THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadre Jefferson, Circuit Court Judge

Appellate Case No. 2024-001124

The State of South Carolina, Respondent,

v.

Melshaun Antwan Robinson, Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err by denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act when the Court abused its discretion in finding Appellant did not establish by a preponderance of the evidence the requisite elements of self-defense?

STATEMENT OF THE CASE

On April 27, 2021, the City of Charleston Police Department arrested Melshaun A. Robinson ("Appellant") for Murder, Attempted Murder, and Possession of a Weapon During the Commission of a Violent Crime.

On January 26, 2023, Appellant filed a Motion to Dismiss pursuant to Section 16-11-450 of the South Carolina Code of Laws (Protection of Persons and Property Act ("the Act")). (R. 1 – 4). Appellant subsequently filed a Memorandum in Support of Immunity on June 20, 2024. (R. 278 – 285).

On June 3, 2024, the Charleston County Grand Jury indicted Appellant for Murder, Attempted Murder, and Possession of a Weapon During the Commission of a Violent Crime ("Possession of a Weapon"). (R. 1050 – 1058).

On June 20, 2024, Appellant appeared before the Honorable Deadra L. Jefferson for an evidentiary hearing on the motion to dismiss. (R. 13 – 252). Blair C. Jennings represented Appellant, and Benjamin C. Simpson and Sara Bozarth represented the State. The State then filed its Memorandum in Response to Defense's Motion to Dismiss on June 24, 2024. (R. 5 – 12).

On June 24 – 27, 2024, Appellant proceeded to trial before Judge Jefferson and a jury. (R. 321 – 1011). Blair C. Jennings represented Appellant, and Benjamin C. Simpson and Sara Bozarth prosecuted the case on behalf of the State. The jury returned guilty verdicts for Murder, the lesser-included offense of Assault and Battery, first degree, and Possession of a Weapon. (R. 992). The Trial Court sentenced Appellant to thirty-three (33) years for the Murder conviction; ten (10) years for the Assault and Battery conviction; and five (5) years for the Possession of a Weapon conviction. (R. 1009; R. 1056 – 1067).

On July 3, 2024, Appellant filed the Notice of Appeal. (R. 1068 – 1069).

On September 30, 2024, Judge Jefferson issued an Order denying the Appellant's Motion for Immunity from Prosecution after this Court had appellate jurisdiction (filed on October 8, 2024). (R. 294 - 320).

This brief of Appellant appeal follows.

STATEMENT OF THE FACTS

Background

On April 25, 2021, Appellant worked as the Assistant General Manager at the King Street Cabaret ("the club") in Charleston, an adult entertainment business where female dancers perform in various stages of undress in the main bar area and in private rooms with patrons for an agreed upon price. (R. 86, line 16 – 87, line 6). Appellant wore a medical boot and used a scooter to move around the strip club that night because of a recent surgery on his fractured foot.

Zabdiel Tinoco-Hernandez ("Decedent") and Jaziel Armenta-Zavala ("Armenta") visited the club that day. Armenta met a frequent patron of the business, Steven Laribo, and discussed receiving a joint private dance from Hannah Catherine Perlitz (formerly Manzi).[1] Armenta and Laribo negotiated with Perlitz, and they agreed to receive a joint private dance for $300.00 to $400.00, equally sharing the financial responsibility to pay for the dance.

Perlitz testified that during the joint dance, Armenta "monopolized" the dance, kept pulling her towards him, was "mimicking sex" with her by moving her around roughly and quickly, tried to put his hands in her underwear, and exposed his penis. Perlitz also testified that the private dance continued after Laribo left the room. (R. 36, line 1 – 39, line 13).

Perlitz further testified that throughout the dance she tried to "redirect" Armenta, but when he exposed himself, she terminated the dance. Perlitz testified that she does not remember the full amount that Armenta agreed to pay for the dance, but at the end of the dance, he refused to pay the agreed upon price stating, "you're trying to take advantage of me." (R. 37, line 25 – 40, line 2). Perlitz testified that an argument ensued, and she informed Armenta that she would notify the manager. Perlitz testified that Armenta responded, "Do that and I'll beat his ass." (R. 40, lines 3-

[1] This witness is listed as Hannah Manzi in the immunity hearing transcript dated June 20, 2024.

9).

Perlitz testified that the Decedent overheard the argument and offered to help pay for the private dance. The surveillance video reflects that the Decedent and Armenta remained in the club for some time after that private dance before exiting the club. Perlitz testified that she was encouraged to inform the manager about what occurred during the private dance, and she ultimately did inform Appellant about Armenta's conduct. (R. 41, line 6 – 42, line 5).

