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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County
Honorable Martha Rivers, Circuit Court Judge
Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KURTINO DAMON WEATHERSBEE,

APPELLANT

APPELLATE CASE NO. 2025-000246

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act where the evidence demonstrated that Appellant was at his home at the time of the incident, Appellant had no duty to retreat, the decedent was the aggressor who had been told to leave the property by Appellant prior to the incident, and Appellant's fear of great bodily injury or death was reasonable thereby satisfying the elements of common law self-defense and the Act by a preponderance of the evidence?

STATEMENT OF THE CASE

Appellant was indicted during the February 2024 term of the Bamberg County grand jury for murder, possession of a weapon during the commission of a violent crime, and possession of a firearm by a person convicted of a violent felony. R. (Indictments). Prior to trial, Appellant moved for immunity pursuant to S.C. Code Ann. § 16-11-410 *et seq*, the Protection of Persons and Property Act. A hearing was held on October 25, 2024, before the Honorable Martha Rivers. The state was represented by David Miller. Appellant was represented by Joshua Koger, Jr. Hrg. 1. An order denying immunity was filed on December 31, 2024. R. (Order Denying Immunity). Counsel Koger moved to reconsider the denial of immunity. R. (Motion for Reconsideration). The court denied the motion to reconsider on January 15, 2025. R. (Order Denying Motion to Reconsider).

The state, represented by Mr. Miller, called the case to trial on January 28, 2025, before the Honorable Walton J. McLeod, IV, and a jury. Appellant was represented by Mr. Koger. Tr. 1. On January 30, 2025, the jury ultimately found Appellant guilty as charged. Tr. 217, ll. 11-24. Judge McLeod sentenced Appellant to thirty years' imprisonment for the murder and five years' imprisonment on each weapons charge, to be served concurrently. Tr. 225, ll. 10-19. Appellant timely filed a notice of appeal from his convictions and sentences.

This brief of appellant follows.

STANDARD OF REVIEW

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [the appellate court] reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "An abuse of discretion occurs when the trial 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, 289, 786 S.E.2d 132, 136 (2016).

ARGUMENT

The circuit court erred in denying immunity from prosecution pursuant to the Protection of Persons and Property Act where the evidence demonstrated that Appellant was at his home at the time of the incident, Appellant had no duty to retreat, the decedent was the aggressor who had been told to leave the property by Appellant prior to the incident, and that Appellant's fear of great bodily injury or death was reasonable thereby satisfying the elements of common law self-defense and the Act by a preponderance of the evidence.

Relevant Facts

The Location

Appellant lived on Cardinal Road in Bamberg, South Carolina. Hrg. 10, ll. 16-18. He had been living in the home for approximately three years and shared the mobile home with Norma Smith – his significant other – and his young son. Hrg. 7, ll. 18-25; Hrg. 9, ll. 16-18; Hrg. 55, ll. 7-16. The mobile home was situated so that the road was to the right of the home. Defense Exhibit 3. Norma, who is legally blind, required a ramp so that she could safely exit the mobile home. Hrg. 10, ll. 12-13; Hrg. 55, ll. 2-6. The ramp started on far left end of the mobile home at the front door and ran the majority of the length of the mobile home ending a few feet from the right edge of the mobile home. Defense Exhibit 1 and 5.[1] Hrg. 10, l. 10 – Hrg. 11, l. 1. The ramp terminated just prior to a set of double windows on the mobile home which were the windows to Norma's bedroom. Hrg. 56, ll. 23-24. Parked directly next to the mobile home was Appellant's red truck. Hrg. 11, ll. 16-17. Behind the mobile home was a ravine that separated the mobile home from a soy bean field. Hrg. 21, ll. 14-25.

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1 Defense Exhibit's 1-6 are photographs taken by law enforcement of the scene. In the photographs a pink colored sheet is seen covering the body of decedent. These exhibits are on file with this Court.

The only individuals who lived on Cardinal Road were Appellant, Norma, and Appellant's young son. Melissa Smith, Norma's sister-in-law, worked in home health care and had been looking after Norma for the past six years. Hrg. 67, ll. 6-14. She was also the ex-wife of the decedent, having spent one year married to him, and was present on the day of the shooting. She had arrived at Appellant and Norma's home around one that afternoon and was doing "typical cleaning" that day. Hrg. 67, l. 7 – 68, l. 5.

