THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court
Brooks Goldsmith, Circuit Court Judge

Case No. 2021-GS-07-00981
Case No. 2021-GS-07-00982
Appellate Case No. 2024-000692

The State,

Respondent,

v.

Stephan Quinton Polite,

Appellant.

FINAL BRIEF OF APPELLANT

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1. Did the trial court abuse its discretion in limiting the evidence during the immunity hearing and in its finding that the defendant was not entitled to immunity under the Protection of Persons and Property Act?

2. Did the trial court err in denying the defense's motion to impeach witness Althea Brown with multiple prior convictions older than 10 years involving dishonesty, under Rule 609(b) of the South Carolina Rules of Evidence?

STATEMENT OF THE CASE

Appellant, Stephan Quinton Polite, was indicted on charges of murder and possession of a weapon during the commission of a violent crime, in connection with the shooting death of Anthony Rivers, Jr., on May 29, 2021. R. pp. 1-4. His case was tried April 15-18, 2024, in the Beaufort County General Sessions Court, with Judge Brooks Goldsmith presiding. R. pp. 14-744. The defense moved for immunity pursuant to the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.* Following a hearing, Judge Goldsmith denied the motion for immunity. R. pp. 142-44. The case was then tried before a jury, which returned a verdict of guilty as to both charges. R. pp. 9, 726. Judge Goldsmith sentenced Appellant to concurrent terms of 30 and 5 years. R. pp. 5-8, 743.

ARGUMENT

The charges in this case stemmed from the shooting death of Anthony Rivers, Jr., on May 29, 2021. A group of friends and acquaintances had gathered for a card party in the shed at the home of Arthur Washington and Alexis Smalls at Keystone Drive on St. Helena Island in Beaufort County. Appellant was there to play cards. His cousin, Rivers (referred to in the testimony as

Anthony or A.J.) arrived in an agitated state, apparently "on" something. By all accounts, Rivers was acting crazy, cursing, being aggressive and confrontational with various persons, including Appellant. Because of Rivers' behavior, Appellant retrieved his gun from his car and, at one point, pointed it at Rivers, but did not fire it. Rivers' aggression toward Appellant continued to the point Appellant decided to leave. When Appellant attempted to go to his car, Rivers came at him and there was a physical altercation between Rivers and Appellant, but again Appellant did not fire his gun. Once Rivers was down on the ground, Appellant went to his car and started driving away. However, the one-lane driveway was blocked by an incoming car, preventing Appellant from proceeding. Rivers chased Appellant's car, started banging on it from the rear, then went to the driver's door, when the shot was fired. The accounts of witnesses differed as to whether the vehicle door was opened or the shot went through the window, and the accounts differed as to whether Rivers or Appellant opened the vehicle door.

Rivers was killed by a single gunshot. A toxicology screen showed Rivers had alcohol, marijuana, and methamphetamine in his system. His blood alcohol level was .316. Further facts are set out below in the context of the claims of error raised by Appellant in this brief.

I. THE TRIAL COURT ABUSED ITS DISCRETION IN LIMITING THE EVIDENCE DURING THE IMMUNITY HEARING AND IN ITS FINDING THE DEFENDANT WAS NOT ENTITLED TO IMMUNITY PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT.

The defense moved for immunity from prosecution pursuant to the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.* At the pre-trial immunity hearing, by agreement of the defense and the prosecution, the witness accounts were elicited through the testimony of the lead investigator for the case, Sergeant Robert Byrd of the Beaufort County Sheriff's Department. R. pp. 21, 28-30. Byrd related information provided in witness interviews by Washington, Smalls, Natasha Robinson (also referred to in the testimony as "Banger"), Althea

Brown (also referred to as Renee Brown or "Pumpkin"), and Appellant and Appellant's prior attorney, James Moss.

