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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID MICHAEL GORDON,

APPELLANT

APPELLATE CASE NO. 2025-000408

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT

1.

The trial court erred in Appellant’s trial for first-degree assault and battery by refusing to instruct the jury on the lesser-included offense of second-degree assault and battery, where the complainant’s injury was a gash on the arm, since there was evidence to support the instruction on the lesser offense4

Standard of Review.....4
Relevant Facts.....4
Discussion.....5

2.

The trial court erred in admitting evidence that was obtained as a result of the warrantless search of Appellant’s home, where no resident gave consent to search, and where exigent circumstances were inapplicable because Appellant was already detained, since the evidence should have been excluded as fruit of the poisonous tree.....9

Standard of Review.....9
Relevant Facts.....9
Discussion.....11

3.

The trial court erred in denying immunity, where Appellant used force to remove another person who had unlawfully entered his dwelling, since Appellant established immunity pursuant to the Protection of Persons and Property Act, and since the court failed to make specific findings of fact and conclusions of law to support its ruling15

Standard of Review.....15

Relevant Facts15
Discussion17
CONCLUSION21

TABLE OF AUTHORITIES

Cases

<i>Bailey v. United States</i> , 568 U.S. 186 (2013)	11
<i>Casey v. State</i> , 305 S.C. 445, 409 S.E.2d 391 (1991).....	7
<i>Kentucky v. King</i> , 563 U.S. 452 (2011)	12, 13
<i>Lange v. California</i> , 594 U.S. 295 (2021)	12
<i>Mapp v. Ohio</i> , 367 U.S. 643 (1961).....	13
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	10
<i>Mincey v. Arizona</i> , 437 U.S. 385 (1978).....	12
<i>Missouri v. McNeely</i> , 569 U.S. 141 (2013).....	12
<i>Riley v. California</i> , 573 U.S. 373 (2014).....	12
<i>Schneekloth v. Bustamonte</i> , 412 U.S. 218 (1973).....	12
<i>State v. Adkins</i> , 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003).....	7
<i>State v. Boswell</i> , 391 S.C. 592, 707 S.E.2d 265 (2011).....	13
<i>State v. Brannon</i> , 347 S.C. 85, 552 S.E.2d 773 (Ct. App. 2001).....	12
<i>State v. Brown</i> , 362 S.C. 258, 607 S.E.2d 93 (Ct. App. 2004)	6
<i>State v. Burkhardt</i> , 350 S.C. 252, 565 S.E.2d 298 (2002)	7, 8
<i>State v. Cervantes-Pavon</i> , 426 S.C. 442, 827 S.E.2d 564, 569 (2019).....	15, 20
<i>State v. Curry</i> , 406 S.C. 364, 752 S.E.2d 263 (2013)	17, 18, 19
<i>State v. Frasier</i> , 437 S.C. 625, 879 S.E.2d 762 (2022).....	9, 11
<i>State v. Garrett</i> , 350 S.C. 613, 567 S.E.2d 523 (Ct. App. 2002).....	4
<i>State v. German</i> , 439 S.C. 449, 887 S.E.2d 912 (2023)	12
<i>State v. Gilmore</i> , 396 S.C. 72, 719 S.E.2d 688 (Ct. App. 2011).....	7