Surveillance Video Recordings

At 8:17:39 PM, the Decedent and Armenta can be seen on surveillance video recordings leaving the club. (Defense Exhibit #16 Flash Drive (DE 16 Individual Video M.R.)) At 8:17:45 PM, Appellant can be seen entering the doorway making comments to the Decedent and Armenta, and they proceed to exchange words until 8:18:14 PM when Appellant returns inside the club, and the Decedent and Armenta continue walking away from the building.

At 8:18:31 PM, Appellant is then seen on retrieving a firearm from his office. Appellant places the firearm in his back waistband and proceeds to the parking lot exiting the club at 8:18:52 PM. Appellant stops and is seen looking around the parking lot at 8:18:58 PM. From 8:19:03 PM to 8:19:11 PM, Appellant walks to the edge of the parking lot near King Street Extension.

At 8:19:30 PM, the Decedent and Armenta are in a vehicle that turns onto Courtland Avenue near King Street Extension. The Decedent's vehicle is approximately forty-five (45) feet away from Appellant when another verbal exchange occurs between Armenta and Appellant from 8:19:30 PM to 8:20:07 PM. During this verbal exchange, Armenta can be seen hanging out of the window, and Appellant is seen throwing an object purportedly causing damage to the side panel of the Decedent's vehicle. The Decedent and Armenta exit the vehicle and begin to approach Appellant.

At 8:20:26 PM, Appellant brandished his firearm and pointed it towards the Decedent and Armenta, causing Armenta to back away, and the Decedent to shield himself with a car. At 8:20:31 PM, Appellant pursued Armenta, and a physical altercation ensued at 8:20:38 PM. The Decedent also engaged in the physical altercation with Appellant at 8:20:45 PM. During this altercation, Appellant fell off the scooter that he used to walk because of his broken foot in a boot.

At 8:20:48 PM, Appellant threw the Decedent to the ground and broke free from the altercation, Appellant then fired multiple shots at the Decedent, striking him. Appellant fired five (5) additional shots at the Decedent and Armenta. The Appellant then began to hobble away from the incident location at 8:21:17 PM. The only firearm recovered from the scene was Appellant's gun.

Immunity Hearing

On June 20, 2024, Appellant appeared before Judge Jefferson for an evidentiary hearing on the Motion to Dismiss pursuant to Section 16-11-450 of the South Carolina Code of Laws. (R. 13 – 252). Defense Counsel called the following witnesses to testify at the immunity hearing: Dr. Hannah Catherine Perlitz, Steven Christopher Laribo, Heather Diamond, and Melshaun Antwan Robinson. The State then called the following witnesses to testify: Jaziel Armenta-Zavala and Detective Daniel Wilson. The parties stipulated that the Decedent "died as the result of multiple penetrating and perforating indeterminate-range gunshot wounds." (R. 297). The parties further stipulated that Armenta "suffered from two gunshot wounds. (R. 297). The first was a gunshot wound to the right hip . . . The second was a grazing gunshot wound to the front of the scalp." (R. 297).

Hannah Catherine Perlitz (formerly Manzi)

Dr. Hannah Catherine Perlitz (formerly Manzi) testified that she is currently doing her

residency in Anesthesiology at Grand Strand Hospital. (R. 25, line 15 – 26, line 8). She testified that at the time of the incident, she was in her second year of medical school at the Medical University of South Carolina in Charleston. She also testified that she was working at the club as a private dancer one (1) to three (3) times a week. Perlitz further testified that she had been working at the club for about three (3) weeks prior to the incident. (R. 28, lines 2-5).

Perlitz testified that she mainly socialized with customers at the bar and offered private dances as opposed to dancing on the stage. (R. 28, lines 18-25). Perlitz stated that semi-private dances were twenty-five (25) dollars to thirty-five (35) dollars per song, and that the club took fifty ($50) dollars per song. Perlitz testified that the dancers set the prices for private dances, and that the price typically ranged from one hundred fifty (150) to three hundred (300) dollars for fifteen (15) minutes. She testified that the club takes fifty (50) dollars per fifteen (15) minutes, and that the dancers paid the bouncer/manager at the conclusion of each private dance.

Perlitz testified that on the night of the incident, she was asked by two (2) men at the bar for a private dance (Armenta and Laribo). (R. 31, lines 12-16). Perlitz testified that it was not typical to give two (2) men a private dance at the same time, but she agreed to the joint dance as she had previously done a joint dance with a man and a woman. Perlitz testified that she witnessed Armenta drinking and believed he was intoxicated. Perlitz testified that she observed Armenta slurring his speech and swaying.