According to Byrd, by all accounts, when Rivers arrived he was cursing, loud, screaming, belligerent, aggressive, challenging people, and acting "crazy" or "possessed." R. pp. 42-45, 48-50, 64-65, 71, 73. Witnesses said Rivers was challenging people, even Washington, who was his best friend. R. p. 45. Rivers was described as "losing his mind," holding his head, and screaming. R. p. 42. Rivers said to Robinson, "You whacked, Banger." R. p. 43. People were asking what was going on with Rivers, and asking Rivers, "what's wrong with you?" R. pp. 43-44. Brown said something to him, and he responded, "I'm not m__f__ing." R. p. 43. Rivers patted down Akeem Chaplin, then did the same to Appellant. R. p. 44. Several people said Rivers was challenging people. R. p. 45. Rivers' friend Washington kept asking him what was wrong with him, and Rivers replied, "I'm not f__ing talking to you, Arthur." R. p. 45.

When Rivers turned his attention to Appellant, Appellant told him to calm down and chill out. R. p. 46. Appellant had been there laughing, joking, having a good time, no problems. R. p. 46. Rivers started trying to pat Appellant down and mess with Appellant, saying, "You can't kill me, you a bitch." R. p. 46. At one point Rivers "chested" or "chest pumped" Appellant and pushed Appellant to the wall, saying "You pussy ass, you're a pussy." R. pp. 47, 79. Others were asking Rivers what was wrong with him, what he was doing, and Rivers responded, "I ain't talking to you" and kept cursing. R. p. 47. His friend Washington pulled him away, but Rivers said, "F__ that, kill me." R. pp. 48-49. Washington asked what he was on, what he was taking, but Rivers simply repeated, "F__ that, kill me, smoke me, kill me." R. p. 49.

Washington and others were dealing with Rivers, trying to get Rivers out of the shed. R. pp. 49-51. During that time, Appellant left the shed, went to his car, and retrieved a firearm to put

on his side. R. pp. 50, 82. The others were trying to move Rivers from the shed, but Rivers was hanging onto the walls. R. p. 51. They were pulling him, but they could not get him off the porch. R. p. 51. Rivers and Washington both fell down on the steps, and Rivers got away from Washington and went right back in the shed. R. p. 51. When Rivers went back in, Appellant was there and pointed the gun at Rivers, but he did not fire it. R. pp. 51-52, 83-84, 88-89. They pulled Rivers out of the shed, Rivers kept cursing, and Washington told Rivers he had to leave. R. pp. 52-53. Washington also retrieved a firearm, but Smalls took it away from Washington and it was put into the shed. R. pp. 53-54. Rivers would not give up and kept trying to make runs to get into the shed. R. p. 54.

A few of the people, including Appellant, stayed in the shed to let Rivers calm down. R. p. 54. After 15 to 20 minutes, River started yelling into the shed at Appellant, saying, "I'm going to f__ you up, bitch. I'm gonna get your bitch ass." R. p. 55. At that point, Appellant did not point the gun or fire it at Rivers. Rather, Appellant said he was just going to leave. R. p. 55.

Appellant left the shed and made a "beeline" for his car, parked beside the mobile home. R. pp. 56-57. Rivers, who was with Washington in another area, got loose and went toward Appellant like he was going to "football tackle" Appellant. R. p. 57. Rivers broke away and came toward Appellant, who was trying to get to his car to leave. R. pp. 57-58. Appellant did not shoot Rivers, instead striking him twice with the gun, and a physical altercation between the two men ensued. R. pp. 58, 83-84. In that altercation, Appellant got the better of Rivers, with Rivers going down to the ground and Appellant dropping the gun. R. pp. 58-59, 84-85. Once Rivers was on the ground, Appellant picked up the gun, went to his car, and started driving away. R. pp. 59, 85.

Another car was coming in the narrow one-lane roadway, blocking Appellant's departure. R. pp. 59-61. Earlier, Appellant had called someone to come get Rivers because of how Rivers was acting, and the car driving in was there to pick Rivers up. R. pp. 60-62. As Appellant was leaving, Rivers chased Appellant's car, caught up with it, and started banging on the car. R. pp. 60-61, 85. All the witnesses agreed Rivers caught up with the car. R. pp. 61-62. At first, Rivers was at the rear of the car, but ultimately he reached the driver's window, right beside where the door opens. R. pp. 65, 67-69. After Rivers had reached the side of the car, the shot fired. R. pp. 62-63.