<i>State v. Glenn</i> , 429 S.C. 117, 838 S.E.2d 495 (2019)	17
<i>State v. Goldenbaum</i> , 294 S.C. 455, 365 S.E.2d 731 (1988)	7
<i>State v. Gordon</i> , 128 S.C. 422, 122 S.E. 501 (1924).....	18
<i>State v. Gourdine</i> , 322 S.C. 396, 472 S.E.2d 241 (1996)	7, 8
<i>State v. Herring</i> , 387 S.C. 201, 692 S.E.2d 490 (2009).....	13
<i>State v. Hill</i> , 315 S.C. 260, 433 S.E.2d 848 (1993)	6
<i>State v. Jones</i> , 416 S.C. 283, 786 S.E.2d 132 (2016)	15, 17, 18, 19
<i>State v. Jones</i> , 435 S.C. 138, 866 S.E.2d 558 (2021)	13
<i>State v. Khingratsaiphon</i> , 352 S.C. 62, 572 S.E.2d 456 (2002)	13
<i>State v. McCall</i> , 429 S.C. 404, 839 S.E.2d 91 (2020).....	12
<i>State v. McCarty</i> , 437 S.C. 355, 878 S.E.2d 902 (2022)	15, 20
<i>State v. Morgan</i> , 417 S.C. 338, 790 S.E.2d 27 (Ct. App. 2016).....	6
<i>State v. Rosenbaum</i> , 438 S.C. 91, 882 S.E.2d 180 (Ct. App. 2022).....	18
<i>State v. Sams</i> , 410 S.C. 303, 764 S.E.2d 511 (2014)	7, 8
<i>State v. Santiago</i> , 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006).....	4
<i>State v. Scott</i> , 424 S.C. 463, 819 S.E.2d 116 (2018).....	17, 19
<i>State v. Stoots</i> , 445 S.C. 127, 912 S.E.2d 248 (2025).....	18
<i>State v. Wilson</i> , 345 S.C. 1, 545 S.E.2d 827 (2001)	4
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	13
<i>Wong Sun v. United States</i> , 371 U.S. 471 (1963)	13

Statutes

S.C. Code Ann. § 16-3-600(A).....	6
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S.C. Code Ann. § 16-3-600(A)(2)	8
S.C. Code Ann. § 16-3-600(C)(1)(b)	5
S.C. Code Ann. § 16-3-600(D)(1)(a)	6, 8
S.C. Code Ann. § 16-3-600(D)(3)	6
S.C. Code Ann. § 16-11-420(B)	17
S.C. Code Ann. § 16-11-420(D)	17
S.C. Code Ann. § 16-11-420(E)	17
S.C. Code Ann. § 16-11-440(A)	19
S.C. Code Ann. § 16-11-450(A)	17

Constitutional Provisions

S.C. CONST. art. V, § 21	6
U.S. Const. amend. IV	11, 13

STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred in Appellant's trial for first-degree assault and battery by refusing to instruct the jury on the lesser-included offense of second-degree assault and battery, where the complainant's injury was a gash on the arm, since there was evidence to support the instruction on the lesser offense?

2.

Whether the trial court erred in admitting evidence that was obtained as a result of the warrantless search of Appellant's home, where no resident gave consent to search, and where exigent circumstances were inapplicable because Appellant was already detained, since the evidence should have been excluded as fruit of the poisonous tree?

3.

Whether the trial court erred in denying immunity, where Appellant used force to remove another person who had unlawfully entered his dwelling, since Appellant established immunity pursuant to the Protection of Persons and Property Act, and since the court failed to make specific findings of fact and conclusions of law to support its ruling?

STATEMENT OF THE CASE

On July 18, 2024, a Lancaster County Grand Jury indicted Appellant, David Gordon, for first-degree assault and battery. R. *(indictment, all pgs). Appellant was tried before the Honorable Brian M. Gibbons and a jury, from February 18 – 20, 2025. John Freeman represented Appellant. Stephanie Wood and Lisa Collins prosecuted the case. Tr. 1. Appellant was convicted as indicted. Tr. 385, ll. 16-19. He was sentenced to serve a ten-year term of incarceration. Tr. 395, ll. 3-5.

This appeal follows.

STATEMENT OF FACTS

A church allowed several homeless people to stay on some of its property (camp), which was located behind a shopping center. Tr. 143, l. 20 – 144, l. 2. Robert Chapman (Complainant) lived in the camp, as did Appellant. Two women also lived there. Complainant and Appellant lived in separate dwellings and had a “strained” relationship. Tr. 145, l. 21 – 151, l. 1. A couple of days before the incident in this case occurred, Appellant contacted Deputy Payne and said Complainant was causing problems at the camp, threatening the women. Payne tried to locate Complainant but was unable to do so prior to the events in this case. Tr. 303, ll. 1-12.

