STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Honorable Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2024-001644

THE STATE, ...RESPONDENT

v.

JABIN ELLIOTTE TRAPP, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the circuit court err 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 preponderance of the evidence the elements required for immunity under subsection 16-11-440(C) and the requisite elements of self-defense?

STATEMENT OF THE CASE

During their December, 2022 term, a Lexington County grand jury indicted Jabin Elliotte Trapp (Appellant) for the murder of Parrish Phillips (2022-GS-32-03843). (R. pp. 947–950 (Indictment)). On April 25, 2024, Appellant filed a motion for a pre-trial hearing to determine whether he was entitled to immunity from prosecution pursuant to S.C. Code Ann. § 16-11-450, also known as the Protection of Persons and Property Act (PPPA). From September 5–6, 2024, Appellant appeared before the Honorable Debra R. McCaslin for the immunity hearing represented by Robert T. Williams, Anna Yonge, and Jason Yonge while Assistant Solicitors Bruce Norton, Lucas Pincelli, and Jordan Cox represented the State. (R. p. 1). At the close of the hearing, the court denied Appellant's immunity motion, finding that Appellant did not prove the elements for immunity or self-defense by a preponderance of the evidence—and therefore was not entitled to immunity from prosecution under the PPPA. (R. pp. 243–247).

Appellant then proceeded to a jury trial before the Honorable Debra R. McCaslin from September 16–19, 2024 with both parties represented by the same attorneys at the immunity hearing. (R. p. 276). At the end of trial, the jury found Appellant guilty of murder and the trial court sentenced him to a forty-year term of imprisonment. (R. pp. 930–932, 945).

This appeal now follows.

STATEMENT OF FACTS

On June 27, 2021, a Sunday afternoon, Appellant Jabin E. Trapp shot and killed Parrish Phillips in Appellant's backyard. (R. p. 8). Parrish was unarmed, wearing flipflops, had a colostomy bag, and was holding a large bag of marijuana in his left hand at the time he was shot.[1] (R. pp. 68–69, 143–145, 170; Court's Ex. 9 (Parrish Front)). Parrish was shot on his left side and on the back shoulder. There were no bullet wounds on the front of his body. (R. pp. 144, 169, 189; Court's Exs. 9 & 21 (Parrish Side)). When Appellant was examined after being taken into custody, he did not have any physical injuries, and he did not self-report any injuries either. (R. pp. 141, 172). Appellant testified at the immunity hearing regarding what led up to the shooting, but there were no other eyewitnesses to the shooting.[2]

Background

Appellant testified that he and Parrish were friends going back about a decade and they got closer over the years through motorcycle riding and other activities. (R. pp. 16–18). He described Parrish as being somewhat of a "hothead" but emphasized that he had "never seen . . . any of that directed towards me" and that they "always had a . . . really good interaction with each other." (R. p. 19).[3] When asked about what Parrish did for a living, Appellant stated:

> A. I'm not sure really. Parrish did . . . have a pressure washing business, . . . he made a few YouTube videos and things, *but I think he did . . . a few hustles here and there, but he sold some weed and did some drug dealing . . . on the side.*

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[1] As discussed in further detail below, Parrish was generally in a poor state of health at the time of the shooting.

[2] Appellant stated that once he and Parrish started arguing, "Lizzy," Parrish's girlfriend, left the back porch and walked out of sight. (R. pp. 56, 114).

[3] Appellant claimed that he knew Parrish could be violent due to his prior imprisonment on an attempted murder (later reduced to an assault charge) and an alleged incident where Parrish was attacked by two people with a knife, but Parrish was able to disarm one of them and "slashed that person up pretty good." He also described how Parrish was injured while in prison. (R. pp. 20–23).

Q. So you were aware he sold weed?

A. *Oh yeah. I was aware that he sold weed.*

(R. p. 23, ll. 18–25) (emphasis added).

