec. App. 1987).	20
<u>State v. Mincey</u> , 14 So. 3d 613 (La. Ct. App. 2009).	20
<u>State v. Walker</u> , 966 P.2d 883 (Wash. 1998).	20
<u>United States v. O’Neal</u> , 36 C.M.R. 189 (C.M.A. 1966).	17
<u>United States v. Peterson</u> , 483 F.2d 1222 (D.C. Cir. 1973).	18
<u>Statutory Provisions:</u>	
S.C. Code Ann. § 16-11-420.	13
S.C. Code Ann. § 16-11-440.	13, 14
S.C. Code Ann. § 16-11-450.	13

STATEMENT OF ISSUE ON APPEAL

Did the circuit court judge reversibly err by granting 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

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 a notice of appeal.

STATEMENT OF FACTS

The incident at the heart of this appeal occurred on St. Patrick's Day in 2022. (R. 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. (R. 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 (R. 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. (R. 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. (R. 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. (R. 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. (R. pp. 61-109).

Regarding Anderson's account, he described what occurred as follows. (R. 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. (R. pp. 63-64). His mother

¹ Anderson claimed to the deputy he accidentally struck Victim with a Milwaukee-brand utility knife during the course of the dispute. (R. 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. (R. p. 30; p. 61; p. 70; pp. 112-113; State's Ex. # 11 (Photograph)).

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. (R. 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. (R. pp. 64-65). A few minutes after that, Victim arrived and also began parking in one of the salon's spots, and Anderson quickly advised Victim he could not park there.² (R. 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. (R. 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. (R. 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. (R. p. 67). Anderson responded by "definitely" cursing at Victim and telling him he needed to "get the fuck out." (R. pp. 67-68; p. 77). Victim then began "getting in [Anderson's] face again," and "words were said." (R. 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. (R. p. 68). "Then some other things were said[.]" (R. 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?" (R. 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." (R. p. 68; p. 78) (emphasis added). Victim then physically pushed Anderson into a car. (R. p.

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)).

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 (R. p. 69; pp. 78-79). When he did, he "accidentally" made contact with Victim's neck. (R. p. 69; p. 79). Immediately in response to that, Victim back away, grabbed his neck, accused Anderson of stabbing him, returned to his vehicle, and then began heading toward 2020 Tavern. (R. p. 70; p. 79). At that point, Anderson "chased [Victim] down" and "tackled him to the ground." (R. 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. (R. p. 70). Following that, Anderson, who was uninjured, waited in the parking lot and was eventually arrested. (R. p. 71; pp. 79-80).

Meanwhile, regarding Victim's account, he remembered the incident in the following manner. (R. 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. (R. 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. (R. 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. (R. pp. 83-84; pp. 104-105). In response, Victim told Anderson it did not matter because the salon was closed. (R. p. 84). Nevertheless, due to Anderson's belligerent behavior, Victim returned to his car and began to move it out of the spot. (R. pp. 84-85; p. 105). As he did, though, Anderson said: "That's right[,] you son of a bitch, you better leave."⁴ (R. p. 85). In response to that, Victim stopped his vehicle, opened the door, and

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. (R. p. 79).

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

asked Anderson what his “fucking problem” was, and the two began exchanging profanities with one another. (R. 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. (R. 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?” (R. p. 87). At that point, Anderson suddenly struck Victim in the mouth, he grabbed Anderson, and Anderson hit him in the neck. (R. 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. (R. 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. (R. 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. (R. 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. (R. 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. (R. 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. (R. 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. (R. 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. (R. 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.” (R. 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. (R. pp. 26-27; p. 42). Anderson then became angry and “bowed up a little bit.” (R. 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. (R. 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 (R. 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 (R. p. 47; pp. 51-52). More specifically, Anderson taunted Victim with statements such as “What are you going to do?” and “*Come at me.*” (R. 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. (R. p. 28; p. 47; p. 53). Following that, the two locked arms, struggled for a few seconds, and then pushed away from one another. (R. 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. (R. pp. 29-30; pp. 55-56).