The Incident

August 7, 2023 started off as a normal day. Appellant was hosting a belated birthday party for his youngest son at his mobile home that afternoon. The night before, he had ordered food and party items from the Wal-Mart in Orangeburg, South Carolina, that he needed to pick up for the get together. He also wanted to donate plasma to obtain some extra cash. Appellant, along with James McCreary (the decedent, AKA Black Cat), and Josh Martin (AKA Red), left his house around ten that morning with decedent driving the trio to Orangeburg. The men donated plasma, went to Wal-Mart to pick up the items for the birthday celebration, grabbed lunch from a fast food restaurant, and stopped at Advance Auto Parts for Appellant to purchase parts to fix his truck before heading back to Appellant's home. Appellant napped in the backseat for the duration of the drive to and from Orangeburg. There were no issues between the men during the trip, they were simply "doing what we do, like we usually do." Hrg. 7, l. 1 – 9, l. 15; Hrg. 13, ll. 11-14.

The group arrived back at Appellant's home between 3:00 and 3:30 in the afternoon. Hrg. 9, ll. 1-6. Decedent had parked his vehicle parallel to the front door so they could pass the groceries over the railing. Hrg. 10, ll. 25 – 11, l. 5. Appellant was awoken by decedent cursing him out over the groceries saying "damn, I got to take you to get your damn groceries, get up and

get your f***ing groceries, you moving slow…y'all gonna make me do something, gonna give you what you want." Hrg. 12, l. 12 – 13, l. 1. Appellant then grabbed the last case of water that was in the trunk of decedent's car and brought it into the mobile home. Decedent followed Appellant into the home continuing to harass and verbally assault Appellant. Decedent stated "Mother f***ers going to respect his name" and repeatedly threatened Appellant, stating he would break Appellant's ribs and bust out Appellant's teeth. Decedent stated when he touches someone, he breaks bones. Hrg. 13, l. 3 – 15, l. 8.

Appellant responded by asking Decedent what he was doing and why he was doing it in front of the children that were present. Appellant told decedent "to get the f*** out of here – you need to leave" due to his aggressive and erratic behavior. Appellant then proceeded back outside away from the children, and Decedent followed him continuing to threaten him. Decedent then proceeded down the ramp, turned left, and got into his car. Appellant stopped at the bottom of the ramp and then went back inside the home. He proceeded to the bedroom to tell Norma that she also needed to tell decedent he was no longer welcome at their home. Hrg. 13, l. 2 – 15, l. 8. Appellant next looked through the window of his front door to see Decedent backing his car out as if to leave. Appellant noted the back end of Decedent's car was parallel with his mailbox. Hrg. 17, ll. 1-9. Appellant decided to grab the parts for his truck[2] and the charcoal to start the grill for the party because it appeared Decedent was leaving. Hrg. 16, ll. 11-21.

Appellant proceeded back outside to his truck where he could still hear the decedent "talking trash" from his vehicle. He heard decedent say "b***h" to which Appellant threw up his hands "like yo, go head on." He leaned into the toolbox on the back of his truck, and when he stood back up, Decedent was pulling back into the yard. The decedent parked his vehicle in

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[2] Appellant testified he had purchased a distributor cap and rotator for his truck. It was his estimation it would take approximately thirty minutes to repair the truck. Hrg. 18, ll. 9-23.

front of Appellant's truck, jumped out of his car, and "ran up" on Appellant stating "you better have your mother f***ing pistol." Hrg. 17, l. 1 – 20, l. 18.