On April 16, 2024, Complainant had been using methamphetamines and other drugs. Tr. 173, l. 3 – 174, l. 22; Tr. 154, ll. 6-24. Complainant regularly carried knives and walking sticks. Tr. 197, ll. 15-22. He believed Appellant had stolen a cooler Complainant had found earlier that day. Complainant went to Appellant’s tent to confront him about the cooler. Tr. 151, ll. 9-25; Tr. 156, l. 8 – 159, l. 4. The men got in an argument and Appellant struck Complainant on the arm with a machete. Tr. 213, ll. 6-11; Tr. 224, ll. 5-13. Complainant claimed Appellant repeatedly “chopped” him with the machete. Tr. 161, l. 1-163, l. 10. He had a cut or gash on his arm when seen by paramedics. State’s Exhibits # 1 – 3.

ARGUMENT

1.

The trial court erred in Appellant's trial for first-degree assault and battery by refusing to instruct the jury on the lesser-included offense of second-degree assault and battery, where the complainant's injury was a gash on the arm, since there was evidence to support the instruction on the lesser offense.

Standard of review

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). An appellate court is bound by a trial court's factual findings unless they are clearly erroneous. *Id.*, 345 S.C. at 6, 545 S.E.2d at 829. Thus, on review, the appellate court is limited to determining whether the trial court abused its discretion. *Id.* at 6, 545 S.E.2d at 829. A trial court abuses its discretion when its ruling is unsupported by the evidence or controlled by an error of law. *State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002). “An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion.” *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

Relevant facts

Complainant claimed the injury left him disabled, with “ten to 15 percent use of my hand[.]” Tr. 141, ll. 23-24. Danny Hyatt (Hyatt), the paramedic who treated Complainant, testified Complainant had an injured arm, which was bleeding, and that such an injury could be dangerous or even fatal. According to Hyatt, at the scene Complainant had a decrease in sensation and it was hard to move his hand. Hyatt cleaned the wound, wrapped it in gauze, and provided Complainant with a cold pack. Hyatt was unaware whether Complainant was admitted

to the hospital. Tr. 223, l. 7 – 232, l. 6. There was no testimony from a doctor or other medical personnel regarding the extent of Complainant’s injuries or any resulting impairment. Sergeant Aldridge testified he believed the offer or attempt to injure Complainant would *not* have been likely to cause death but could have resulted in great bodily injury due to potential for protracted loss or scarring. Tr. 282, ll. 11-19. Photographs of the injury were introduced and the cut or gash appeared to be approximately two inches long. State’s Exhibits # 1 – 3.

Appellant requested a jury instruction on the lesser-included offense of assault and battery in the second degree. Tr. 337, l. 12 – 338, l. 10; Tr. 383, ll. 8-16. Defense counsel noted the weapon in this case was not a gun and argued that on these facts it was a jury question whether the offer or attempt to injure was accomplished by means likely to produce great bodily injury or death (first-degree assault and battery), or whether moderate bodily injury resulted or could have resulted (second-degree assault and battery). Tr. 337, l. 6 – 338, l. 10. The State opposed the charge, citing Hyatt’s testimony the injuries could have resulted in death and Complainant’s testimony he had protracted loss or impairment of a bodily member. Tr. 338, l. 11 – 340, l. 5. The court ruled it would not charge the lesser offense, referencing evidence that Appellant was “swinging wildly or whatever[.]” Tr. 339, ll. 17-25; Tr. 383, ll. 8-16.

Discussion

As applicable to these facts, a person commits the offense of assault and battery in the first degree if he unlawfully “offers or attempts to injure another person with the present ability to do so, and the act: (i) is accomplished by means likely to produce death or great bodily injury[.]” S.C. Code Ann. § 16-3-600(C)(1)(b). In contrast, a person commits the offense of assault and battery in the second degree if he “unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and: (a) moderate bodily

injury to another person results or moderate bodily injury to another person could have resulted[.]” S.C. Code Ann. § 16-3-600(D)(1)(a). Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree. S.C. Code Ann. § 16-3-600(D)(3).