At the conclusion of the hearing, the circuit court judge took the matter under advisement. (R. pp. 128-129). Thereafter, upon considering the matter, the circuit court judge granted immunity from prosecution to Anderson. (R. p. 140). In doing so, the circuit court

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.” (R. 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. (R. p. 44).

judge correctly noted Anderson had the burden of demonstrating entitlement to immunity by a preponderance of the evidence. (R. p. 132). Likewise, the circuit court judge correctly recognized the defense of self-defense has four necessary elements when deadly force has been employed. (R. pp. 137-138). The circuit court judge then began analyzing the elements of self-defense in light of the various factual findings he made. (R. 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. (R. 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. (R. 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.*

(R. 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. (R. 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. (R. 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. (R. 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.” (R. 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.” (R. 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.

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

Following the grant of immunity, the solicitor timely sought reconsideration of the circuit court judge’s ruling. (R. pp. 141-153). As support for the request, the solicitor pointed out several critical problems with the circuit court judge’s order. (R. 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. (R. 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. (R. 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. (R. 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. (R. pp. 152-153).

Ultimately though, the circuit court judge denied the solicitor’s reconsideration request. (R. 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. (R. p. 155).

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 circuit court judge committed a clear error of law by granting immunity to Anderson pursuant to the South Carolina Protection of Persons and Property Act because: (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. To the contrary, 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, and 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. Accordingly, the circuit court judge's ruling 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 difficult” 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 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. 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 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

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. (R. p. 147).

a self-defense charge. . . . Accordingly, [Bryant] was not entitled to a self-defense charge and the trial judge correctly refused the charge.”).

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 reversibly erred by conducting an incomplete and inadequate analysis.

For all the foregoing reasons, the circuit court judge 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 committed a reversible legal error by ruling upon a request for immunity without addressing the elements of self-defense and remanding with instructions for the circuit court to analyze *all* the elements of self-defense). Accordingly, the circuit court judge's legally-erroneous ruling must be reversed, and Anderson's case should be remanded for further proceedings.

CONCLUSION

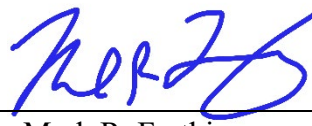
For all the foregoing reasons, it is respectfully submitted the ruling of the circuit court judge should be reversed and the case should be remanded for further proceedings.

Respectfully submitted,

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April 24, 2024

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2023-000943

THE STATE,

Appellant,

vs.

JUSTIN TYLER ANDERSON,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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PROOF OF SERVICE

I, Caroline Collins, certify I have served the Final Brief of Appellant and accompanying Record on Appeal on Respondent by sending electronic copies via email to the address listed in AIS for the following individual:

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I further certify all parties required by Rule to be served have been served.
This 24th day of April, 2024.



CAROLINE COLLINS
Administrative Coordinator
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May 31 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
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State of South Carolina

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Justin Tyler Anderson

Respondent.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3.
STATEMENT OF ISSUES ON APPEAL.....	4.
STATEMENT OF THE CASE.....	4.
STATEMENT OF FACTS.....	4.
ARGUMENTS.....	7.
CONCLUSION.....	10.

TABLE OF AUTHORITIES

South Carolina Case Law

State v. Brooks, 252 S.C. 504, 510 167 S.E.2d 3077, ...	7, 8.
State v. Dickey, 394 S.C. 491, 499 716 S.E.2d 97 (2011).....	7.
State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011).....	9, 10.
State v. Rogers 130 S.C. 426, 126 S.E.2d 329 (1925).....	7.

Statutory Provisions

S.C. Code Ann. Section 16-11-410, et seq.....	10.
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STATEMENT OF ISSUES ON APPEAL

1. Whether the Court erred in concluding the Respondent was only required to prove by a preponderance of the evidence two of self-defense's elements to be entitled to immunity.
2. Whether the Court erred in not making an actual determination on whether the "without fault for the difficulty" element had been established.
3. Whether Anderson could be found to be without fault in bringing on the difficulty due to the opprobrious language he used to provoke the physical altercation that occurred with the alleged victim.
4. Whether Anderson did not reasonably need to use deadly force against the unarmed alleged victim at the time he did so.

STATEMENT OF THE CASE

The Respondent concurs with Appellant's Statement of the Case.

STATEMENT OF FACTS

Donna Ferguson, Defendant's mother, owns a hair salon in York County. The salon is located next door to a restaurant and bar which has a large parking lot. The salon has a small parking lot which is marked by several signs giving notice that parking is only for salon customers. (R. pp. 8 - 13). Ms. Ferguson posted the signs because of problems she had had in the past regarding patrons of the restaurant using her parking spaces. (R. p. 13).