Appellant clarified that he did not smoke weed but would buy "THC cartridges" about "once a month" from Parrish over the years to help with his "anxiety." (R. p. 24). Appellant then described how Parrish came to live in his house. Parrish underwent intestinal surgery and was recovering, and he eventually asked Appellant if he could stay with him. Appellant described Parrish's wounds, including his colostomy bag as a result of the intestinal surgery and how Parrish was generally "in bad shape." (R. pp. 24–26, 70–71). Appellant described speaking to Parrish about his expectations of him as a houseguest, specifically that Parrish could not keep large amounts of cash or large amounts of drugs in the house since any charge or improper association could jeopardize Appellant's job. However, Appellant permitted Parrish to have a personal supply of marijuana. (R. pp. 29–30). Parrish eventually moved into Appellant's home in early June 2021 accompanied by his "service dog" Max and live-in girlfriend "Lizzy." Appellant generally described Parrish as a bad houseguest—often not cleaning up after himself or playing TV "really loud." Appellant also described his discomfort with Parrish's frequent home healthcare visits that took place in Appellant's living room. (R. pp. 35–37, 176–177). Appellant let Parrish stay in the master bedroom closer to the front door while Appellant stayed in the back bedroom opposite his home office. (R. p. 117; Court's Ex. 7 (Map)).

Initially, Appellant claimed he was not charging Parrish rent. (R. pp. 31–33). However, Appellant described eventually coming up with a figure and working out an agreed price of $1200 to reflect two months of rent. Parrish then gave Appellant $1200 in a wad of cash with "a rubber band on it" which made Appellant "nervous" due to his prior understanding that Parrish would not

keep large amounts of cash in the house. (R. pp. 37–38). Appellant let Parrish borrow his "Caddy" to drive around since Parrish had car troubles. (R. pp. 39–42). Appellant testified that the expectation was for Parrish to just get around as needed and to get to doctors' appointments. However, he described two instances where he caught Parrish in a lie about where he was going (Appellant could track the vehicle on his phone) and suspected that Parrish was engaging in drug transactions. (R. pp. 39–42).

On cross-examination, Appellant admitted that he knew about Parrish's possession of marijuana along with cartridges for "weed vapes" which Appellant himself would use and sell to a personal friend—despite his rule of no large amounts of cash or drugs.[4] (R. pp. 82–86). He claimed a "large amount" of cash would be $5000 and a large amount of "drug product" would be a pound. (R. p. 87). Appellant described that on Friday night, the same weekend of the shooting, Parrish was in immense pain and "walking around the house naked." Appellant then went to a friend's house to pick up "pain pills" for Parrish. (R. pp. 94–97). When asked if he knew how Parrish was getting marijuana or cartridges, Appellant stated Parrish kept "the bulk of his stuff" at his friend Aubrey's house and the rest at another friend's house. (R. p. 97). Appellant was also confronted with pictures taken from the house by law enforcement of a large yellow bin with padlocks on it in Parrish's room and a cardboard box on a dresser full of "Banger cartridges." This box of cartridges was in Appellant's bedroom. (R. pp. 98–103; Court's Exs. 4 & 5).

Regarding Max, Appellant stated that when Parrish moved in, he was not taking care of Max—meaning Appellant took over the responsibility of feeding and taking care of him. Appellant stated he never had an issue with him and that Max was never aggressive towards him. (R. pp. 90–92).

[4] Appellant also acknowledged other drug transactions with this friend. (R. pp. 84–88).

The Shooting

The second time Parrish lied about his whereabouts according to Appellant was Saturday, June 26. Appellant planned to confront him about this the following day along with his other issues as a houseguest. (R. pp. 42–43). Appellant testified that Parrish left with a friend named Aubrey Sunday morning and did not return until around 4:30 PM. (R. pp. 43–49). When he returned, Appellant and Parrish began talking outside on the back porch and Appellant began talking to Parrish about some of his issues and telling him that things were not working out, to which Parrish became "a little bit irritable . . . a little bit turned up" and started calling Appellant his "bitch," referring to the $1200 in cash given to Appellant for rent. (R. pp. 50–52). Appellant testified he told Parrish he should "find a different place" and then went inside to retrieve the $1200 Parrish had given him. When Appellant returned to the back porch, he put the envelope of money down on the high-top table and told Parrish he could put the money towards finding another place. (R. pp. 52–53; *see also* Court's Ex. 24 (Table)). At this point, Appellant also confronted Parrish about his lies regarding his use of Appellant's vehicle to conduct drug transactions, to which Parrish allegedly reacted as follows:

> [Y]ou're dead and don't even know it yet; you're . . . already dead. He's like . . . people died for knowing shit like this, and so he really gets irate at this point and gets all up in my face and telling me like . . . he owns me and that he might not be able to completely take me out right now, but that once Max gets done . . . with me there won't be nothing left but a carcass.