For purposes of assault and battery,

(1) “Great bodily injury” means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

(2) “Moderate bodily injury” means physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

S.C. Code Ann. § 16-3-600(A). *See also State v. Morgan*, 417 S.C. 338, 339-40, 790 S.E.2d 27, 28-29 (Ct. App. 2016) (defendant pled guilty to assault and battery in the second degree based on conduct which resulted in victim sustaining serious injuries including broken arm, broken hip, and broken ribs).

The court must charge the jury on the applicable law. S.C. CONST. art. V, § 21. “The law to be charged to the jury is determined by the evidence presented at trial.” *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). “If there is any evidence to support a jury charge, the trial judge should grant the request.” *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004).

“If there is evidence in the record from which the jury could infer the defendant is guilty of the lesser-included offense, rather than the crime charged, the trial judge must instruct the jury on the lesser-included offense.” *State v. Gilmore*, 396 S.C. 72, 76, 719 S.E.2d 688, 690 (Ct. App. 2011). “The trial judge is to charge the jury on a lesser included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). “[O]ur cases consistently hold that a request to charge a lesser included offense is properly refused only when there is no evidence the defendant committed the lesser rather than the greater offense.” *Casey v. State*, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991). *See also State v. Goldenbaum*, 294 S.C. 455, 457, 365 S.E.2d 731, 732 (1988) (trial court properly refused to charge the jury on second and third-degree burglary where there was no evidence “from which the jury could infer that appellant committed second or third rather than first degree burglary”). “In determining whether the evidence requires a charge on a lesser-included offense, the Supreme Court must view the facts in the light most favorable to the defendant.” *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014).

“In reviewing jury charges for error, we must consider the court’s jury charge as a whole in light of the evidence and issues presented at trial.” *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). “A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” *Id.*, 353 S.C. at 318, 577 S.E.2d at 464. “[T]o warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” *State v. Burkhardt*, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002). “Failure to give requested jury instructions is not prejudicial error

where the instructions given afford the proper test for determining the issues.” *Id.* at 263, 565 S.E.2d at 304.

The jury could have reasonably concluded Appellant was guilty of the lesser offense of second-degree assault and battery since it could have found the gash on the arm was moderate bodily injury rather than finding the attempt to injure was likely to cause death or great bodily injury. S.C. Code Ann. § 16-3-600(D)(1)(a); S.C. Code Ann. § 16-3-600(A)(2). While the paramedic claimed the injury could have resulted in death, Officer Aldridge candidly admitted he did not believe the attempt to injure Complainant was one which was likely to cause death. Moreover, although Complainant claimed he had lost some functioning in his hand, the State presented no testimony from any medical professional and presented no medical records to substantiate this. Complainant was prone to exaggeration based on his other testimony. Photographs of the injury showed a cut or gash about two inches long. State’s Exhibits # 1 – 3.

Viewed in the light most favorable to Appellant, there was evidence to support a jury instruction on second-degree assault and battery. *Sams*, 410 S.C. at 308, 764 S.E.2d at 513. The court’s refusal of the request to charge was error. *Gourdine*, 322 S.C. at 398, 472 S.E.2d at 241. The error requires reversal since the jury was not afforded the proper test for determining the issues. *Burkhart*, 350 S.C. at 263, 565 S.E.2d at 304.

The trial court erred in admitting evidence that was obtained as a result of the warrantless search of Appellant's home, where no resident gave consent to search, and where exigent circumstances were inapplicable because Appellant was already detained, since the evidence should have been excluded as fruit of the poisonous tree.

Standard of review

“[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether reasonable suspicion exists—is a question of law subject to de novo review.” *State v. Frasier*, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022).

Relevant facts

Paramedics and City police arrived at the shopping center, which was in the City of Lancaster, since 911 was called from there and since Complainant was there. However, the incident occurred in the nearby encampment, which was outside the City, in Lancaster County. Tr. 93, l. 1 – 96, l. 9; Tr. 240, l. 3 – 244, l. 19; Tr. 269, l. 6 – 271, l. 10.