The Defendant, son of Mrs. Ferguson, had the authority to watch the salon when his mother was not present as well as monitor the parking conditions when she was not there. On this evening, he had that authority and watched over the property while his mother had gone to the restaurant to let a customer know that she was ready for her. (R.

pp. 14 -20). Present with Mr. Anderson was his girlfriend Kirsten Michelle Pickett, and her 10 year old daughter Bailey who suffers from cerebral palsey (R. p. 15); (R. p. 21).

Prior to the incident another car pulled into the fourth parking spot of the salon. The occupants exited the car and Ms. Pickett told them they were not allowed to park there. They began to walk away and Ms. Pickett told them she was going to call a tow truck. Eventually they returned to the car and pulled away. Two minutes later another car pulled up and began to back into the fourth parking spot. This time the Defendant was waiving at the car to let them know they couldn't park there. The driver's window was rolled up at that time. The driver stopped the car and rolled down the window asking what the problem was. Mr. Anderson told him he couldn't park there. The driver responded to Mr. Anderson that the salon was closed so he could park there. (R. pp. 22-25); (R. p. 66).

At that time both men began raising their voices. The man sitting in the car asking the Defendant what his problem was. The driver of the car then exited the car and approached the Defendant who was still behind the car in the third parking spot and who didn't move. The driver came up in front of the Defendant and began poking him at his nose and chest and yelling at him. (R. pp. 25 – 26); (R. pp. 66 – 68).

Then the driver returned to his car for a moment and then came back to the Defendant as Ms. Pickett sat a few feet away in her car. The driver of the car then threatened the Defendant by saying that he “was going to fuck him in the ass.” When he got close to the Defendant he spat on the Defendant. He then began to return to his car but turned around again. He then came back, lunging into the Defendant, knocking him into the rear driver's side door of Ms. Pickett's car where Ms. Pickett was sitting in the

driver's seat, and the door inside of which her daughter Bailey was sitting. (R. pp 27–29); (R. pp 68 – 69).

Immediately after the driver knocked the Defendant into Ms. Picket's car, he also swung a fist at the Defendant. While this was happening, the Defendant reached his hand into his pocket to retrieve a utility knife he carries for his work. The Defendant lifted both hands into the air defensively and the knife struck the side of the driver's neck cutting him. It was at this time the driver then backed off of the Defendant. The driver realized he had been cut and went toward his vehicle. The Defendant threw the utility knife up onto the windshield of his van. He then tackled the driver in the parking lot. It was at this time that Ms. Pickett kicked the Defendant and the Defendant released the driver and he went to the restaurant. The Defendant and Ms. Picket remained on the scene, comforted Bailey, and awaited the arrival of law enforcement. Law Enforcement arrived and the Defendant was arrested. (R. pp. 69 – 71).

The driver later admitted to law enforcement and under oath that if he had just stayed in his car and drove somewhere else to park, all of this could not have happened. (R. pp. 107 – 108).

ARGUMENTS

Whether the Court erred in concluding the Respondent was only required to prove by a preponderance of the evidence two of self-defense's elements to be entitled to immunity.

The trial court was correct in concluding the Defendant only had to present evidence by a preponderance of the evidence of two self-defense elements. Normally there are four elements that must be satisfied to justify the use of deadly force as self-defense. *State v. Dickey*, 394 S.C. 491, 499 716 S.E.2d 97, 101 (2011); *State v. Duncan*, 392 S.C.404, 411 709 S.E.2d 662, 665 (2011). The elements of self-defense are: (1) The defendant was without fault in bringing on the difficulty; (2) the Defendant actually believed that he was in imminent danger of losing his life or suffering serious bodily injury, or he actually was in such imminent danger; (3) a reasonable and prudent man of ordinary firmness and courage would have entertained the same belief; and, (4) the Defendant had no other probable means of avoiding the danger of losing his own life or sustaining bodily injury than to act as he did in this particular instance. *Dickey*, 394 S.C. 499, 716 D.E.2d at 101.

The trial court found, in citing *State v. Brooks*, 252 S.C. 504, 510 167 S.E.2d 307, 310 (1969) that a business proprietor has the right to eject trespassers from the premises and that the proprietor is without fault in bringing on the difficulty as long as he is engaged in a legitimate exercise in good faith of his right to eject. *State v. Rogers* 130 S.C. 426, 126 S.E.2d 329 (1925).