(R. p. 54, ll. 10–18). When asked how Parrish physically reacted, Appellant stated:

> So when . . . he got turned up, . . . he got up and started getting really animated and agitated towards me, he got up towards me, and that's when he made the comment about taking me out and that Max . . . would leave nothing but a carcass behind, *and so I actually stood up out of my chair, I said you can't talk to me like this in my house, you need to leave*, and he said I ain't fucking leaving and . . . he's right in my face . . .

(R. p. 56, ll. 1–9) (emphasis added).

Appellant then claimed Parrish "head-butted" him and stormed inside—at which point Appellant claimed he was starting to think about getting his phone and calling the police. (R. p. 56). However, Appellant stated he could not remember where his phone was and thought that he left it inside his bedroom—so he decided to follow Parrish inside towards his bedroom.[5] While in his bedroom, Appellant could not find his phone but decided to grab a handgun from his dresser. He described going back through the house to the back porch (with his gun down by his right thigh) and seeing his phone on one of the high-top chairs—at which point Parrish "bum-rush[s]" him. (R. pp. 57–59). Appellant then described Parrish attempting to grapple with him for the gun, pushing him off the back porch into the yard. Appellant stated that he was scared it would be "game over" if Parrish got him to the ground. At one point, Appellant stated that Parrish exclaimed "Max, on me" which he thought would cause Max to attack him and knock him over. Finally, Appellant gets free at some point and shoots Parrish multiple times until he collapses as he is backing away. (R. pp. 59–62).

On cross-examination, Appellant admitted he had used a "weed cartridge" that afternoon before Parrish came home. (R. p. 112). Regarding his confrontation with Parrish before they both went back inside the house, Appellant admitted that he had never previously told law enforcement that Parrish head-butted him. (R. pp. 115–116). Appellant was shown a diagram of his house and asked to identify their two bedrooms and to describe following Parrish inside the house after being headbutted. (R. pp. 116–118). When asked why he followed Parrish inside, Appellant stated:

A. Because I'm retrieving my phone so I can call the cops.

Q. Okay. Is Lizzy inside at that time?

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[5] Regarding his fear of Parrish, Appellant stated: ". . . I thought he was going to get a knife, club or something. I thought he was gonna come back and beat the crap out of me." (R. p. 56, ll. 23–25).

A. I don't know where Lizzy is.

Q. Okay. Did you think about calling out to her; hey, Lizzy, call the cops; I was just assaulted?

A. That . . . I wouldn't . . .

Q. That never crossed your mind?

A. . . . I wouldn't ask Lizzy to call the cops.

(R. p. 118, ln. 17—R. p. 119, ln. 2). Appellant emphasized he was just trying to find his phone and claimed he grabbed the handgun because he was scared—even though there was also a "combat assault shotgun" in his bedroom. (R. pp. 119–124). Despite not knowing where Parrish was at this point, Appellant emphasized he needed to go back outside to the back porch—past the front door—to retrieve his phone, since he "knew the phone was in the back because I had been working in the backyard all day." (R. p. 125). While describing being pushed around by Parrish during their struggle, Appellant claimed he never saw the bag of marijuana in Parrish's hand. (R. pp. 136–145).

Appellant's Other Statements

In addition to his testimony at the immunity hearing, Appellant gave several statements to law enforcement. Shortly after law enforcement arrived, Appellant was handcuffed and given *Miranda* warnings while being walked back to the police car. After being asked what happened, Appellant stated that Parrish was a long-time friend who was staying at his house due to recent surgeries. Appellant stated that Parrish was "doing some stuff that I didn't like him doing" and that he asked Parrish to leave. After which, Appellant claimed Parrish got really agitated. Officer Hassler asked Appellant if there was "a drug deal," to which Appellant stated "No, . . . I found out he was dealing drugs. That's why I was addressing it with him." (R. pp. 158–159; Court's Ex. 12 (Hassler BWC) at 04:40–05:45).