Appellant's pistol was inside of his truck. Hrg. 42, ll. 15-16. He grabbed the pistol off of the seat and fired one shot over the driver's side door. The decedent was progressing towards Appellant and moved as if he was grabbing a weapon[3] from under his shirt. Appellant then proceeded to fire two more times while backing up. Hrg. 20, ll. 19-21. The decedent fell to the ground at the corner of the trailer, just to the side and front of Appellant's truck. Hrg. 21, ll. 7-8. Defense Exhibit 4. Appellant went inside the mobile home through the back door, apologized to Norma, stated the decedent would not stop, and he did not know what the decedent had going on, then stated he had to leave because he was not supposed to have a gun.[4] He proceeded into his backyard, across the ravine, and into the soybean field where he sat down. Hrg. 21, ll. 7-17. He discarded the gun in one of the "holes and wells" on the property and stated it would take an excavator to get it. Hrg. 49, ll. 19-21. Appellant smoked cigarettes in the field for about thirty-five minutes until he heard law enforcement dogs barking. He then stood up and was taken into custody. He repeatedly stated that he was acting in self-defense and had a right to defend himself on his own property. Hrg. 22, ll. 4-24.

At the time of the incident, Appellant and Decedent had known each other for approximately two and a half years. Hrg. 9, ll. 19-20; Hrg. 26, ll. 11-15. Appellant was between five-foot-seven and five-foot-eight, weighing approximately 145 pounds.[5] He believed Decedent

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3 No weapon was found on the decedent.

4 Appellant had been convicted of violent felonies when he was seventeen years old and was therefore not permitted to own a weapon.

5 The arrest warrant listed Appellant as 5' 8" weighing 166 pounds. Hrg. 92, ll. 9-14

was approximately five-foot-ten to five-foot-eleven and weighed almost 300 pounds. Hrg. 15, ll. 9-15. The autopsy report indicated Decedent was 69 inches (5' 9") and 250 pounds. Hrg. 87, ll. 17-20.

Additional Testimony At The Immunity Hearing

In addition to testifying to the incident, Appellant testified to his state of mind. When asked why he shot the decedent, Appellant stated he was in fear for his life. He explained,

> The man who's threatening you is smack -- *he's a certified smacker. That's the slang for, you know, taking somebody's life or murder*. And he's going to *break my ribs, knock my teeth out*. He's going to show me how to get rid of somebody. *I was telling him, Man, you got to leave, just go ahead and leave.* He said, Well, you know, I come with the land, I'm family. You'll be gone before me. And then he acted upon that.
>
> So I'm not from here and he just -- we never had no emotion. He never was like this. *It was just different. It was just all of a sudden.* And I kept telling him, I'm not about to fight your big ass. Like, why is you doing this? You know, all the kids in there, like, *leave*. And he bring his grands and stuff over there. I don't know what was going on with him just this day. Just this one time. And I just felt like, you know, I couldn't let him get me. I just felt like he wouldn't stop. *And I thought he had something to shoot me. He telling me I better have mine.*

Hrg. 25, l. 8 – 26, l. 3 (emphasis added). Appellant testified that he felt he had to act to save himself from an aggressive attack and that he believed it was reasonable to defend himself. Hrg. 26, ll. 4-10. Appellant maintained that he tried to defuse the situation and tried "every way to avoid it." When the decedent was "turning up" in his house, he went outside purposefully so the children would not see decedent's aggressive behavior. He begged the decedent to leave. Hrg. 28, ll. 1-24. Based on the threats that the decedent had been making, when the decedent ran up on Appellant like he was about to hit or shoot him, he believed he was in immediate danger of great bodily injury or loss of his life. Hrg. 28, l. 25 – 29, l. 7. He maintained that at the time of

the shooting, the decedent was attacking him after making numerous threats including threatening to kill Appellant, and he feared the decedent would make good on his threats. Hrg. 44, ll. 5-8.

Appellant stated that he and Decedent had not had prior problems, just a normal friendship where they would help each other out and hang out, sometimes smoking marijuana together. While they had not used any drugs together that day, Appellant felt that Decedent had used something "more than marijuana" because Decedent's behavior was so different from normal. Hrg. 31, l. 18 – 33, l. 4.

When asked about the pistol, Appellant explained that he had experienced problems during the three years he had been living in Denmark. Both his truck and the mobile home had been shot up by unknown individuals. Appellant began carrying a pistol with him in Denmark due to the threats he was facing in the community, so that he could protect himself and his family. Hrg. 30, l. 4 – 31, l. 5. He did not keep the pistol in the house because of the children. Hrg. 50, ll. 4-8. Appellant reported the shooting incidents to police and stated it would be in the "police blotters." He also stated that Decedent was in the police blotters for beating people up and threating officers in Bamberg. Hrg. 48, ll. 12-15.