In the present case, the alleged victim was not only a trespasser, unlike the decedents in *Brooks* who at one point had been invitees, but had been a trespasser from the beginning. Therefore, the first element of self-defense was never to be a consideration in this case.

Whether the Court erred in not making an actual determination on whether the “without fault for the difficulty” element had been established.

Since the ejectment began immediately upon the alleged victim’s entry onto the property, and so at no point was the Defendant in a position to be considered as to be at fault in bringing on any difficulty, as shown above, that element didn’t apply in this case and the Court was correct in concluding that. The allegation by the State that the Court didn’t specifically make a finding of fact that the Defendant was not at fault is moot since the element didn’t apply.

Whether Anderson could be found to be without fault in bringing on the difficulty due to to the opprobrious language he used to provoke the physical altercation that occurred with the alleged victim.

The State argues that due to the language the Defendant used toward the alleged victim at the time the alleged victim refused to leave the property after trespassing, and threatened and used “opprobrious” language toward the Defendant, the Court should have found the Defendant at fault in bringing on the difficulty.

First, as argued above, the Defendant was not required to prove the first prong of self- defense in this case due to *State v. Brooks*, 252 S.C. 504, 167 S.E.2d 307 (1969). The Defendant, from the beginning was dealing with a trespasser as he was authorized to do.

Secondly, if the first prong was required to be shown, there was sufficient evidence that the Defendant was not at fault at bringing on the difficulty. Upon reviewing the decision of the trial court in a pretrial immunity proceeding, Respondent submits the standard of appellant review is whether there is sufficient evidence in the

record to support the finding by the trial court. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). The trial court found that the Defendant was the son of the owner of the salon and the parking lot, and had placed the Defendant in authority to monitor the parking lot while the owner walked up to the restaurant to let a client know she was ready for the client's appointment. Therefore, the Defendant had authority to give notice of trespass and demand trespassers to leave. (Ct. Ord. P. 3 pp. 4 – pp. 7) Further the Court found that the property had been plainly marked regarding non-client parking (Ct. Ord. P 3 pp.8).

The Court also found that at the time the Defendant began to yell at the alleged victim, the victim had trespassed on the property and was continuing to do so and began to yell at the Defendant about his poor attitude. Also, the Court found it was the alleged victim who exited his car and began to move first toward the Defendant. (Ct. Ord. P. 4 pp. 11 – 13.).

Again, it should also be noted that the Court specifically addressed and compared the believability of the witnesses in this matter and found the testimony of the Defendant and Ms. Pickett to be more believable and credible than that of the alleged victim. (Ct. Ord. P. 6 pp. 22).

Whether Anderson did not reasonably need to use deadly force against the unarmed alleged victim at the time he did so.

Once again, in reviewing the decision of the trial court in a pretrial immunity proceeding, Respondent submits the standard of appellant review is whether there is sufficient evidence in the record to support the finding by the trial court. *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011).

The Court found in the record that the physical confrontation was initiated by the alleged victim and that all of the witnesses described how the alleged victim retreated to his car no less than twice and then returned finally starting the physical altercation with the Defendant. The Defendant was concerned about what the alleged victim may have been able to obtain from his car. Because of this, the Court found that both the second and third element had been satisfied. Given the testimony and evidence in the record, the Court made no error in making those findings of fact. Nor did the Court err in finding that the Defendant was in a place where he had a right to be and therefore, had no duty to retreat. (R. p. 139).

CONCLUSION

For the reasons set forth above, the Court made no error in concluding that Defendant established by a preponderance of the evidence the second and third elements of self-defense without having to establish the first and the fourth, and was thus entitled to immunity from prosecution under the South Carolina Protection of Persons and Property Act (S.C. Code Ann. Section 16-11-410, et seq.)

Therefore, the ruling of the trial court should be upheld.

Respectfully submitted,

s/Leland B. Greeley

APP'X 204

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May 30, 2024.

Rock Hill, South Carolina.

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May 31 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No.: 2023-000943

State of South Carolina

Appellant,

v.

Justin Tyler Anderson

Respondent.