Robinson thought the window was rolled down and the shot went through the window, but she was not sure because others said the door opened. R. p. 63. In fact, Byrd verified the driver's side window did not work, therefore it could not have been rolled down. R. p. 64. The door had to have been opened, because the window was not broken and there were no bullet holes in the vehicle. R. pp. 63-64, 68. Brown said Appellant opened the door and shot. R. p. 61. Appellant said it was Rivers that opened the door. R. p. 69. He said Rivers slammed the door open forcefully, and was climbing into the car. R. pp. 93, 95.

The witnesses denied seeing Rivers with a weapon, but a box cutter was found in his pants pocket. R. p. 78. Byrd confirmed Rivers had a blood alcohol level of .316 and his toxicology screen was presumptively positive for amphetamines and marijuana. R. pp. 74-76, 101.

During its questioning of Byrd as to witnesses' accounts, the defense asked Byrd what evidence there was that Appellant was not in fear of Rivers. R. pp. 110-11. The state objected to this question, and the court inquired "isn't that a subjective thing though, that he was afraid?" and sustained the objection. R. p. 111. Appellant contends this ruling was erroneous, as discussed below.

After the testimony and argument by counsel, the court ruled Appellant was not entitled to immunity. The court found Appellant was not entitled to the presumption of S.C. Code Ann. § 16-11-440(A), based on the court's finding there was "no evidence [Rivers] was attempting to remove [Appellant] from the vehicle, or had forcibly tried to occupy the vehicle." R. pp. 142-43. The court further found the defense failed to establish self-defense by a preponderance of the evidence. R. p. 143. The court found Appellant was at fault because he got the gun, threatened Rivers with it, pointed and presented it, and assaulted Rivers. R. p. 143. The court found the most that was going on was banging on the car, challenging the driver, since they had just had an altercation in which Rivers was assaulted. R. pp. 143-44. Appellant contends the court erred in these rulings, as discussed below, and Appellant is entitled to a finding of immunity or, alternatively, a new immunity hearing.

A. The court erred in limiting the evidence on the issue of whether Appellant was in fear.

Under the Protection of Persons and Property Act ("the Act"), a criminal defendant is entitled to immunity from prosecution if he is found to be justified in using deadly force. *See* S.C. Code Ann. § 16-11-450(A); *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567-68 (2019); *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013); *State v. Dennis*, 444 S.C. 353, 369, 907 S.E.2d 142, 151 (Ct.App. 2024). To warrant immunity, the defendant 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. *Cervantes-Pavon*, 426 S.C. at 449, 827 S.E.2d at 568; *Curry*, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4. He has no duty to retreat if, at the time of the attack, he is in a place where he has a legal right to be. *See* S.C. Code Ann. § 16-11-440(C); *Cervantes-Pavon*, 426 S.C. at 449, 827 S.E.2d at 568. The protections afforded by

the Act are not limited to dwellings but also expressly extend to occupied vehicles. *See* S.C. Code Ann. § 16-11-440(A); *Dennis*, 444 S.C. 370-71, 907 S.E.2d at 151-52.

The defense contended Appellant was entitled to immunity from prosecution because the evidence presented in the hearing established the elements of self-defense. A key component of a claim of self-defense is whether the person who used deadly force was in fear for his safety – whether he ***actually believed*** he was in imminent danger of losing his life or sustaining serious bodily injury – and another related component is whether ***that belief was reasonable***. *See Cervantes-Pavon*, 426 S.C at 449, 827 S.E.2d at 568; *Dennis*, 444 .C. at 369, 907 S.E.2d at 151. The question defense counsel asked of Byrd – what evidence was there that the defendant was not in fear – was directly relevant to the inquiry as to the defendant's ***actual belief*** that he was in danger. R. pp. 110-11. The court erred in sustaining the objection.