The defense called two other witnesses at the immunity hearing: Norma Smith and Melissa Smith. Norma testified that when the men arrived at the home from Orangeburg, she was in her bedroom, the windows of which were directly at the end of the ramp, getting the children ready for the party. She could hear "the disruption when they entered the ramp. It was Mr. McCreary [Decedent] being belligerent and Mr. Weathersbee [Appellant] was *asking him to leave.*" Hrg. 56, ll. 16-24 (emphasis added). Norma heard the commotion and confirmed Appellant came into the bedroom to speak with her. She next heard a car driving and parking.

She heard Decedent say to Appellant "you better have something" and Appellant say "no" before she heard the gunshots. Hrg. 57, l. 4 – 58, l. 2. She went outside and was told Decedent was on the ground. She then returned inside and spoke with Appellant at the back door before he went in and sat in the soybean field. Hrg. 58, ll. 4-17. She recalled the decedent "done got out of place with us. I already heard the things that he was saying. And I could tell by the response of Mr. Weathersbee, he was asking him to leave. He asked me to ask him to leave and tell him don't come back." Hrg. 59, ll. 8-14. Norma had a sibling-like relationship[6] with the decedent and described Decedent as "arrogant sometimes, but for the most part, he was all right." On the day of the incident, Decedent was different, "a little more aggressive," out of the ordinary and not himself. Hrg. 61, ll. 6-9.

Melissa Smith testified that the first thing she recalled was Appellant coming in the home real fast and setting the water down while the decedent was walking behind Appellant talking trash. While she did not recall the specifics of the decedent's statements, she confirmed he was talking trash and that Appellant did not say anything in return. Hrg. 68, l. 18 – 69, l. 1. Melissa confirmed Appellant left the home, and Decedent followed him continuing to verbally assault Appellant. She maintained that Appellant "didn't say a thing" in response to the continued threats and trash talking by decedent. Hrg. 70, ll. 4-9. Melissa was "being nosy," so she stuck her head out of the door and saw the decedent *getting out of his car* and moving toward Appellant. She called to the decedent "James, come here" twice, but the decedent did not look at or respond to her. She then heard a gunshot and saw the decedent fall to the ground. Hrg. 70, l. 17 – 71, l. 25. She testified she attempted to render aid to the decedent and called 9-1-1. Hrg. 72, ll. 2-11. When asked why she called for the decedent while he was walking toward the red

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6 Norma, Melissa, and the decedent were all related to one another. Hrg. 78, ll. 13-16.

truck, she stated "[b]ecause, like I said, I heard him fussing when he was in the house, so I'm thinking he going to fuss some more. So I was like, James, come here. But he ain't came." Hrg. 72, ll. 6-10.

Agent Steppe testified generally regarding the scene and his investigation. Hrg. 80, l. 5-85, l. 17. The state entered the autopsy report into evidence during his testimony. The autopsy revealed that the decedent had been shot twice, once on the left side and once in the left upper back. State's Exhibit 1. The toxicology of the decedent revealed cocaine and marijuana in his blood. Hrg. 88, l. 22 – 89, l. 9. Agent Steppe admitted that the drugs found in decedent's blood could produce anxiety, paranoia, psychosis, depression, and poor judgment. Hrg. 91, ll. 2-20. He confirmed that Norma and Melissa testified consistent with their original statements to law enforcement. Hrg. 88, ll. 1-13.

Court's Ruling Denying Immunity

In the order denying immunity, the court found it subsection (A) did not apply to Appellant's case because the decedent had a right to be at Appellant's home. The court found Decedent was an invitee and that it was "not clear that he had been uninvited." Further, the court found Melissa, the care taker and non-resident, had invited decedent back onto the property prior to the fatal shooting and that she had the authority to make the invitation. The court noted that "the witness may have been calling the victim towards the door to avoid further confrontation with defendant and in an attempt to diffuse what was a volatile situation." The court continued that her intention was not relevant because at the time of the "invitation, the victim was now in a location he is authorized to be in" and thus, subsection (A) did not apply. R. (Order Denying Immunity, pg. 3-5).