Perlitz testified that Armenta was wearing a fanny pack across his chest. (R. 33, lines 4-8). She testified that she and the two (2) men went to the private dance room together, where one gentleman would pay for the first dance, and the other gentleman would pay for the second dance. She testified that she does not remember the exact amount agreed upon for the dances. Perlitz testified that, at the time of the private dance, the two (2) men were sitting on the same couch while

she was dancing. She testified that she removed all her clothing except her underwear.

Perlitz testified that Armenta monopolized the dance and kept pulling her towards him. (R. 36, lines 1-11). She testified that Armenta was gripping her tightly, moving her around quickly and roughly, and was mimicking sex with her. She also testified that Armenta tried to put his hands inside of her underwear several times. She further testified that Armenta picked her up, dropped her, and pushed her against the wall. (R. 38, lines 9-13). Perlitz stated that she told Armenta several times to stop.

She further testified that Laribo left the dance early and the private dance continued. Perlitz testified that Armenta exposed his penis about thirteen (13) minutes into the private dance, and she decided to terminate the private dance. (R. 38, line 16 – 39, line 4). Perlitz testified that once the dance concluded Armenta paid her one hundred ($100) dollars but did not pay the agreed amount. Perlitz testified that she informed Armenta that she would have to get the manager if he did not pay.

Perlitz testified that Armenta responded, "Do that and I'll beat his ass." (R. 40, lines 3-9). She testified that she was employed at the club until the early summer of 2023. She testified that during the remainder of her employment she never encountered another patron this rough or aggressive. (R. 42, line 17 – 43, line 2). She further testified that the Decedent heard her and Armenta arguing about the money and entered the private dance room. She testified that the Decedent offered to help pay for the private dance, but she does not remember if the Decedent ever gave her money.

Perlitz testified that after her encounter with Armenta, she discussed the encounter with Laribo and another individual. She testified that the two (2) individuals encouraged her to request that Appellant ask the Decedent and Armenta to leave the club. (R. 41, lines 5-15). Perlitz further

testified that law enforcement did not follow up with her until approximately a week prior to trial. (R. 43, lines 11-24).

On cross-examination, Perlitz testified that there is no possibility that Armenta had any confusion regarding the price of the dance. She acknowledged that she did not initially share every detail with law enforcement. Specifically, Perlitz testified she did not share that Armenta exposed his penis during the private dance. Perlitz further testified that she gave a lengthy statement to the Charleston County Public Defender's investigator on June 2, 2021, but did not mention Armenta exposing his penis. Perlitz testified that she gave another statement to the Public Defender's investigator on June 10, 2021, and mentioned that Armenta exposed his penis. (R. 48, line 18 – 49, line 13).

Perlitz testified that she doesn't remember if she told Appellant that Armenta exposed his penis. However, Perlitz testified she shared with Appellant that she was uncomfortable and didn't feel safe around Armenta.

Steven C. Laribo

Steven C. Laribo testified that he is retired from the US Air force and has resided in the Charleston area since 1993. (R. 53 – 54). Laribo testified that he and his friends would meet at the club about every two (2) to three (3) months. Laribo arrived at the club around 5:00 PM to 5:30 PM on the night of the incident but none of his friends showed up to the club. He further testified that he knew Appellant from his prior experience at the club. (R. 55, lines 1-2).

Laribo testified that the he did not know Armenta's name, but remembered that he was wearing a fanny pack on the night of the incident. Laribo also could not recall the dancer's name. Laribo saw Armenta drinking and could tell that he had consumed a couple of drinks. (R. 58, line

20 – 59, line 4). This was evident to Laribo by Armenta's persistence and slurred speech. Laribo testified that Armenta was persistent in requesting a private dance from Perlitz.

Laribo testified that he and the Armenta received a "double dance." Laribo also testified that he had never participated in a "double dance" prior to the night of the incident. He testified that the "other guy" insisted on a "double" so he went ahead and did it. Laribo testified that prior to the private dance, Perlitz informed him and Armenta of the price, and they agreed to each pay for their dance.

Laribo testified that Armenta was all over Perlitz ("more aggressive" and "all over her"), and "it was pretty much the two of them." (R. 58, line 12). Laribo stated that he paid Perlitz and left the room when the song was over for his private dance. Armenta and Perlitz remained in the private room for more than one song after Laribo left the room. Laribo testified that Perlitz appeared upset after the private dance with Armenta, and he encouraged Perlitz to speak with Appellant. (R. 59, line 25 – 60, line 25).

Heather Diamond

Heather Diamond testified that she is an employee at the club and had worked there since October of 2020. (R. 64, lines 3-4). On the night of the incident, Diamond testified that she was working the reception desk area at the entrance of the club and arrived to work at 8:00 PM. Diamond testified that she typically checks at the door for identification, compliance with dress code, and takes payment for the cover charge.