The apparent basis for the court's ruling – that the question was eliciting something subjective – is flawed. The fear element of self-defense has both a subjective and an objective component. The subjective component is the defendant's ***actual belief***. The objective component is the question of the ***reasonableness of that belief***. Both components are the proper subject of questioning where an issue of self-defense is raised. The defense was entitled to explore what evidence existed on the question whether the defendant was or was not actually in fear for his safety. For the court to sustain the state's objection to the defense's questioning on the basis that it was subjective was erroneous. The question was proper, and the court's ruling sustaining the state's objection was an error of law. The ruling inappropriately limited and prejudiced the defense in its presentation of the evidence on this key element of the defendant's claim of self-defense and immunity from prosecution.

The court's ruling sustaining the objection was also improper in view of the agreement of the parties that the evidence relevant to the immunity question would be presented through the lead investigator, Byrd, without the defense having to call every witness that had spoken with the investigators. R. p. 21. The defense was seeking to elicit from Byrd what evidence had been gathered – what any witness had reported to the investigators – that suggested the defendant was not in fear. R. pp. 110-11. The state had agreed the relevant evidence on the immunity issue could come in through the lead investigator. R. p. 21. In light of that agreement, the court committed an error of law by limiting the defense in its attempt to elicit from Byrd that the investigating officers had not heard any witness account or otherwise obtained any evidence that tended to show the defendant was not in fear at the time the shot was fired.

Evidentiary rulings are governed by an abuse of discretion standard. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *Dennis*, 444 S.C. at 364, 907 S.E.2d at 148. Likewise, immunity determinations are governed by an abuse of discretion standard. *Cervantes-Pavon*, 426 S.C. at 449, 827 S.E.2d at 567; *Dennis*, 444 S.C. at 364, 907 S.E.2d at 148. An abuse of discretion occurs when the court's ruling is controlled by an error of law or when factual conclusions are without evidentiary support. *See Cervantes-Pavon*, 426 S.C. at 449, 827 S.E.2d at 567; *Black*, 400 S.C. at 16, 732 S.E.2d at 884. Where the rulings in an immunity hearing are controlled by errors of law, the appropriate remedy is to remand for a new immunity hearing. *See, e.g., State v. Glenn*, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019); *Cervantes-Pavon*, 426 S.C at 452, 827 S.E.2d at 569; *Dennis*, 444 S.C. at 368-69, 907 S.E.2d at 150-51. The court's evidentiary ruling was controlled by errors of law. Because the court improperly and prejudicially limited the defense in its presentation of the evidence in support of the claim of immunity, this Court should remand for a new immunity hearing.

B. The court erred in denying immunity from prosecution.

In its claim of immunity, the defense was relying on the elements of self-defense. It was also relying on the presumption afforded by the Act on the issue of the reasonableness of a person's fear under certain circumstances. *See* S.C. Code Ann. § 16-11-440(A). Under the statute, a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury when using deadly force if (1) the person against whom the force is used is in the process of unlawfully and forcefully entering an occupied vehicle, or if he is attempting to remove another against his will from an occupied vehicle, and (2) the person who uses deadly force knows or has reason to believe that an unlawful or forcible entry or act is occurring. *See* S.C. Code Ann. § 16-11-440(A)(1), (2). The statute contains certain enumerated exceptions, none of which are applicable here. *See* S.C. Code Ann. § 16-11-440(B) (1)-(4).

Our Supreme Court has instructed that the court considering a claim of immunity should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence, but if the defendant has failed to meet the elements of reasonable fear or duty to retreat, the court should then determine whether Section 16-11-440(A) or Section 16-11-440(C) of the Act is applicable. *See Glenn*, 429 S.C. at 118, 838 S.E.2d at 496. Moreover, in announcing its ruling, if not reduced to a written order, the court should make specific findings on the elements of self-defense on the record. *Id.*, 429 S.C. at 123, 838 S.E.2d at 499. The existence of conflicting evidence on the issue of immunity does not automatically require the court to deny immunity. *Cervantes-Pavon*, 426 S.C at 451, 827 S.E.2d at 569; *Dennis*, 444 S.C. at 368, 907 S.E.2d at 150. The fact that a victim is unarmed does not automatically prohibit immunity. *Cervantes-Pavon*, 426 S.C. at 451, 827 S.E.2d at 568. And the fact that a defendant armed himself does not, in and of itself, make him the aggressor. *Id.* Nor is it automatic that a person is not entitled to immunity