Turning to subsection (C), the court found Appellant was not entitled to immunity holding,

> The court finds that the preponderance of the evidence is the men exited at the same time and the victim stopped his vehicle at the end of the ramp as he was exiting the yard. It is not clear why the victim stopped. One witness heard him threaten the defendant; the other did not. Defendant at that time is behind the door of the inoperable truck. *He had the opportunity to retreat to the back yard. These facts undercut defendant's belief that he was in imminent peril.* Defendant's witness did not feel endangered as she invited victim back into the home. Under these circumstances, the court does not find defendant's belief of imminent danger to be reasonable and denies his grant of immunity pursuant to subsection (C).

R. (Order Denying Immunity, pg. 6-7) (emphasis added).

Counsel Koger moved to reconsider the order denying immunity. In the motion, counsel argued that there was nothing in the record to support that Melissa had the authority to invite the decedent back into the home, particularly after the express directive given multiple times by Appellant that the decedent needed to leave his property. The decedent, having been told by the resident to leave, was a trespasser and attacker at the point of the fatal shooting. He also argued that Appellant had no duty to retreat because he was at his home. He argued that Appellant had shown he was entitled to immunity under both subsection (A) and (C). R. (Motion for Reconsideration). The trial court denied the motion to consider. R. (Ordering Denying Defendant's Motion to Reconsider).

Discussion

The Castle Doctrine

"One 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." State v. Gordon, 128 S.C. 422, 122 S.E. 501, 502 (1924)

(emphasis added). "Where a house, premises, or place of business is jointly occupied, used, and possessed by two persons, as by partners, joint tenants, or tenants in common, each joint occupant, being equally entitled to possession, need not retreat when attacked while in the building or premises by the other joint occupant." Id. at 426, 122 S.E. at 502. see also Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992) (discussing, in dicta, law of self-defense with respect to battered woman's syndrome and noting that a battered woman who acts while on her own premises has no duty to retreat); State v. Grantham, 224 S.C. 41, 77 S.E.2d 291 (1953) (holding that husband who shot and killed his wife while she was advancing upon him with a knife in their home was not bound to retreat in order to invoke the benefit of self-defense).

"There is no duty to retreat where an attack occurs in one's home or place of business. We have followed the general rule that the absence of a duty to retreat *also extends to the curtilage of a home.* See also 40 Am.Jur.2d § 168 ("curtilage" includes outbuildings, yard around dwelling, garden). State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489, n. 15 (1998) (emphasis added).

The Protection of Persons and Property Act

In 2006, the South Carolina General Assembly adopted the Protection of Persons and Property Act. S.C. Code Ann. § 16-11-410, et seq. The General Assembly explained its intent was 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." S.C. Code Ann. § 16-11-420(A). The General Assembly found it "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." S.C. Code Ann. § 16-11-420(B). The General Assembly recognized "that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes,

businesses, and vehicles." S.C. Code Ann. § 16-11-420(D). Finally, the General Assembly explained "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).

To effectuate this intent, the General Assembly created a statute providing for immunity from prosecution to "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law." S.C. Code Ann. § 16-11-450(A). Our Supreme Court explained that "another applicable provision of law" found within the Act "includes the common law of self-defense." State v. Glenn, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013).

"This means a defendant 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." Glenn, 429 S.C. at 18, 838 S.E.2d at 496 (internal quotation omitted). "Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. If the defendant 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." Id.

Section 16-11-440 provides in relevant part:

> (A) 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.
>
> (B) The presumption provided in subsection (A) does not apply if the person:
>
> (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder;
>
> (C) 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.

"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." Glenn at 118, 838 S.E.2d at 496. The presumption of subsection (A) does not apply, however, "if the victim has an equal right to be in the dwelling or residence." Id. "In cases where the defendant 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 the provision was enacted to extend the protections of the Castle Doctrine to other places where he has a right to be." Id. at 118-119, 838 S.E.2d at 496. "Where this section is applicable, it replaces the duty to retreat element required to establish self-defense." Id. at 119, 838 S.E.2d at 497. "In determining whether a defendant 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." Id. "Generally, a defendant 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." Id.

Self-defense

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) 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, or if the defendant was actually 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; 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 the particular instance. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011)

An individual who provokes or initiates an assault may not assert self-defense. State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide." Id.