City police officers went to the camp and called Appellant to come out of the tent. Appellant, who was cooperative, did so, and they detained a shirtless and shoeless Appellant. They quickly handcuffed him and Officer Tolbert asked him where the weapon was located. Appellant stated it was under his mattress. Tolbert went into the tent and asked Rose Deese, Appellant's elderly roommate, where the machete was and she stated it was under the mattress and lifted the mattress. Officer Tolbert got the machete and took it back to the parking lot, handing it off to a county officer. Lancaster County Sheriff's Department officers read

Appellant his *Miranda v. Arizona*, 384 U.S. 436 (1966), rights and arrested him. Court's Exhibit #7; Tr. 46, l. 17 – 47, l. 10; Tr. 96, l. 10 – 97, l. 6; Tr. 240, l. 3 – 244, l. 19; Tr. 269, l. 6 – 282, l. 1.

Pretrial, Appellant moved to suppress evidence obtained from a warrantless search of his home wherein police obtained the machete. Defense counsel argued there were no exigent circumstances, noting the weapon was a knife, not a gun. The State argued there was an exigency based on the need to secure the defendant and secure the weapon since officers and another camper (Rose) were present. Tr. 34, l. 2 – 37, l. 6. The court asked the parties to address fruit of the poisonous tree, consent, and exigent circumstances. Defense counsel noted the magistrate's office was very close to the scene, and that Appellant was securely detained when law enforcement entered the tent, which was Appellant's home. Tr. 87, l. 8 – 92, l. 1.

The court heard testimony from Appellant and from Officer Tolbert, and it saw Officer Tolbert's body-worn camera footage. (Court's Exhibit #7, the body camera footage, is on file with this Court.) Appellant testified he did not give police permission to go into his home. Tr. 49, ll. 3-5. Officer Tolbert did not have a warrant. Tolbert testified he went to the camp to detain Appellant for investigative purposes and secure the weapon, as there were "officer safety issues with the individual and a machete[.]" He noted the complainant and paramedics were still at the nearby shopping center and that there could be other people in the camp. He wanted to secure the scene. Tr. 94, l. 7 – 96, l. 4.

According to Tolbert, he thought he had permission to enter the tent because Appellant had told him the machete was inside, Rose Deese was in the tent and stated she would show him the weapon, and Appellant did not tell him not to enter. Tr. 97, ll. 4-15. Tolbert admitted that no one told him, "come on in," and he admitted that Appellant posed no threat when Tolbert entered

the tent since another officer was present and Appellant was in handcuffs at that point. Tr. 101, l. 2 – 102, l. 23. Tolbert also admitted that once Appellant was in handcuffs there was nothing that prevented law enforcement from getting a search warrant. Tolbert stated he did not need a search warrant because of exigent circumstances—a violent crime. Tr. 103, l. 24 – 105, l. 3.

After hearing the testimony, defense counsel argued the circumstances were not exigent and a search warrant was required, citing the Fourth Amendment, and noting Appellant was already detained, cooperative, and shirtless and shoeless. The solicitor responded that there was a “safety issue” for the officers, paramedics, and victim. She also argued Appellant and Rose effectively gave consent, and that Rose could have touched the machete if it had not been secured. Tr. 105, l. 16 – 109, l. 13. The court denied the motion to suppress. It found exigent circumstances and consent existed, and it found Officer Tolbert’s testimony was credible. Tr. 109, ll. 17-22.

Discussion

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. The Fourth Amendment is applicable to the States through the Fourteenth Amendment. *Bailey v. United States*, 568 U.S. 186, 192 (2013).