if there was some prior engagement, confrontation, or altercation between the individuals involved. *Cf. Cervantes-Pavon*, 426 S.C at 446-47, 452, 827 S.E.2d at 566, 569.

In this case, the evidence presented in the pre-trial immunity hearing was undisputed that Rivers came to the card party acting aggressively and confrontationally. He was cursing, acting crazy, and exhibiting physical aggression toward others, including Appellant. Without any provocation from Appellant, Rivers initiated physical contact with Appellant – he "chested" or "chest pumped" Appellant and pushed Appellant against the wall. It is true that Appellant retrieved a gun and pointed it, but he did not fire it and instead decided to leave, making a clear break from his earlier action of involving the firearm.

After Rivers was outside, Rivers continued to curse and attempt to get to Appellant. As Appellant was going from the shed to his car to leave, it was again Rivers that was the aggressor, breaking loose from those trying to hold him back and lunging toward Appellant, as if to tackle him. Appellant struck Rivers with the gun to subdue him but did not fire the gun at him. Once Rivers was on the ground, Appellant picked up the gun from where it had fallen, went to his car, got in, and started driving away, again making a clear break from the prior physical altercation.

As Appellant was leaving, Rivers, again the aggressor, chased after Appellant and started banging on the car, at the rear, then moved on to the driver's side and, by Appellant's account, slammed opened the driver's door and started to climb in. R. pp. 93, 95. It was only at this point that Appellant discharged the firearm.

In its ruling on the immunity issue, the court placed undue emphasis on Appellant's conduct during the earlier events – noting Appellant had threatened Rivers with the gun and pointed and presented the firearm when the men were in the shed, and noting Appellant had assaulted Rivers once they were outside – without giving due consideration to Appellant's having

broken off the confrontation and attempted to leave. The defense cited *State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319 (1999), which recognizes that a person may withdraw in good faith from a conflict and be restored to the right of self-defense. The withdrawal from the conflict need only be communicated to the other party "by word or act." *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322. It is undisputed that once Rivers was on the ground, Appellant picked up the gun, went to his car, got in, and began to drive away. This action communicated to Rivers that Appellant had withdrawn from the conflict, but Rivers again chased after Appellant, banging on the car, coming to the driver's door. The court's findings were entirely premised on the earlier conduct, which occurred before Appellant broke off the confrontation and left. The court did not give any consideration to the evidence that Appellant withdrew from the conflict, left the site where Rivers was on the ground, got in his car and attempted to leave, notwithstanding that the evidence in the record supported the defense's argument that Appellant had regained his right of self-defense. On the evidence presented, the court abused its discretion in failing to consider the issue of Appellant's regaining the right of self-defense and analyzing the elements of self-defense at that juncture, based on the evidence Rivers chased him, caught up with and pounded his vehicle, came to the driver's side, opened the door, and started to climb in.

Moreover, at that juncture, because Appellant was in his vehicle attempting to leave, the presumption of Section 16-11-440(A) had come into play, and the defense was not required to prove Appellant was in fear or that his fear was reasonable. There was evidence in the record that Rivers forcefully opened the door and was entering the vehicle. R. pp. 69, 93, 95. Under the statute, with Rivers making a forcible entry into Appellant's occupied vehicle, and Appellant having reason to believe that a forcible entry or a forcible act was occurring, Appellant was presumed to be in reasonable fear of imminent peril. *See* S.C. Code Ann. § 16-11-440(A).