An individual has the right to act on appearances. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000). Additionally, "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense." State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951). Furthermore, "when a person is justified in firing the first shot, he is justified in

continuing to shoot until it is apparent that the danger to his life and body has ceased." State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978).

Analysis

The order denying immunity in this case contains numerous errors of law. The court correctly found that the decedent was the aggressor and that the incident occurred on Appellant's property in and around his home. However, the court also found that Appellant was not entitled to the presumption of reasonable fear because it found the decedent had an equal right to be on Appellant's property, despite being repeatedly told to leave. Further, it imputed a duty to retreat onto Appellant when he was attacked on his property which was improper. Under the Castle Doctrine, the Act, and the common law self-defense, Appellant has shown he was entitled to immunity from prosecution.

Appellant was entitled the presumption of reasonable fear contained in 16-11-440(A) for three reasons. First, Decedent had been given multiple commands to leave and indeed had begun to leave the property by getting into his car and beginning to back out. He then returned to the property to continue to assault Appellant. At the time of the fatal shooting, Decedent had unlawfully returned onto Appellant's property as a trespasser. Appellant was within his lawful right to protect his property and home against further entry from the aggressive and erratic trespasser that had been continuously threatening him. See Wiggins (Castle Doctrine extends to curtilage of a home). Appellant was and is therefore entitled to the presumption under (A)(1).

Second, Appellant, the person who used deadly force, knew and/or had reason to believe that an unlawful and forcible act was occurring. See 16-11-440(A)(2). At the time of the shooting, Decedent was a trespasser on the property and had unlawfully returned to the property after being told to leave. Decedent had repeatedly and continuously verbally assaulted Appellant

prior to getting in his car and continued to threaten Appellant as he reversed towards the road. When he abruptly pulled back into the Appellant's yard, got out of his vehicle, and "ran up" on Appellant telling him he better have his pistol, Appellant had a reasonable belief that a forcible act against his person was about to occur. He also knew a forcible act of entry onto his property was occurring. Thus, under (A)(2) he qualifies for the reasonable presumption.

Third, Melissa Smith, who was also a guest at Appellant's home, had no authority to override the expressed command of Appellant that Decedent leave his property. The criminal trespass statute provides that "[a]ny person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative" has committed a crime. S.C. Code Ann. § 16-11-620. The statutory framework established that once a property owner or resident has warned someone not to enter, that individual lacks the lawful authority to be on the premises regardless of the invitation from another guest. See State v. Hanapole (S.C. 1970) 255 S.C. 258, 178 S.E.2d 247 (In analyzing the older version of the trespass statute it clearly for the purpose of protecting the rights of the owners or those in control of private property and the owner of such property may lawfully forbid any and all persons to enter or remain upon any part of his premises which are not devoted to public use.) The only individuals who could have re-invited Decedent back onto the property after he was told to leave and had begun to leave would have been Appellant or Norma. There is no testimony in the record that either individual re-invited

Decedent onto the property. He therefore was not in a place he had an equal right to be, and the removal provision of section (B) did not apply.

Turning to section (C), the circuit court erroneously found that Appellant had an opportunity to retreat to avoid the confrontation which undercut his belief that he was in imminent peril. Critically, Appellant had no duty to retreat, as he was standing in his yard between his truck and home. The law allowed him, as the one attacked without fault on his part on his own *premises*, to claim immunity from the law of retreat. State v. Gordon, 128 S.C. 422, 122 S.E. 501, 502 (1924). Whether there was an opportunity to retreat is not relevant. Under section (C), the court was required to analyze whether, at the time of the incident, Appellant was engaged in an unlawful activity and was attacked in another place where he had a right to be. Unquestionably, Appellant was at his home and on his property. Our Supreme Court has held that "another place" encompasses a residence. State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016) (By using the language 'but not limited to, his place of business,' we find the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographical restriction."). Therefore, he was attacked in the place he had a right to be.

Appellant was not engaged in any unlawful activity that was the proximate cause of the shooting. The bare assertion that the accused was engaged in unlawful activity at the time of the incident does not automatically bar an individual from raising a claim of immunity under the Act. Our Supreme Court has held that the trial court must perform a proximate cause analysis on the unlawful activity element to determine whether the unlawful activity was the cause of the incident. Further, the burden is on the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.