After Appellant was taken into custody, he was taken back to Lexington Police Department for an interview. However, shortly after the interview began, Appellant invoked his right to counsel. (Court's Ex. 27 (First Interview Video) at 24:40–26:00). Thereafter, Appellant was "sat on" by Officer Paul Walker for "several hours" while investigators prepared search warrants. (R. pp. 197–199, 208–209). Though Walker did not ask Appellant any questions regarding the shooting, Appellant spontaneously made several statements. First, Appellant stated that he had just found out that Parrish was a drug dealer and that, after that, "things went south really quickly. . . ." (R. pp. 199–201; Court's Ex. 30 (Walker BWC) at 1:25:25–1:25:40). Next, Appellant asked Walker if he had ever had to draw his weapon on somebody. When Walker told Appellant he had, Appellant stated "I was backing up, walking away . . . still coming after me. . . ." Walker advised Appellant that he had previously invoked his right to counsel and that they should not be discussing his case.[6] (R. pp. 201–202; Court's Ex. 30 at 1:32:45–1:33:40). Appellant made no further statements until he came back for a second interview accompanied by counsel. In this second interview, Appellant presented a similar story to what he testified to at the hearing. (*See* Court's Ex. 28 (Second Interview Video)).

[6] Walker emphasized that the only conversation between the two of them other than the spontaneous statements by Appellant was about things completely unrelated to the case such as barbequing.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015). "A claim of immunity under the [PPP] Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) (quoting *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

ARGUMENT

The trial court did not abuse its discretion in denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act because Appellant did not establish the elements required for immunity under the Act nor the requisite elements of self-defense by a preponderance of the evidence.

Appellant claims the trial court abused its discretion in finding Appellant did not establish by a preponderance of the evidence the elements required for immunity under S.C. Code Ann. § 16-11-440(C) and the requisite elements of self-defense. Specifically, Appellant argues that the trial court erred in finding Appellant at fault for bringing on the difficulty, that he was not in imminent danger of losing his life, and that a reasonably prudent person would not have entertained the same belief. However, Appellant's claims to immunity were entirely dependent on a claimed series of events that thoroughly lacked credibility and were inconsistent with other evidence presented by the State. In essence then, Appellant asks this Court to disturb the credibility and factual findings of the trial court which are thoroughly supported by the record. Even assuming Appellant's account was credible, he was not without fault in bringing on the difficulty and lacked justification to use deadly force. Accordingly, the trial court did not abuse its discretion in denying Appellant immunity under the PPPA.

This Court should affirm.

A. Relevant Facts

Following the close of testimony at the hearing and arguments regarding the admissibility of Parrish's prior bad acts at trial, Appellant argued he was entitled to immunity under the PPPA because he proved all the requisite elements of self-defense by a preponderance of the evidence. (R. p. 219). Regarding the element of being without fault in bringing on the difficulty, Appellant argued that Parrish was the initial aggressor who worked himself up into a rage after being told he

should leave Appellant's home; Appellant, while frantically searching for his phone to call 911, armed himself because of his fear of Parrish. But before he could get his phone and call for help, he was attacked by Parrish while on the back porch. Since Appellant was merely trying to get away from the situation, Appellant argued he was not at fault in bringing on the difficulty.[7] (R. pp. 220–223).

Regarding the element of being in actual imminent danger, Appellant cited the "eight second" struggle for the gun as speaking for itself, noting:

> . . . If Parrish gets that gun, it's probably a reverse and he's sitting here instead. So there is definitely an actual imminent danger here to [Appellant] because if Parrish gets the gun, it could kill [Appellant], and [Appellant] reacted the way a normal person would when their life is threatened by pulling the trigger and stopping Parrish from getting it. . . . He was actually in imminent danger of his own life being taken and he reacted reasonably under the circumstances.

(R. p. 223, ln. 10—R. p. 224, ln. 3).

Regarding the duty to retreat, Appellant argued:

> One, we think we've proven that he didn't have the opportunity to escape the situation. He was doing a normal reasonable thing; get his phone so he could call the police. That was the alternative here. If he . . . had his phone right away, he could have called the police. So he goes in search of his phone, he gets into . . . his back bedroom. There's no way out of the house back there once he's there. If that was a bad decision, that was a bad decision, but once he's there, he's trapped. He can't get out of that situation. He's got to go back through the house. So he comes back through the house and when he's out on the back porch, there's no opportunity for him to get away from that point. Parrish is on him.

(R. p. 224, ll. 4–18). At this point, the court interjected by asking why Appellant did not just leave his cell phone behind and go out the front door, leading to the following exchange:

> **The Court:** [W]hy is the phone so important that it would make you go back if you're scared to death of this person? Tell me that. Why would you have to go get your phone, armed with a gun, when he had the opportunity when he was in his

[7] Appellant also argued that he was entitled to arm himself on his own property and that alone would not put him at fault for bringing on the difficulty, citing *State v. Hendrix*, 270 S.C. 653, 244 S.E.2d 503 (1978).