Diamond testified that she noticed Armenta wearing a "sling bag" on the night of the incident. (R. 68, line 6-10). Diamond testified that she observed Appellant tell the Decedent and Armenta in the doorway of the club, "Do me a favor and don't come back." (R. 68, lines 17-25).

Diamond testified that Appellant was calm and assertive, and Armenta was "rowdy" and did not want to be told to leave.

Diamond testified that Appellant never touched the Decedent or Armenta while they were in the club. Diamond observed Appellant leave the doorway, re-enter the club, and then leave the club again. She did not observe Appellant carrying anything as he exited the club and did not witness the incident in the parking lot. Diamond also provided a statement to the police on the night of the event. (R. 71, lines 1-10).

On cross-examination, Diamond testified that the front door to the club is a heavy metal door that can be locked. She also testified she had no idea how to lock the door, but the manager would have that knowledge. She further testified that the club does not like for patrons to bring bags inside the club, but she has never checked anyone's bag.

She testified that the Decedent and Armenta were angry and yelling as they were being escorted out of the club. (R. 73, line 22 – 74, line 17). Diamond testified that Armenta and Appellant had a verbal exchange after the Decedent and Armenta were escorted out of the club. Diamond testified that the front door was open while this verbal exchanged occurred, and that she heard Appellant's words over the music but did not hear their response. She further testified that she gave a verbal statement to the police based on what she saw but does not recall giving any form of written statement to the police that night. (R. 71, line 3 – 72, line 7).

Appellant Melshuan Robinson

Appellant testified about his personal life, which included a time line of his upbringing and work history. (R. 78 – 83). He testified that he was forty-one (41) years of age and explained that he was born with Asthma. Appellant maintained that although he played sports growing up, he was unable to be his best due to asthma. Appellant also testified that at the time of the incident,

he was suffering from a work related injury to his foot. The injury required corrective surgery, including the placement of plates and screws in his foot. Appellant had to wear a boot and use a scooter to get around because he was not able to put pressure on his foot.

Appellant then went on to testify about how the club operated. Appellant was initially employed as a floor host at the club but was promoted to general manager after one and a half (1.5) years of employment. (R. 86). Appellant testified that he was employed at the club for approximately five (5) or six (6) years and was a general manager on the date of the incident.

Appellant testified that the dancers who worked on stage kept one hundred (100) percent of their money. However, the dancers who offered semi-private and private dances had to pay the club to use the private rooms. The dancers charge in fifty ($50) dollar increments and they each "settle up" and pay the general manager after each dance. There are four (4) "champagne" rooms. Appellant identified that he was sitting in the back corner of the club where he could elevate his injured foot on the date of the incident. Appellant testified that he normally would have occupied the "manager's chair." (R. 91, lines 3-24).

Appellant testified that he was not able to lock the front door from inside because it required an Allen key. Appellant testified that after he was notified of the incident between Armenta and Perlitz. Appellant testified that he told the Decedent and Armenta to leave and not come back. Specifically, he told the Decedent and Armenta, "Leave. Don't come back. We don't treat women like that in America." (R. 95, lines 17-18).

Appellant testified that while he was arguing with Armenta, the Decedent was "pretty chill." Appellant further testified that Armenta stated, "You don't want to fuck with me. I'll kill you. I'll kill everybody. I'll kill that snitching bitch." (R. 96, lines 15-17). Appellant testified that he did not take the threats seriously at first because he hears threats every night at the club.

However, Appellant testified that he did not take the threats seriously until the Armenta unzipped his satchel and placed his hand inside. Appellant testified when the Armenta unzipped his satchel, the Decedent grabbed Armenta and pulled him away from the door. Appellant testified after that exchange, he should get their vehicle plate number. Appellant then went to retrieve his firearm from inside the club.

Appellant testified that after retrieving his firearm, he went out to the parking lot to obtain the license plate number from the Decedent's vehicle in case they returned. Appellant testified that he had no intention of shooting or engaging with the Decedent and Armenta when he exited the club. Appellant heard screaming and yelling but could not tell where it was coming from until the Decedent's vehicle pulled up to the stop sign at the King Street Extension. Appellant testified that he was approximately forty-five (45) to fifty (50) feet away from the Decedent's vehicle. (R. 101, lines 2-7).

Appellant testified that he did not signal for the Decedent and Armenta to stop. (R. 104, lines 2-6). Appellant saw Armenta "hanging out of the window" stating how he was going to fuck Appellant up and kill Appellant. (R. 102, line 13-16). Appellant testified that he did not threaten the Decedent or Armenta, but simply said, "Carry y'all ass on." Appellant testified that he did not prevent the Decedent and Armenta from leaving. (R. 104, lines 9-12).