See Glenn at 121, 838 S.E.2d at 497-498 (2019) *citing* State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994). "Proximate cause is the efficient or direct cause; the thing that brings about the complained of injuries." McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 386, 684 S.E.2d 566, 569 (Ct. App. 2009). "Proximate cause is defined as the direct cause, the immediate cause, the efficient cause, or the cause without which the death would not have resulted." State v. Dantonio, 376 S.C. 594 (2008). There is nothing in the record to suggest that Appellant's owning a firearm as a felon proximately caused the death. It was the aggressive, belligerent actions of the decedent and the decedent's choice to reengage Appellant that led to the fateful encounter.

Further, Appellant's belief that the decedent was going to harm him was reasonable. The decedent was slightly taller and almost one hundred pounds heavier than Appellant. Appellant knew decedent was a "smacker", had beat people up before, and had threatened to harm law enforcement. Decedent was the only aggressor, as Appellant's only responses to him were to leave his property. Decedent indeed got in his car and began to leave the property before stopping his vehicle, getting out of it, and reengaging Appellant telling him he "better have his motherf***ing pistol." At that point, after repeatedly being verbally accosted and having the attacker disobey the direct order to leave, Appellant's fear of harm to himself was reasonable.

Appellant was attacked at his home, a place he had the right to be. He was not engaged in any unlawful activity that proximately caused the confrontation that led to the fatal shooting. Under section (C), he had no duty to retreat and had the *right* to stand his ground and meet force with force because he reasonably believed it was necessary to prevent death or great bodily injury to himself.

Decedent began the day as a guest at Appellant's home. Decedent had that status revoked when he was told repeatedly to leave the property after he verbally accosted Appellant and threated seriously bodily harm. While the order found it was not clear if Decedent had been uninvited, the testimony belies this finding. Appellant and Norma both testified that Appellant repeatedly told the decedent to leave. Further supporting that Decedent was a trespasser was that he had actually begun to leave the property, presumably at the direction of Appellant, before choosing to exit his vehicle and reengage Appellant. While Appellant was the only individual who could testify as to how far Decedent moved his car, Norma testified she heard the car moving and the door opening, and Melissa confirmed Decedent was getting out of his car at the end of the ramp when she poked her head out of the door. The testimony revealed that the car was originally parked parallel to the front door, and it was parallel to Appellant's truck at the time of the fatal shooting, corroborating that Decedent at some point got into his vehicle and backed up as if he was leaving.

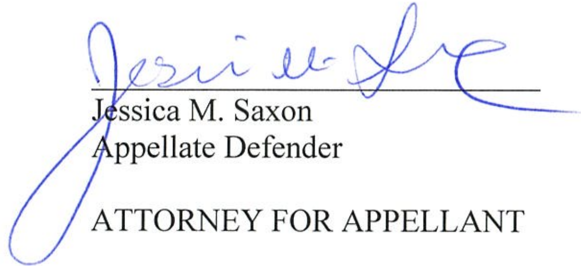
Regarding common law self-defense, Appellant has met the elements by a preponderance of the evidence. The record clearly reflects that Appellant was without fault in bringing on the difficulty. All the witnesses testified that Decedent was the aggressor, that he was continuously following Appellant around "talking trash," and threatening Appellant. Appellant was in actual imminent danger of losing his life and sustaining serious bodily injury, *and* his belief that he was in actual imminent danger was reasonable because the decedent was significantly larger than him, acting out of the ordinary, was aggressive, belligerent, likely intoxicated on cocaine and marijuana, and had reengaged after presumably beginning to leave the property. A reasonably prudent man of ordinary firmness and courage would have entertained the same belief and would have acted in the same manner to save himself from seriously bodily harm or losing his life

based on all the circumstances before the court. Because Appellant was on his own property, he had no duty to retreat.

Appellant was permitted to use deadly force under the Act, under the Castle Doctrine, and under common law self-defense. Given the totality of the circumstances he was justified in using deadly force and should be immune from prosecution.

CONCLUSION

Based on the foregoing reasons, Appellant respectfully request this Court vacate the order of the circuit court, vacate Appellant's convictions, and find Appellant is immune from prosecution.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of February, 2026.