“Warrantless searches are generally considered per se unreasonable unless they fall within a recognized exception under the Fourth Amendment. Police may search an individual if that person consents, but the burden is on the State to demonstrate consent.” *State v. Frasier*, 437 S.C. 625, 638, 879 S.E.2d 762, 769 (2022). “Law enforcement must obtain consent

voluntarily, which is a fact-intensive inquiry viewed under the totality of the circumstances.” *Id.* (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973)). “Police do not need to tell an individual that he can refuse to consent, but it is a factor in the overall analysis.” *Id.* “[A] valid finding of consent requires a suspect to be able to refuse or revoke consent.” *State v. German*, 439 S.C. 449, 467, 887 S.E.2d 912, 921 (2023). In this case, the State did not demonstrate consent to enter the home. Officer Tolbert did not ask either Appellant or Rose for consent, and neither person invited him to enter. *Cf. State v. Brannon*, 347 S.C. 85, 88, 552 S.E.2d 773, 774 (Ct. App. 2001) (defendant gave written consent to a vehicular search). The totality of circumstances did not support the judge’s finding there was consent to search the home.

“The Fourth Amendment ordinarily requires that police officers get a warrant before entering a home without permission. But an officer may make a warrantless entry when ‘the exigencies of the situation’ create a compelling law enforcement need.” *Lange v. California*, 594 U.S. 295, 298 (2021) (quoting *Kentucky v. King*, 563 U.S. 452, 460 (2011)). The “exigent circumstances” exception to the warrant requirement may be invoked where “the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.” *Missouri v. McNeely*, 569 U.S. 141, 148-49 (2013). Exigent circumstances allow “police to respond to emergency situations.” *Mincey v. Arizona*, 437 U.S. 385, 392 (1978). Exigencies may “include the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury.” *Riley v. California*, 573 U.S. 373, 402 (2014). “Generally, whether exigency exists is also determined by the totality of the circumstances.” *State v. McCall*, 429 S.C. 404, 410, 839 S.E.2d 91, 94 (2020).

There was no exigency once Appellant was securely detained and police believed the machete to be under a mattress. *Cf. State v. Herring*, 387 S.C. 201, 211, 692 S.E.2d 490, 495 (2009) (exigent circumstances exception for officer’s “precautions to protect his own safety, and the safety of the officers around him, by looking into the garage to see if the suspect was there”). The evidence was not drugs, which could have been easily destroyed. *Cf. Kentucky v. King*, 563 U.S. at 456 (officers entered apartment on belief drug-related evidence was about to be destroyed). If the police were concerned about Rose tampering with the machete, they could have asked her to come outside. She, like Appellant, was cooperative with law enforcement. The Fourth Amendment required officers to obtain a warrant to enter the home.¹

Evidence that is obtained from an unlawful search or seizure is to be excluded as “fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). *See also Terry v. Ohio*, 392 U.S. at 29 (“evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation”); *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (“evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court”); *State v. Khingratsaiphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (“Evidence seized in violation of the Fourth Amendment must be excluded from trial.”).

The court should have suppressed the machete and other derivative evidence of the unlawful search (i.e., video of the machete and officer testimony about it). U.S. Const. amend. IV; *Wong Sun*, 371 U.S. at 488. Moreover, this issue is preserved as there was a pretrial hearing on a constitutional issue. *See State v. Jones*, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021)

¹ Additionally, Tolbert was operating outside his territorial jurisdiction. *See State v. Boswell*, 391 S.C. 592, 599, 707 S.E.2d 265, 268 (2011) (territorial jurisdiction is the authority over persons, things or occurrences located in a defined geographical area). The County had not requested the City’s assistance with the case. *See Court’s Exhibits #1 – 4.*

(“[W]here a court rules after a hearing on a constitutional issue . . . the ruling is final and, unless something changes during trial that may reasonably cause the trial judge to alter the pretrial ruling, no further objection is required to preserve the issue for appellate review.”).

3.

The trial court erred in denying immunity, where Appellant used force to remove another person who had unlawfully entered his dwelling, since Appellant established immunity pursuant to the Protection of Persons and Property Act, and since the court failed to make specific findings of fact and conclusions of law to support its ruling.

Standard of review

“Circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard.” *State v. McCarty*, 437 S.C. 355, 365, 878 S.E.2d 902, 908 (2022) (quoting *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019)). “This Court, in turn, reviews an immunity determination for an abuse of discretion. *McCarty*, 437 S.C. at 365, 878 S.E.2d at 908. “An abuse of discretion occurs when the [circuit] court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Id.*, 437 S.C. at 365, 878 S.E.2d at 908 (quoting *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016)).