Appellant testified that Armenta threw an object out of the vehicle's window, and he picked the object up, and threw it back towards the vehicle. At that point, the Decedent and Armenta exited the vehicle and began approaching Appellant. Appellant testified that he observed Armenta reaching into his shoulder bag and that's when Appellant pulled out his firearm.

Appellant testified that he did not pull out his firearm until the Decedent and Armenta tried to trap him between two cars. (R. 104, lines 20-23). Appellant further testified that after he pulled

his firearm out, he rushed Armenta because he was trying to reaching into his shoulder bag. Appellant testified that he did not want to shoot and kill the Decedent or Armenta. Appellant testified that he only pulled out his gun to deter the Decedent and Armenta since they were approaching him.

On cross-examination, Appellant reiterated that the front door of the club cannot be locked from inside. Appellant testified that only Armenta was being "rowdy." (R. 126, lines 22-25). Appellant testified that Armenta's bag was very concerning to him, because Appellant always associates "that kind of bag" with a gun. Appellant testified that he encountered Armenta earlier in the evening when the Armenta was "balling money up" and hitting the dancers with the money. Appellant testified that he told the Armenta not to ball money up and throw it at the dancers. Appellant further testified that he had a "few more interactions" with the Armenta that night.

Appellant testified that during the verbal exchange at the doorway, he told Armenta, "If this ain't for you don't come back." Appellant testified that during the verbal exchange at the stop sign, Armenta threw a small piece of white plastic at him. Appellant reiterated that he picked up the object that he believed was thrown at him and threw it back towards the vehicle.

Appellant testified that on the night of the incident the Armenta was speaking "back and forth in Spanish." (R. 133, lines 22 – 134, lines 6). Appellant stated, "I'm not denying that I did chase them down."

On re-direct, Appellant testified that he was concerned for his safety, and the safety of everyone in the club. Appellant stated that Armenta grabbing his bag is what really scared him. Appellant testified that he told police about the threats Armenta made towards him including, "I'm going to fucking kill you punta." Appellant testified that based on his previous work experience, he understood "punta" to be a derogatory slang term.

Jaziel Armenta-Zavala

Jaziel Armenta-Zavala testified that he is originally from Mexico, came to the United States when he was thirteen (13) years old, and currently does construction work. (R. 141, line 22 – 142, line 8). He further testified that the Decedent also worked in construction and had minor children aged 12 (twelve), 9 (nine) and 4 (four) at the time of his demise.

Armenta testified that the Decedent was his brother-in-law, and they had known each other for twenty (20) years. Armenta testified that he had sold both of his four (4) wheelers that weekend and wanted to spend some of his proceeds. Prior to going to the club, the Decedent and Armenta went to Hooters to have a "couple of drinks." (R. 145, lines 5-9). The Decedent and Armenta then proceed to the club where they had a "couple" more drinks. Armenta testified that he "spoke to a female at the bar with another guy." (Hannah Perlitz and Steven Laribo).

Armenta testified that the "girls were offering dances", and that he and Laribo agreed to purchase a private dance together. Armenta testified that Laribo agreed to pay for half of the private dance, and he agreed to pay for the other half. Armenta testified that while in the private dance room, Perlitz danced with him, then she danced with Laribo, the song ended, and Perlitz went back to dancing with him.

Armenta testified that once the song ended, Laribo left the private dance room. Armenta admitted that he did touch Perlitz. Armenta further testified that when he touched Perlitz, she informed him that he was not allowed to touch her, and he stopped. Armenta testified that Perlitz continued to dance for about three (3) to four (4) songs after Laribo left the private room. Armenta denies exposing his penis during the private dance. Armenta further testified that he never prevented Perlitz from leaving the private room, and he left the room first.

Armenta testified that he and Laribo agreed to four hundred ($400) dollars for the cost of

the dance to be split equally between the two (2). Armenta testified that, at the conclusion of the dance, Perlitz requested the entire four hundred ($400) dollars from him. Armenta testified that he gave Perlitz two hundred ($200) dollars for his half of the dance, and Perlitz demanded that Armenta pay the full four hundred ($400) dollars for the dance. Armenta maintained that he offered to pay Perlitz an additional fifty ($50) dollars and gave her a total of two hundred fifty ($250) dollars for his portion of the dance.

Armenta testified that he left on his own and was not kicked out of the club. He further testified that he finished his drinks, "threw dollars," and stopped to use the bathroom before leaving the club. Armenta testified that when he exited the club, he was heading to the Decedent's vehicle and going home. As they were leaving the club, Armenta heard Appellant yelling, "If you guys are leaving, go and don't fucking come back." Armenta responded, "You don't have to worry about us. We're not coming back." (R. 154, lines 12-19).