PROOF OF SERVICE

Respondent, by and through its undersigned attorney, does hereby state that he served a copy of his Final Brief and Motion to File Outside of Time by email and by placing a hard copy in the U.S. Mail with sufficient postage attached there to and addressed as follows:

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Senior Assistant Deputy Attorney General
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Post Office Box 11549
Columbia, South Carolina 29211

Respectfully submitted,

s/Leland B. Greeley

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Rock Hill, South Carolina.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Justin T. Anderson, Respondent.

Appellate Case No. 2023-000943

Appeal From York County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2025-UP-242
Submitted April 1, 2025 – Filed July 16, 2025

AFFIRMED

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General Mark Reynolds Farthing,
both of Columbia; and Solicitor Kevin Scott Brackett, of
York, all for Appellant.

Leland B. Greeley, of Rock Hill, for Respondent.

PER CURIAM: This appeal arises from the circuit court's grant of immunity to Justin T. Anderson. On appeal, the State argues the circuit court committed error by granting immunity to Anderson pursuant to the South Carolina Protection of

Persons and Property Act (The Act)¹ because (1) the circuit court 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 was at fault for the difficulty because the language he used provoked the physical altercation; (3) Anderson did not reasonably need to use deadly force against his unarmed victim at the time he did; and (4) the circuit court erroneously concluded Anderson was only legally required to establish two of the four self-defense elements to be entitled to immunity. We affirm.

STANDARD OF REVIEW

"Circuit courts utilize pretrial hearings to determine whether a defendant 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). Appellate courts "review[] an immunity determination for an abuse of discretion." *Id.* "An abuse of discretion occurs when the [circuit] court's 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).

The Act provides immunity from prosecution for a person who has used deadly force after a trial court determines the person was justified in using such force.

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.

¹ The Act is informally known as the "Stand Your Ground Law" and was enacted by the South Carolina General Assembly in 2006 to provide a person "is immune from criminal prosecution and civil action for the use of deadly force" in circumstances that are permitted by the Act or by another provision of law. S.C. Code Ann. § 16-11-450(A) (2015); *State v. McCarty*, 437 S.C. 355, 366, 878 S.E.2d 902, 908 (2022).

§ 16-11-440(C). The Act provides immunity for "[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

§ 16-11-450(A). "[A]nother applicable provision of law' includes the common law of self-defense." *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019). The general four elements a defendant must meet to justify the use of deadly force under the common law of self-defense are the following:

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.

Id. at 116, 838 S.E.2d at 495.

LAW/ANALYSIS

*Without Fault for the Difficulty Element*²

The State argues the circuit court erred in granting immunity without making an actual determination on whether the "without fault for the difficulty" element had been established. Further, the State argues Anderson could not have been without

² We have combined issues one and two.

fault for bringing on the difficulty because the language he used provoked the altercation. We disagree. In *State v. Brooks*, our supreme court held that if a proprietor, while exercising the right to eject a trespasser, is assaulted and subjected to danger of losing life or suffering serious bodily harm, the proprietor would be justified in using self-defense. 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969). If the proprietor is engaged in the legitimate exercise in good faith of the right to eject, he or she would be without fault in bringing on the difficulty and would not be required to retreat. *Id.* Similarly, in *State v. Starnes*, our supreme court affirmed the circuit court's jury charge stating that if a proprietor, after ordering a trespasser to leave, is assaulted and subjected to danger justifying self-defense, and if the proprietor is acting in good faith to eject the trespasser, the proprietor would be without fault in bringing on the difficulty and would not have to retreat. 213 S.C. 304, 315, 49 S.E.2d 209, 213 (1948). Whether a proprietor legitimately exercised the right to eject a trespasser in good faith can turn on the language used during the interaction. *State v. Wiggins*, 330 S.C. 538, 546-47, 500 S.E.2d 489, 493-94 (1998).

Here, we find the circuit court did address the fault element of self-defense. The circuit court found Anderson had the right to eject trespassers. Under the subsection "Fault in Bringing on the Difficulty," the order first cites the language relating to a business proprietor's right to eject trespassers in good faith. The court acknowledges that language used during the interaction can lend itself to a determination of whether the proprietor was acting in good faith. The judge, acting as fact-finder, made a credibility finding that Victim was more exaggerated and less credible than the others. Based upon these findings and the language in the order, we hold the circuit court did not err.