Relevant facts

At the pretrial immunity hearing, Appellant testified he was living in a tent covered by a tarp and framed up with wood. He had an agreement with the church to stay on the property. He had two elderly roommates. Tr. 41, l. 1 – 42, l. 7. Complainant, who lived approximately one hundred yards away, had previously threatened to hurt Appellant if he did not “stay out of his way.” Complainant was not allowed in Appellant’s tent. Appellant knew Complainant to carry a knife and a walking stick. Tr. 43, l. 14 - 44, l. 16. Appellant had called the police a number of times regarding Complainant. Tr. 45, ll. 5-9. Appellant awoke to Complainant arguing with his roommate Rose. Appellant told him to leave and Complainant refused. At the time of the

assault, Complainant was facing Appellant “like he was going to rush me or something.” Tr. 57, l. 13 – 58, l. 9. Appellant struck Complainant with the machete just outside the door to Appellant’s tent. Tr. 63, ll. 21-25. Appellant swung the machete at Complainant several times, not trying to kill him just trying to make him leave. Tr. 68, l. 23 – 69, l. 13. Appellant’s testimony was consistent with his statements to law enforcement at the scene.² Court’s Exhibit #7.

The State conceded Rose Deese, the woman who stayed in a tent under Appellant’s tarp, had given a statement in which she stated Complainant had come in “to tear things up.” However, the solicitor claimed Deese also said Appellant struck Complainant while he was leaving. Tr. 75, ll. 2-20. Early in the hearing, the judge made a finding the habitation was a dwelling. Tr. 42, ll. 8-12. Defense counsel argued Appellant was entitled to immunity because Complainant, who had methamphetamines in his system, had forcefully entered Appellant’s tent; there was a history between the two men; Appellant was at the door of his tent when the incident occurred; and Appellant had permission to be camped on the land. Tr. 74, l. 5 – 79, l. 3. The solicitor argued Appellant should not receive immunity because Complainant was not attacking Appellant but had gone into the tent looking for his cooler and was simply “pushing [Appellant’s] buttons.” Tr. 79, ll. 8-16.

At the conclusion of the hearing, the judge stated he was making a decision based on Appellant’s testimony. Tr. 79, ll. 17-21. The court ruled, “I’m going to deny your motion for immunity. I find the defendant has failed to sustain his burden of proof to prove that he is

² The solicitor played portions of several exhibits during her cross-examination of Appellant, and the court had already seen Officer Tolbert’s body-worn camera footage. It appears these exhibits may have included: Court’s Exhibit #7, State’s Exhibit #5; State’s Exhibit #6, and State’s Exhibit #10. (State’s Exhibit #4 is the same as Court’s Exhibit #7.) These exhibits are on file with this Court.

immune from prosecution.” Tr. 79, ll. 22-25. “[T]he defendant can claim [self-defense] and I’m not preventing him from claiming that but he is not immune from prosecution under the law.” Tr. 80, ll. 12-14.

Discussion

Sections 16-11-410 – 16-11-450, the Protection of Persons and Property Act (Act) codified the common law Castle Doctrine and extended its reach. *State v. Glenn*, 429 S.C. at 117, 838 S.E.2d at 495; *State v. Curry*, 406 S.C. 364, 369, 752 S.E.2d 263, 265 (2013). “[I]t is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.” S.C. Code Ann. § 16-11-420(B). “[P]ersons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes[.]” S.C. Code Ann. § 16-11-420(D). “[N]o 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).

“A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force[.]” S.C. Code Ann. § 16-11-450(A). “[A]nother applicable provision of law’ includes the common law of self-defense.” *State v. Glenn*, 429 S.C. at 117–18, 838 S.E.2d at 496 (citing *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018); *State v. Jones*, 416 S.C. 283, 300 n. 8, 786 S.E.2d 132, 141 n. 8 (2016). “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.’” *State v. Glenn*, 429 S.C. at 118, 838 S.E.2d at 496 (quoting *Curry*, 406 S.C. at 372,

752 S.E.2d at 267). “Under the Castle Doctrine, ‘[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense.’” *State v. Jones*, 416 S.C. at 291, 786 S.E.2d at 136 (quoting *State v. Gordon*, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924)).