Armenta further testified that Appellant was calling the Decedent and Armenta "punks" and "bitches." (R. 159, lines 23-24). After the verbal exchange, Appellant went back into the club and Armenta believed the altercation had ended. Armenta claimed that Appellant was yelling for them to stop they attempted to exit the parking lot in the vehicle. Armenta claimed that he lowered his window to hear what Appellant was saying and denied "cussing" at or ever threatening Appellant. (R. 158, lines 9-15).

Armenta testified that he never threw anything at the Appellant, but Appellant threw a rock at the Decedent's Vehicle. He testified that the Decedent was mad at the damage caused to his vehicle by the Appellant. Armenta testified that the Decedent and Armenta exited the vehicle and began to approach the Appellant. He then testified that it was his perception that Appellant wanted to fight. Armenta testified that they attempted to retreat when the Decedent and Armenta saw the

firearm. He testified that Appellant chased him, and Armenta tried to grab Appellant's arm. Armenta testified that Appellant shot him, and at that point, he turned to run away. As he was running away, Armenta testified that he heard four (4) to five (5) more gun shots. (R. 162, lines 7-18).

Armenta testified that he saw the Decedent run to the driver's door of the vehicle and "fade" to the ground. Armenta testified that he used his bag to hold money and camera accessories and never had a gun on the night of the incident. Armenta testified that he never said that he was going to kill anyone. (R. 163, line 22 – 164, line 13).

On cross-examination, Armenta testified that he and the Decedent went to Hooters around two (2) to three (3) o'clock on the afternoon of April 25, 2021. At Hooters, he had two (2) crown and cokes, and the Decedent was drinking beer. Armenta testified that he and the Decedent arrived at the club between five thirty (5:30 PM) and six (6:00 PM) on the night of the incident.

Armenta testified that he had previously been to the club twice before and this was his third visit. Armenta testified that he had three (3) to four (4) more crown and cokes while at the club. Armenta testified that he was not drunk but was also not aware that his blood alcohol level was 0.200. Armenta claimed that he felt fine. (R. 169, lines 15 – 170, line 14).

Armenta testified that during his verbal exchange with Appellant, he said, "We out of here bitch", but he never said, "Fuck you punta," "I'll fuck you up," or "I'll kill you." Armenta testified that when the Decedent's vehicle arrived at the corner of Courtland Avenue and King Street Extension, he was yelling out of the window, "What do you want?" (R. 174, line 2 – 175, line 8).

Armenta admitted that he originally told officers that nothing was thrown at the truck. He testified that his memory was not clear because he was under the influence of medication. Armenta also admitted that he originally told officers that Appellant came close to the Decedent's vehicle

and had his gun out when he approached the vehicle. Armenta admitted that, if the Decedent had kept driving, or if they had never approached the Appellant, none of this would have happened. (R. 179, line 21 – 180, line 3).

Detective Daniel Wilson

Detective Daniel Wilson testified that he did not find Appellant's version of events credible, as Appellant's story was inconsistent with his investigation. (R. 237, line 24 – 238, line 6). Detective Wilson testified that he believed Appellant to be the aggressor since he was the only party with a firearm. Detective Wilson also noted, when Appellant presented his firearm, the Decedent and Armenta retreated and the Appellant continued to pursue them. He also testified that all the gunshot wounds that the Decedent sustained entered from the Decedent's back.

On cross-examination, Detective Wilson admitted that there were inconsistencies in Armenta's statements. (R. 599, line 5 – 600, line 2). For example, Armenta said that he was leaving the club because it was closing not because he was being kicked out. The club was not closing at the time of the incident. Armenta also originally stated that he told Appellant, "fuck you punta." Detective Wilson further testified that a portable charger was recovered from the scene. (R. 587, line 23 – 588, line 4).

On re-direct, Detective Wilson testified that on he observed the Decedent and Armenta backing away on the surveillance video when the Appellant pulled out his firearm. Detective Wilson testified that he believed Armenta's statements were more accurate than Appellant's statements.

Circuit Court's Ruling and Order Denying Immunity

At the conclusion of the immunity hearing, the Circuit Court ruled from the bench that "the [Appellant] has failed to establish the three elements of self-defense." (R. 244, lines 5-7). The

Court specifically notes that the written order would "be filed prior to the conclusion of the trial[.]" (R. 244, lines 11-12). The Circuit Court found that Appellant was at fault in bringing on the difficulty because he "left that place of safety, and pursued these individuals." (R. 244, lines 23-24). Specifically, "I think the fact of him placing the gun in his waistband, leaving a place of safety and going out into the parking lot, fails to establish by a preponderance of the evidence that [Appellant] was without fault in bringing on the difficulty." (R. 245, lines 14-19).