The court rejected application of the presumption upon a finding there was "no evidence" Rivers "was attempting to remove the Defendant from the vehicle" or "had forcibly tried to occupy the vehicle." R. pp. 142-43. This finding amounted to an abuse of discretion, for two reasons. First, the court applied the wrong standard, misstating the language of one alternative of the statute, which allows for the presumption where the person "is in the process of unlawfully and forcefully entering" the occupied vehicle. *See* S.C. Code Ann. § 16-11-440(A)(1). Rivers' actions did not have to reach the level of "forcibly tr[ying] to occupy the vehicle," as the court articulated. R. p. 143. Rather, under the actual language of the statute, it was enough that he was in the process of unlawfully and forcefully entering the vehicle.

Second, there was evidence in the record that Rivers was in fact forcefully entering the vehicle. He had chased the car, had pounded on it from the rear, and had then gone to the driver's door. While there was some conflict among the witnesses, there was some evidence presented that it was Rivers that opened the door. R. pp. 69, 93. As noted above, conflict in the evidence does not automatically defeat a finding of immunity. *See Cervantes-Pavon*, 426 S.C at 451, 827 S.E.2d at 569; *Dennis*, 444 S.C. at 368, 907 S.E.2d at 150. Contrary to the court's finding of "no evidence," there was in fact some evidence to support the applicability of the presumption. Rivers' chasing Appellant, pounding the vehicle, reaching the driver's door and forcefully opening the door provided an evidentiary basis for applying the presumption. The court's finding there was no evidence to warrant applying the presumption was therefore an abuse of discretion. *See Black*, 400 S.C. at 16, 732 S.E.2d at 884 (an abuse of discretion occurs when the court's ruling is grounded in factual conclusions without evidentiary support). This Court should reverse the lower court's denial of immunity and find Appellant is entitled to immunity from this criminal prosecution. In the alternative, the Court should remand for a new hearing on the question of immunity.

II. THE TRIAL COURT ERRED IN NOT ALLOWING IMPEACHMENT OF ALTHEA BROWN WITH MULTIPLE PRIOR CONVICTIONS OLDER THAN 10 YEARS INVOLVING DISHONESTY, UNDER RULE 609(b), SCRE.

The defense sought to impeach one of the state's witnesses, Althea Brown, with multiple convictions for fraud and forgery that were older than 10 years, under the exception contained in Rule 609(b) of the South Carolina Rules of Evidence. That rule allows for admission of a conviction older than 10 years, in the interests of justice, where the probative value of the conviction supported by specific facts and circumstances substantially outweighs the prejudicial effect. *See* Rule 609(b), SCRE.

In addition to a conviction for breach of trust with fraudulent intent from 2019, which the state agreed was admissible, Brown had multiple additional convictions for prior crimes involving dishonesty: four convictions for fraud in 2002, multiple forgeries in 2001, another forgery in 2008, and two forgeries in 2009. R. pp. 153-55. The defense contended these numerous older convictions represented a pattern, not a random act in one's youth, which went directly to the witness's credibility and truthfulness. R. p. 155. The defense contended the ability of the jury to analyze the credibility of the witnesses was particularly crucial in this case, and these convictions were relevant. R. pp. 155-56. The defense argued the probative value was such that, in the interest of justice, the convictions should be admitted. R. p. 156. It was particularly important to impeach this witness's credibility because this witness was crucial to the state's case and said things the other eyewitnesses did not. R. pp. 156, 159, 162-63. The defense argued these specific facts and circumstances made the probative value so high that it substantially outweighed any prejudicial effect. R. pp. 162-63.

The state argued the use of the older convictions would only serve to confuse the jury and embarrass the witness. R. pp. 154, 160. The defense countered this was a sophisticated jury that

would not be confused by the multiple prior convictions of the witness, and a witness's hurt feelings or embarrassment is not the kind of prejudice contemplated by the rule. R. pp. 160-61, 163. Rather, the impeachment evidence would have zero or little prejudicial effect. R. pp. 164.

The court ruled it would not permit the older convictions to be used. R. p. 166. Upon inquiry by the defense as to the court's precise ruling, the court stated it found no factual circumstances supporting the use of the convictions or that the convictions had ***any probative value***. R. p. 170. This ruling was erroneous.