The four traditional elements of self-defense are: (1) The defendant was without fault in bringing on the difficulty; (2) The defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant’s actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief; and (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. *State v. Stoots*, 445 S.C. 127, 134, 912 S.E.2d 248, 252 (2025).

However, since the Act excuses the duty to retreat, “a defendant seeking immunity under the Act must prove he was acting in self-defense by showing: (1) he was without fault in bringing on the difficulty; (2) he was in imminent danger of death or serious bodily injury or believed he was in such danger; and (3) if the defense is based on an actual belief of imminent danger, a reasonably prudent person of ordinary firmness and courage would have held the same belief.” *State v. Rosenbaum*, 438 S.C. 91, 103, 882 S.E.2d 180, 186 (Ct. App. 2022).

“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.” *State v. Curry*, 406 S.C. at 370, 752 S.E.2d at 266.

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A). “[I]f a person seeking immunity under subsection 16-11-450(A) c[an] prove the elements of self-defense in an immunity proceeding, immunity must be granted.” *State v. Scott*, 424 S.C. at 473, 819 S.E.2d at 120–21.

If the presumption of reasonable fear from subsection (A) applies, the defendant does not need to prove he believed he was in imminent danger. *See State v. Jones*, 416 S.C. at 301, 786 S.E.2d at 141 (“if section 16–11–440(A) applies, there is no requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A)”).

The court erred in denying immunity. In applying the four elements of self-defense to this case, Appellant met the first element of self-defense: he was without fault in bringing on the difficulty. The evidence at the immunity hearing showed Appellant was asleep when Complainant unlawfully and forcefully entered his tent. Appellant injured Complainant after the unlawful entry while attempting to remove him from the dwelling. Therefore, Section 16-11-440(A) applied, satisfying the second and third elements of self-defense. *Jones*, 416 S.C. at 301,

786 S.E.2d at 141. The fourth element, the duty to retreat, was excused under the Act and the Castle Doctrine. *State v. Curry*, 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4.

The court further erred in denying immunity without making specific findings or conclusions which provided a basis for its denial of immunity. “[T]he circuit court must weigh the evidence and make its own credibility and factual findings before reaching a decision as to immunity.” *State v. McCarty*, 437 S.C. 355, 372, 878 S.E.2d 902, 911 (2022). “We emphasize that a circuit court, as the designated fact-finder in this matter, must provide adequate findings to support its decision so an appellate court can perform its role of reviewing the ruling under an abuse of discretion standard.” *Id.*, 437 S.C. at 374, 878 S.E.2d at 912. “[S]pecific findings of fact and conclusions of law are critical to reviewing courts, particularly given the gravity of the circumstances these cases necessarily involve.” *State v. Cervantes-Pavon*, 426 S.C. 442, 452 n. 4, 827 S.E.2d 564, 569 n. 4 (2019).

Because the trial court made no specific findings to support its decision denying immunity, Appellant respectfully requests this Court grant him a new immunity hearing. *See State v. McCarty*, 437 S.C. at 374-76, 878 S.E.2d at 913 (where there were “no specific findings by the circuit court to enable this Court to adequately undertake its appellate review[,]” “we find a remand to the circuit court is needed,” and “we leave it to the circuit court’s discretion to determine whether to issue a new order based on the record of the hearing it has already conducted, or whether to conduct a new immunity hearing before issuing a ruling.”); *State v. Cervantes-Pavon*, 426 S.C. at 452, 827 S.E.2d at 569 (defendant entitled to new immunity hearing where the appellate court is “unable to discern a legally correct basis on which the court relied”).

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence. As to Issues 1 – 2, Appellant respectfully requests this Court remand for a new trial. As to Issue 3, Appellant respectfully requests this Court remand for a new immunity hearing.


Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of March, 2026.