> bedroom or office that he had to walk through? I saw the map of the house. The living room . . . the front door is that way, the back door is that way. Why?
>
> **Mr. Yonge:** Because . . . I do not think that would be a probable means of avoiding the danger that Parrish poses to him. He's gonna have to leave on foot; otherwise, he's got to go get keys . . . to a car. He's leaving on foot from his house down the road with Parrish, who's in a rage. But I'll grant you even if we can't prove . . . by a preponderance of the evidence that . . . we met this duty to retreat, . . . we still fall under Section 16-11-440(c). . . . And what that says is . . . if the defendant is not engaged in unlawful activity and he's in a place where he has a right to be, then he does not have the duty to retreat.

(R. p. 225, ln. 4—R. p. 226, ln. 2). Both the State and the court thereafter agreed that Section 440(C) would apply since both Appellant and Parrish resided at the home together at the time of the shooting. (R. p. 227).

In response, the State argued that Appellant was not entitled to immunity under Section 440(C) because Appellant was engaging in an unlawful eviction and self-admitted narcotics distribution scheme at the time of the shooting. Further, Appellant was at fault in bringing on the difficulty because he started the argument with Parrish, escalated it by trying to give back the $1200, then went to arm himself, ultimately shooting an unarmed man. Although Parrish was agitated, the State pointed out how Appellant was also getting agitated during the argument.[8] (R. pp. 227–233). Regarding Appellant's alleged fear, the State noted:

> He may not have a duty to retreat, Judge, but is that someone in fear for their life that they're going to walk through a house where they don't know where the man who's a threat to their life is with the gun behind them? He's not gonna have the gun ready for the unknown threat that could be lurking around any corner? He's gonna walk all the way through the house with the gun hidden behind him and go back to where they were arguing?

(R. p. 230, ln. 22—R. p. 231, ln. 5).

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[8] The State cited *State v. Strickland*, 389 S.C. 210, 697 S.E.2d 681 (2010) for the proposition that evidence of the defendant telling the victim "to shut his F'ing mouth" was evidence of bringing on the difficulty creating a jury question. (R. p. 233).

The State also argued Appellant was not actually in imminent danger—citing the fact that Parrish was unarmed, had medical issues (including recent surgery), and was holding a bag of marijuana at the time of his death. Finally, the State highlighted many of the inconsistencies between Appellant's various statements of what happened—arguing that these inconsistencies alone should be enough to deny immunity, especially where the physical evidence contradicted Appellant's account. (R. pp. 233–238). For example, there were several inconsistencies between his interview testimony and his testimony at the hearing. First, Appellant stated he retrieved his pistol from his "nightstand," not his dresser. (Court's Ex. 28 at 14:30–15:00). Second, Appellant claimed Parrish had grabbed both of his arms at some point during the struggle—despite Parrish being found with a large bag of marijuana in one of his hands. (*Id.* at 16:00–16:30). Third, when recalling Parrish exclaiming "Max, on me," Appellant stated that he had heard from other people that Max was a "trained attack dog" and that he thought Parrish was going to issue "some sort of attack command." At the hearing, he testified that he thought Max was going to knock him to the ground. He did not recall Max being a "trained attack dog" or any "attack command."[9] (*Id.* at 16:30–17:20; 19:30–21:00; *see also* R. p. 238).

The court took the matter under advisement and gave its ruling the following day as follows, first with respect to the elements of self-defense:

> A defendant is entitled to immunity from prosecution under the [PPPA], and I must first consider whether the defendant has proven the elements of self-defense, and there's four elements to self-defense.
>
> The defendant must be without fault in bringing on the difficulty. I listened to the testimony of the officers, *but more importantly, the testimony of the defendant* . . . and I do believe that there was a back and forth heated argument *that was started by the defendant* asking [Parrish] to leave his home. It was rather confrontational from his testimony and he *walks away from that and goes and gets a gun.* So I do

[9] The immunity hearing testimony of one of the investigators at this second interview addresses many of these inconsistencies. (*See* R. pp. 182–189).

believe that he had a part in bringing on the difficulty and under State v. Strickland words alone could be sufficient to bring about the difficulty. . . .

Looking to the second element, the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury. Now I heard testimony . . . that he feared somehow the victim was going to signal Max, the dog, to attack him. And I watched the video. That dog followed the defendant all the way out to the truck wagging his tail. The dog lived there. He was friendly with the dog. He said he's never had a problem with the animal before. In fact, he was the one who mainly took care of him.