Use of Deadly Force

The State argues Anderson did not reasonably need to use deadly force against Victim. We disagree. The circuit court found Anderson established 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. It further found a reasonably prudent man of ordinary firmness would believe the same and if such danger actually existed, the circumstances warranted such a man to use deadly force to save himself. As fact-finder in an immunity hearing, the court is in a unique position to consider all of the factors. We hold the court 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.

Establishment of the Elements

The State argues the circuit court erred when it found Anderson was only legally required to establish two elements of self-defense. We disagree. The court found Anderson, being in a place he had the right to be pursuant to section 16-11-440(C) of the Act, and as a business proprietor with the right to eject trespassers, only had to satisfy elements two and three 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 reasonably prudent man of ordinary firmness would have entertained that same belief. As to element one, the fault element, the court properly established Anderson was a business proprietor who, in good faith, exercised his right to eject a trespasser. Therefore, he was without fault in bringing on the difficulty. As to the fear elements two and three, the court, as fact-finder, found the testimony of the witnesses, Victim's initiation of physical contact, and his repeated returns to his vehicle established Anderson's fear and a reasonable man would have held the same belief. Based upon the foregoing facts considered by the circuit court in its order, and its credibility findings, we find Anderson had no other probable means of avoiding the danger than to act as he did. We find the circuit court's order properly addressed each element of self-defense and there was no abuse of discretion.

Based on the foregoing, the circuit court's grant of immunity is

AFFIRMED.³

THOMAS, HEWITT, and CURTIS, JJ., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2023-000943

THE STATE,

Appellant,

vs.

JUSTIN TYLER ANDERSON,

Respondent.

APPELLANT'S PETITION FOR REHEARING

Through an unpublished decision issued on July 16, 2025, this Court affirmed the circuit court judge's order granting immunity to Respondent Justin Tyler Anderson pursuant to the South Carolina Protection of Person and Property Act. State v. Anderson, Op. No. 2025-UP-242 (S.C. Ct. App. filed July 16, 2025). In affirming the circuit court judge's order, this Court first rejected the State's contentions the circuit court judge reversibly erred because: (1) he failed to make an actual determination on whether the "without fault for the difficulty" element had been established; and (2) Anderson was not without fault for the difficulty based on the language he used during the incident. Next, finding the circuit court judge properly determined Anderson "actually believed he was in danger because of the physical confrontation initiated by" the victim and did not err by finding Anderson's use of deadly force was justified, this Court rejected the State's contention Anderson did not reasonably need to use deadly force against his unarmed victim based on the circumstances involved. Finally, despite the language used by the circuit

court judge in his order, this Court rejected the State’s contention the circuit court judge’s analysis was incomplete and determined his order “properly addressed each element of self-defense” and no abuse of discretion occurred. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant (“the State”) respectfully petitions for rehearing because this Court appears to have misapprehended and overlooked several critical flaws with the circuit court judge’s order that necessitated—and continue to necessitate—reversal on appeal.

Turning first to the propriety of the circuit court judge’s ruling concerning the “without fault for the difficulty” element of self-defense, 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. (R. 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. (R. 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.*

(R. p. 139) (emphasis added). Notably, absent from that ruling is any actual explanation as to whether or how Anderson was without fault for the difficulty based on the case-specific circumstances involved.

In its decision affirming the circuit court judge’s grant of immunity to Anderson, this Court found the circuit court judge’s ruling in that regard “did address the element of self-

defense.” But the circuit court judge’s own words from his order support a contrary conclusion. Critically, based on what the circuit court judge himself stated, 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 State v. Glenn, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019) (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); cf. Morris v. BB&T Corp., 438 S.C. 582, 588, 885 S.E.2d 394, 398 (2023) (“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.”). As a result, this Court should grant rehearing and reevaluate the matter based on what the circuit court judge actually stated and ruled in his order.

Relatedly, turning to whether Anderson truly could have been without fault for the difficulty as necessary for him to have a viable claim of self-defense, Anderson, in fact, 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 the victim that led to the supposed need to use deadly force. That is true because Anderson admittedly exchanged vulgar language and *threats* with the

victim before any physical contact occurred between the two.¹ 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—by his own admission—even beckoned the victim to “come at [him],” which was an act starkly inconsistent with a genuine good faith effort to get the 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

¹ Notably, by his own admission, Anderson made statements to the victim like “Fuck you,” “*Come at me,*” and “What are you gonna do?” (R. p. 78) (emphasis added).