The Circuit Court found, "I don't find credible somehow this thought process that [Armenta] was going to come in and shoot up the place. Nobody could have gotten the drop on him. They had the ability to see the parking lot." (R. 247, lines 21-25). The Court also noted, "Even more important, the ability to call the police if [Appellant] thought the situation was that exigent before he left a place of safety." (R. 248, lines 1-3). The Court also ruled, "I do not find it credible that he simply went to look for their license tag numbers." (R. 248, lines 7-9). The Court also ruled, "there is not evidence that the victims in this case acted initially such that it would have justified the use of deadly force." (R. 248, line 16-19). The Court further distinguished this case to "the *Dickey* case" because Dickey called the police. (R. 248, line 23 – 249, line 4).

On September 30, 2024, the Circuit Court issued an Order denying Appellant's Motion for Immunity from Prosecution after this Court had appellate jurisdiction (filed on October 8, 2024).[2] (R. 294 – 320). Specifically, the Circuit Court found "that the Appellant has failed to meet his burden of proof in that the Appellant has failed to prove, by a preponderance of the evidence, that he was justified in the use of deadly force against the Decedent and Armenta." (R. 318 – 319). The Court found that "the evidence provided confirms that the Appellant had a right to be at the

[2] The Circuit Court did not have jurisdiction over this case when it issued the written order. Therefore, this Court should not consider the written order in its analysis.

King Street Cabaret on Aril 25, 2021, however, . . . Appellant's testimony lacks veracity and the Appellant has failed to satisfy the elements of S.C. Code Ann. §16-11-440." (R. 319).

The Circuit Court found, "Not only did the Appellant fail to meet the elements of reasonable fear, but the Appellant also failed to meet the element of lack of fault in bringing on the difficulty. (R. 319). The Court also found, "Appellant has failed to meet his burden of proof in proving the elements of self-defense, save the duty to retreat, as required by law to prevail on a claim for immunity under the Protection of Persons and Property Act." (R. 319). The Circuit Court further held, "While this Court recognizes that the Appellant 'doesn't have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him.' *State v. Rash*, 182 S.C. 42, 188 S.E. 435, 438 (1936), the Court does not find that to be a credible theory to be applied in these circumstances." (R. 319).

STANDARD OF REVIEW

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

ARGUMENT

I. **THE CIRCUIT COURT ERRED BY DENYING APPELLANT IMMUNITY FROM PROSECUTION PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT BECAUSE THE COURT ABUSED ITS DISCRETION IN FINDING APPELLANT DID NOT ESTABLISH BY A PREPONDERENCE OF THE EVIDENCE THE REQUISITE ELEMENTS OF SELF-DEFENSE.**

Law

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

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

Specifically, the immunity section of the Act provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Discussion

A. The Circuit Court erred in finding Appellant failed to prove by a preponderance of the evidence that he was without fault in bringing on the difficulty.

The Circuit Court abused its discretion in finding Appellant failed to prove by a preponderance of the evidence that he was without fault in bringing on the difficulty for three (3) reasons. First, the Circuit Court abused its discretion in finding Appellant's testimony not credible

when Appellant had the right to exist the club to confirm that the Decedent and Armenta were leaving the premises and to obtain their license plate number. *See Dickey*, 394 S.C. at 500, 716 S.E.2d at 101 (finding "the State offered to prove Petitioner's fault in bringing about the harm was the act of following Boot and Stroud outside. As Petitioner had the right to eject the trespassers from the premises, his decision to exit the building and stand on the doormat to ensure their departure cannot, in and of itself, be construed as acting in bad faith."); *see Id.* 394 S.C. at 502, 716 S.E.2d at 103 (finding "Petitioner was not at fault in bringing about the harm by exiting the building.").

Second, the Circuit Court failed to specifically address whether Armenta or Appellant caused the Decedent to stop the vehicle instead of driving away. The prejudice of this issue is highlighted by Appellant not brandishing his weapon until *after* the Decedent and Armenta exited the vehicle and were approaching him in a threatening manner. *See Dickey*, 394 S.C. at 500, 716 S.E.2d at 101 (finding "the testimony is consistent that Petitioner was not brandishing his gun when they were outside, but rather, he pulled the gun from its holster when Boot and Stroud turned and began advancing toward him in an aggressive manner.") (footnote omitted).