Convictions for crimes involving dishonesty are quintessential impeachment evidence. Our Supreme Court has recognized that it is the ***nature*** of the conviction that is important: it is a conviction that bears on whether jurors ought to believe a witness that qualifies the conviction to be used for impeachment. *See State v. Black*, 400 S.C. 10, 22, 732 S.E.2d 880, 887 (2012).

In *Black*, the Supreme Court addressed the admission of remote prior manslaughter convictions of a non-defendant witness. The Court noted the factors outlined in *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000), for evaluating the admissibility of remote convictions under the balancing test of the rule. *See Black*, 400 S.C. at 19, 732 S.E.2d at 885. The Court further noted that *Colf* involved impeachment of a defendant and that the non-exclusive *Colf* factors must, as a practical matter, be adjusted where the case involves impeachment of a witness who is not the defendant. *Id.*, 400 S.C. at 19, 732 S.E.2d at 885-86. The Court emphasized the importance of adequately assessing the probative value of remote convictions before balancing that against their prejudicial effect. *See Black*, 400 S.C. at 21, 732 S.E.2d at 886. The Court instructed:

> The starting point in the analysis is the degree to which the prior convictions have probative value, meaning the tendency to prove the issue at hand – the witness's propensity for truthfulness, or credibility. The tendency to impact credibility, in turn, determines the impeachment value of the prior conviction. Impeachment value refers to how strongly the nature of the conviction bears on the veracity, or credibility, of the witness.

> . . . in general, it is a conviction which bears on whether jurors ought to believe the witness or party that qualifies for impeachment purposes.
>
> The crimes which are generally spoken of as meeting this test of giving a basis for an inference of a propensity to lie and which bear directly on whether jurors ought to believe him are those which rest on dishonest conduct, . . . or carry a tinge of falsification, . . . or involve some element of deceit, untruthfulness, or falsification . . . .
>
> A rule of thumb is that convictions that rest on dishonest conduct relate to credibility, whereas crimes of violence, which may result from a myriad of causes, generally do not.

See Black, 400 S.C. at 21-22, 732 S.E.2d at 886-87 (citations omitted and internal quotation marks omitted). More recently, the Supreme Court reiterated the statement in *Black*, quoting: "Impeachment value refers to how strongly the nature of the conviction bears on the veracity, or credibility, of the witness." *See State v. Brewton*, 442 S.C. 169, 180, 898 S.E.2d 132, 137 (2024) (citation omitted).

Under the *Colf* factors, as applied in *Black*, the remote fraud and forgery convictions had a high impeachment value, the first factor, as they involved dishonesty and therefore were directly relevant to the issue of the veracity and credibility of this witness, thus weighing in favor of admissibility. *Cf. Black*, 400 S.C. at 21, 732 S.E.2d at 886 (manslaughter offenses, while crimes of violence, are not crimes of dishonesty). The second factor, the witness's subsequent history, also weighed in favor of admissibility, since this witness had a subsequent conviction for a crime involving dishonesty, breach of trust with fraudulent intent, a conviction the state conceded was proper impeachment evidence. *Cf. Black*, 400 S.C. at 21, 732 S.E.2d at 886 (witness did not have any subsequent conviction). Unlike *Black*, the first two *Colf* factors strongly weigh in favor of admissibility. As in *Black*, the third factor, similarity of the conduct, is of no consequence where the witness at issue is not the defendant. *Id.* And the fourth and fifth factors, which overlap

somewhat, concern the witness's credibility. *Id.* In this case, those factors – the importance of the witness's testimony and the centrality of the credibility issue – also weigh in favor of admissibility. The witness's testimony was vitally important to the state's case, given that she was the only witness who gave certain testimony that was unfavorable to the defense. And the credibility issue was central to the jury's deliberations – Appellant and Brown's accounts were contradictory of each other, and the ultimate finding of the jury would depend upon who the jury believed. Here, unlike in *Black*, the *Colf* factors clearly weigh toward a finding that the probative value of these convictions substantially outweighed their prejudicial effect. *Cf. Black*, 400 S.C. at 21-24, 732 S.E.2d at 886-88.