Then I also heard testimony about the victim himself, but I did not see anything . . . that they argued on the back porch. There was a chair overturned. There wasn't anything else disturbed on that porch if that's where the confrontation happened . . . and not to mention that *the victim was unarmed* and also an occupant of the home and had a right to be there and live there. . . . *[T]he only thing the victim had in his hand was a bag of marijuana. . . .*

This Court didn't find from the testimony that he was in any actual imminent danger of losing his life or believed that he was in any danger. . . .[T]his victim, not to mention the health he was in, he had a colostomy bag . . . and then on top of that . . . the defendant also testified he knew [Parrish] for ten years *and they've never had a cross word between each other*, they got along fine. . . . I just think the defendant initiated an argument and it escalated and . . . the victim, he went inside, and then I think the defendant followed him. *So if there is any fear of being in harm, why follow him?* But . . . he goes inside, he follows him . . . and goes and gets a gun.

Now would a person of reasonably prudent ordinary firmness and courage would have entertained the same belief. I don't believe so. I think this was just an argument over rent and money and the defendant wanted him out. That was the testimony. I think it escalated. He got a gun. Whatever confrontation there was wasn't certainly one that rose to the level that they were knocking things off of the porch . . .

I know that it is a preponderance of the evidence standard, but I don't believe that there's been enough sufficient evidence showing that the defendant was in actual danger or that he reasonably believed that he was in danger. I do believe . . . that he was at fault in bringing on the difficulty . . . or partially at fault . . .

(R. p. 243, ln. 8—R. p. 246, ln. 12) (emphasis added). Regarding the applicability of Section 440(C), the court noted that even if Appellant was not engaged in unlawful activity—despite his own admissions to engaging in drug activity—the force Appellant used was not necessary to

prevent death or great bodily injury since there was no imminent fear. Accordingly, the court denied Appellant's request for immunity. (R. pp. 246–247).

B. Discussion

In South Carolina, the Protection of Persons and Property Act (PPPA) provides immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force in certain circumstances. S.C. Code Ann. § 16-11-450. The PPPA "codified the common law Castle Doctrine and extended its reach." *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 495 (2019). In order to validly claim immunity under the PPPA, our Supreme Court has concluded that a "defendant must show, by a preponderance of the evidence, that he has a valid claim of self-defense" and the circuit court must first consider, in a pretrial ruling, "all of the elements of self-defense—except the duty to retreat[]" *State v. McCarty*, 437 S.C. 355, 368, 878 S.E.2d 902, 909 (2022) (citing *Curry*, 406 S.C. at 371, 752 S.E.2d at 266). The four elements of common law self-defense are as follows:

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

Curry, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4 (quoting *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)). If the defendant fails to prove the elements of reasonable fear or the duty to retreat, the trial court must determine whether section 16-11-440(A) or (C) is applicable.

Section 16-11-440(A), "the main thrust of the Act, provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence or occupied vehicle." *Curry*, 406 S.C. at 370, 752 S.E.2d at 266. "However, the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence." *Id.* Thus, subsection (A) does not apply in the scenario of two coresidents, meaning such a defendant claiming immunity is "defaulted" into subsection (C). *See Jones*, 416 S.C. at 291–98, 786 S.E.2d at 136–40. Since Appellant and Parrish lived together in the same house at the time of the shooting, Appellant must rely on subsection (C)—provided as follows:

> 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) (emphasis added). Thus, where this subsection is applicable, it replaces the duty to retreat element of self-defense. *Curry*, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4.

In this case, the trial court correctly found that Appellant failed to prove the requisite elements of self-defense and correctly denied Appellant immunity under subsection (C). Even taking Appellant's account at face value, he failed to show he was without fault in bringing on the difficulty since he started the argument with Parrish and further escalated it, eventually arming himself and shooting Parrish. Appellant essentially did not dispute that he started the argument with Parrish—though he downplayed his own agitation and escalation of the situation. As the State noted:

> Judge, I think this case dies about two minutes [sic] into Officer Hassler's body camera where he says we got heated. We got in a heated argument. Judge, if nothing else, he . . . voluntarily enters into a heated argument with someone before anybody gets physical, before anybody gets a gun, that's bringing on the difficulty.

(R. p. 238, ll. 13–18; *see also* Court's Ex. 12 at 05:00–05:40). As the trial court correctly identified in its ruling, Appellant's own admissions to starting the argument are fatal to proving this element of his claim.