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 and without need to consider the victim's testimony and credibility, 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 the victim that led to the stabbing. 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 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)); State v. Patterson, 262 N.E.3d 595, 609 (Ohio Ct. App. 2025) (“Regarding the first element of a self-defense claim, the notion that an accused must not be at fault in creating the situation is broader than simply not being the immediate aggressor.” (citations and internal quotations omitted));

McCarty v. Commonwealth, 51 S.W.2d 249, 250 (Ky. 1932) (“One cannot make a threatening demonstration and then shelter from the storm he has purposely raised under the shield of self-defense. . . . A challenge to a mortal combat, an assault, or a personal affront of such serious character as to be reasonably calculated to provoke and to precipitate a dangerous assault from another, are generally deemed sufficient to authorize a jury to deny the ordinary right of self-defense.”). 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 State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) (“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, this Court should grant rehearing, and that is particularly true given the circuit court judge did not actually analyze the “without fault for the difficulty” element and, resultantly, offered no explanation or analysis as to how the language Anderson *self-admittedly* used did not preclude him from validly claiming to be without fault for the difficulty. Morris, 438 S.C. at 588, 885 S.E.2d at 398; cf. Strickland, 389 S.C. at 215, 697 S.E.2d at 684 (finding “shut your fucking mouth” constituted language that “might reasonably have been expected to bring on the difficulty”).

Next, turning to self-defense’s necessity element, 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 the victim as was required for him to have a viable self-defense claim. Demonstrating that fact, nothing presented

during the immunity hearing established the 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 the victim returned to his vehicle a few times. Notwithstanding the fact Pickett interpreted the same occurrence as a sign the victim was attempting to retrieve his phone, the victim returning to his vehicle was the precise thing Anderson supposedly was trying to get the victim to do. Meanwhile, Anderson readily admitted he did not know if anything was in the 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 the 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 State v. Harvey, 110 S.C. 274, 277, 96 S.E. 399, 400 (1918) (“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.”). As a result, this Court should grant rehearing.

Finally, turning to whether the circuit court judge actually considered all the required elements of self-defense in granting immunity to Anderson, the circuit court judge—based on the contents of his order—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. (R. p. 140). 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 reversibly erred by conducting an incomplete and inadequate analysis. Resultantly, this Court should grant rehearing.

For all the foregoing reasons coupled with the reasons advanced and articulated in the State’s appellate brief, the State respectfully asks this Court to reconsider this matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion reversing the circuit court judge’s flawed immunity ruling and remanding for further proceedings. By doing so, this Court will ensure the circuit court judge—who, up to this point, has 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—conducts the appropriate analysis and actually explains how all the requisite elements of self-defense have or have not been established, which—based on Anderson’s own admissions—could not legitimately be established in Anderson’s case. See Morris, 438 S.C. at 585-586, 885 S.E.2d at 396 (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 the trial judge committed a reversible legal error by ruling upon a request for immunity without addressing the elements of self-defense and remanding with instructions for the circuit court to analyze *all* the elements of self-defense).

Respectfully submitted,

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By: 
Mark R. Farthing
S.C. Bar Number 76901

September 2, 2025

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2023-000943

THE STATE,

Appellant,

vs.

JUSTIN TYLER ANDERSON,

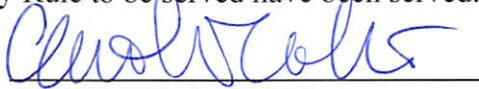
Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Appellant's Petition for Rehearing on Respondent by sending an electronic copy 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 2nd day of September, 2025.



CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General

The South Carolina Court of Appeals

The State, Appellant,

v.

Justin Tyler Anderson, Respondent.

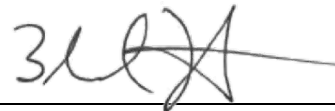
Appellate Case No. 2023-000943

ORDER

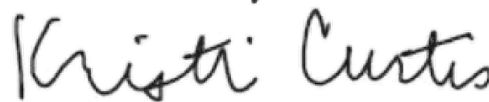
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Leland B. Greeley, Esquire
Mark Reynolds Farthing, Esquire
Kevin Scott Brackett, Esquire
Angie Bryant

FILED
Sep 10 2025