Finally, the Circuit Court ignored Appellant's testimony that explained why he advanced on Armenta *after* Appellant brandished his weapon. Specifically, Appellant testified that he believed Armenta was reaching in his shoulder bag to get a gun, and he rushed Armenta to prevent him from gaining access to a weapon. *See Dickey*, 394 S.C. at 501, 716 S.E.2d at 102 (finding "Petitioner believed he was reaching for a deadly weapon."); *Fuller*, 297 S.C. at 443–44, 377 S.E.2d at 331 (finding a person has the right to act on appearances, even if the person's belief is ultimately mistaken). Therefore, the Circuit Court erred in finding Appellant failed to prove by a preponderance of the evidence that he was without fault in bringing on the difficulty.

B. The Circuit Court erred in finding Appellant failed to prove by a preponderance of the evidence that he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

The Circuit Court erroneously focused on Appellant's conduct *prior* to the Decedent and Armenta getting out of their vehicle, advancing towards Appellant, and Armenta unzipping the bag *after* Appellant brandished his gun. *See Fuller*, 297 S.C. at 444, 377 S.E.2d at 331 (finding "words accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense.") (quotation citation omitted). The Circuit Court did not properly consider Appellant's testimony regarding his reasonable belief for why he was afraid that Armenta may have a gun in his shoulder bag when addressing this element.

Appellant testified that he was concerned for his safety, and the safety of everyone in the club. Appellant also testified that Armenta reaching in his bag is what really scared him. *See Fuller*, 297 S.C. at 443–44, 377 S.E.2d at 331 (finding a person has the right to act on appearances, even if the person's belief is ultimately mistaken). Notably, Appellant testified that Armenta's intoxicated and aggressive conduct towards Perlitz; the specific threats to kill him, Perlitz, and the other patrons; and Armenta unzipping the bag made him believe Armenta probably had a weapon. *See State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) (finding "words accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense.") (quotation citation omitted). Therefore, the Circuit Court erred in finding Appellant failed to prove by a preponderance of the evidence that he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

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C. The Circuit Court erred in finding Appellant failed to prove by a preponderance of the evidence that the Decedent was the aggressor, and therefore, erred in finding Appellant has failed to prove by a preponderance of the evidence that a reasonably prudent man of ordinary firmness and courage, similarly situated, would have felt that he was in imminent danger of losing his life or sustaining serious bodily injury.

This Court should not consider the written order since it was filed after the Circuit Court lost jurisdiction. However, if this Court does consider the Circuit Court's written order, the Court erroneously found, "[d]ue to the [Appellant's] failure to prove, by a preponderance of the evidence, that the [Decedent] was the aggressor, [Appellant] has failed to prove by a preponderance of the evidence that a reasonably prudent man of ordinary firmness and courage, similarly situated, would have felt that he was in imminent danger of losing his life or sustaining serious bodily injury." *See State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018). The Circuit Court ignored the Decedent's and Armenta's actions. Therefore, the Circuit Court erred in finding Appellant failed to prove by a preponderance of the evidence that the Decedent was the aggressor, and therefore, erred in finding Appellant has failed to prove by a preponderance of the evidence that a reasonably prudent man of ordinary firmness and courage, similarly situated, would have felt that he was in imminent danger of losing his life or sustaining serious bodily injury.

D. The Circuit Court erred in finding Appellant failed to prove by a preponderance of the evidence that he 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.

The Court abused its discretion in focusing solely on Appellant's decision not to immediately call 911 and to exit the club when the Decedent and Armenta chose not to drive away, got out of their vehicle, and approached Appellant in a threatening manner. *See Dickey*, 394 S.C. at 502, 716 S.E.2d at 103. Appellant was outnumbered and being approached by two intoxicated men; one of whom had made recent threats to kill him, and he believed was armed based on his actions. Appellant could have put himself in more danger by attempting to flee (turning his back

to the danger given his current condition with a broken foot and asthma), particularly when he has no duty to retreat. *See State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000) (finding "[o]nce the right to fire in self-defense arises, a Appellant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act.") (citation omitted). Therefore, the Circuit Court erred in finding Appellant failed to prove by a preponderance of the evidence that he 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

E. The Circuit Court abused its discretion in finding Appellant's testimony not credible.

The Circuit Court erred in finding Appellant's testimony not credible by failing to properly acknowledge the inconsistencies in Armenta's testimony, and the corroborating witnesses who's testimony supported Appellant's version of events.

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CONCLUSION

Based on the foregoing reasons, Appellant Melshaun A. Robinson respectfully requests that this Court reverse his convictions and grant him immunity from prosecution.

Respectfully submitted,

s/ Dayne Phillips 

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadre Jefferson, Circuit Court Judge

Appellate Case No. 2024-001124

The State of South Carolina, Respondent,

v.

Melshaun Antwan Robinson, Appellant.

CERTIFICATE OF COUNSEL

The undersigned Counsel certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

s/ Dayne C. Phillips

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