To the extent Appellant presently argues that the trial court erred for considering *Strickland*'s proposition that "words alone could be sufficient to bring about the difficulty," (*See* Brief of Appellant at 20) he fails to articulate why this was an improper use of the case. There, our Supreme Court was unambiguous in stating that evidence of someone telling another to "shut your fucking mouth" was evidence for the jury to consider whether the defendant brought on the difficulty. Specifically, the Court stated: "the question of whether *the language used was opprobrious enough* as to have reasonably been expected to bring on a difficulty is ordinarily a question of fact for the jury." *Strickland*, 389 S.C. at 215, 697 S.E.2d at 684 (citing *State v. Ferguson*, 91 S.C. 235, 242–43, 74 S.E. 502, 505 (1915)) (emphasis added). Appellant's current focus on the fact he armed himself only after Parrish got enraged ignores the fact he started and escalated the argument in the first instance. (*See* R. pp. 229, 232–233).

Second, Appellant failed to demonstrate he was actually in imminent danger of losing his life or that he reasonably believed he was in imminent danger of losing his life. Taking his account at face value may suggest he was in imminent danger, but, as argued by the State at the hearing, Appellant's inconsistencies across his various statements alone were enough to irreparably damage his credibility. And Appellant's story was simply uncorroborated by the physical evidence. Parrish was unarmed, holding a large bag of marijuana in one of his hands, wearing flipflops, and had a colostomy bag along with other medical issues putting him in generally poor health. Further, the

evidence presented by the State at the hearing showed that bullet wounds were on the side of Parrish's body—not the front—and the only evidence of a physical struggle (as Appellant described it) was an overturned chair next to the table; and yet the rest of the table/porch area was undisturbed. (*See* R. pp. 234–238). His claim that Max was going to attack him is contradicted by his own admissions that Max was never aggressive and that he took care of him.[10]

And although conflicting evidence as to the immunity issue "does not automatically require the [trial] court to deny immunity, the [trial] court must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act." *State v. Cervantes-Pavon*, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019). Thus, as the factfinder, and under the appropriate standard of review, the trial court's credibility assessments and general findings of fact should not be second guessed on appeal. *State v. Chhith-Berry*, 437 S.C. 527, 542, 878 S.E.2d 352, 360 (Ct. App. 2022) (citing *State v. Oates*, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017)); *see also State v. Pickrell*, 435 S.C. 417, 436–441, 867 S.E.2d 465, 475–478 (Ct. App. 2010) (noting in case with similar factual scenario that deferential standard of review requires appellate court to uphold factual findings of circuit court "if there is evidence to support the same."). The trial court was correct in finding Appellant's story lacking in credibility and in identifying the other probative evidence contradicting his claim that he was in imminent danger.

Appellant's claim that he was fearful of Parrish due to an alleged "violent past" is again contradicted by Appellant's own admission that there was never any prior difficulty between the two; in fact, not even a "cross word" between the two. (*See* R. pp. 211–212). All the alleged threats made by Parrish depend on Appellant's word alone which, as discussed already, was correctly

[10] Appellant's argument that the trial court ignored the evidence of Max biting one of the responding officers is irrelevant where Appellant admitted to Max never being aggressive towards him.

given little weight by the trial court. A reasonably prudent person of ordinary courage would not fatally shoot a man who was unarmed,[11] in poor health, holding a bag of marijuana, in the side of his body because of an argument over rent and money.

Thus, even assuming Appellant can prove he did not bring on the difficulty, he fails to show that he was in imminent danger of losing his life or that a reasonably prudent person in the same situation would use deadly force against Parrish. *See State v. Bixby*, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) ("Because all the elements are required to establish self-defense, we are not persuaded by Appellant's argument. It is an axiomatic principle of law that the defense has not been established *if any one element is disproven.*") (emphasis added). Additionally, although the trial court did not make a specific ruling on this issue, the evidence also suggested that Appellant was engaging in an unlawful eviction as well as unlawful drug activity—thereby precluding a finding of immunity under subsection (C). Nonetheless, the trial court correctly found that Appellant failed to prove *any* of the elements of self-defense and was correct in denying immunity as a result. This Court should affirm.

[11] *See Cervantes-Pavon*, 426 S.C. at 450–51, 827 S.E.2d at 568 (noting that while evidence of an unarmed victim does not automatically preclude immunity, it is still relevant for consideration under the PPPA).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

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