In this case, the trial court's ruling that the multiple prior convictions of Brown for fraud and forgery did not have ***any*** probative value was an error of law. Under the clear authority of *Black* and *Brewton*, crimes involving dishonesty are probative of a witness's propensity for truthfulness, veracity, and credibility, satisfying the impeachment value factor of the balancing test. *See Brewton*, 442 S.C. at 180, 898 S.E.2d at 137; *Black*, 400 S.C. at 21-22, 732 S.E.2d at 886-87. As the Court noted in *Black*, "A rule of thumb is that convictions that rest on dishonest conduct relate to credibility, whereas crimes of violence, which may result from a myriad of causes, generally do not." *Id.*, 400 S.C. at 22, 732 S.E.2d at 887 (citation omitted). Fraud and forgery are crimes involving dishonesty and, therefore, have ***some level*** of probative value on the issue of a witness's credibility. The court's finding that Brown's remote prior fraud and forgery convictions did not have ***any*** probative value amounted to an abuse of discretion. *See Black*, 400 S.C. at 16, 732 S.E.2d at 884 (abuse of discretion occurs when ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support).

The court's error in finding the convictions had no probative value also impacted the balancing test that was required to be conducted under Rule 609(b) and the cases construing that rule, including *Black*. Because the court found no probative value, it did not address the issue of prejudice or conduct a balancing test at all. As the defense argued, the witness's multiple offenses involving dishonesty demonstrated a pattern of dishonesty and were highly probative of her tendency toward untruthfulness. In this case, the jury's weighing of Brown's truthfulness was crucial, because she was the only witness that stated Appellant opened the vehicle door when the shot was fired. R. pp. 308, 310. The probative value was high, while the prejudicial effect was non-existent. The only conceivable prejudicial effect articulated by the state was potential embarrassment to the witness. R. p. 154. But, as the defense correctly responded, embarrassment to a witness is not prejudice, as contemplated by Rule 609(b). Under the circumstances of this case, the standard for admission of remote convictions under Rule 609(b) was satisfied – the probative value of these convictions substantially outweighed their prejudicial effect. *See* Rule 609(b), SCRE. The court abused its discretion in failing to allow use of these convictions to impeach the witness.

The error in refusing to allow this impeachment evidence was not harmless. Credibility of the witnesses was critical in the jury's determination of the facts surrounding the shooting, in particular, the question of who opened the car door as Appellant was attempting to leave. Althea Brown was the only witness that testified it was Appellant that did so. Had the court allowed the use of her multiple convictions for crimes of dishonesty to be used to impeach her veracity, the outcome of the jury's deliberations likely would have been different. The prejudicial effect of disallowing the use of these convictions for impeachment purposes was enhanced by the state's resting its case without calling any eyewitnesses other than Althea Brown and Natasha Robinson.

Of the numerous individuals at the scene when the shooting occurred, only two were called to testify, and one – Althea Brown – contradicted Appellant's testimony that it was Rivers that opened the door and tried to enter the vehicle. R. pp. 308, 310, 543-45. As the defense contended in renewing its objection at the directed verdict and new trial motion stages, R. pp. 451-52, 584-85, 731-33, the prejudice of disallowing the use of these convictions was substantially enhanced by the state's decision to rest its case without calling the additional eyewitnesses.

The court abused its discretion in disallowing use of the remote convictions for impeachment purposes, and the court's ruling was highly prejudicial and not harmless. This Court should reverse Appellant's conviction and remand for a new trial.

CONCLUSION

The Court should reverse the immunity ruling due to errors of law in the limitation of the evidence and in applying the applicable standard for immunity. The Court should find Appellant was entitled to immunity from this prosecution or, alternatively, remand for a new immunity determination.

The Court should also find reversible error in the court's exclusion of the remote prior convictions for impeachment purposes and remand for a new trial.

Respectfully submitted,

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