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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2025-000408

The State,Respondent,

v.

David Michael Gordon,Appellant.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly denied Appellant's request to charge the jury on the lesser included offense of second-degree assault and battery where, even when viewed in the light most favorable to Appellant, the evidence presented at trial regarding the use of a machete to attack the victim did not support the lesser charge.
2. Whether the trial court properly admitted evidence obtained in the brief warrantless search of Appellant's tent to retrieve the machete used in the assault where: (1) exigent circumstances supported the search and (2) he consented to the narrowly tailored search. Furthermore, whether any possible error in admitting the machete into evidence was harmless under the circumstances of the case where it did not reasonably affect the result of the trial given the overwhelming evidence of guilt.
3. Whether the trial court properly found Appellant was *not* entitled to immunity from criminal prosecution under the Protection of Persons and Property Act where he failed to carry his burden of proving by a preponderance of the evidence that he was entitled to immunity under the provisions of the Act.

STATEMENT OF THE CASE

David Michael Gordon (Appellant) was indicted at the July 2024 term of the grand jury for Lancaster County for assault and battery – first degree (2024-GS-29-01001). He was represented by Assistant Public Defender P. John Freeman of the Sixth Circuit Public Defender’s Office. Respondent (the State) was represented by Assistant Deputy Solicitors Stephanie Wood and Lisa Collins of the Sixth Circuit Solicitor’s Office. On February 18-20, 2025, the case proceeded to trial before the Honorable Brian M. Gibbons and a jury. At the conclusion of trial, the jury found Appellant guilty as indicted and he was sentenced to ten (10) years’ imprisonment with credit for 310 days of time served. (R.p.1; p.386-p.395; p.414-p.416). Appellant timely filed a notice of intent to appeal his conviction and a brief in support of his appeal was filed by Appellate Defender Joanna K. Delany of the South Carolina Commission on Indigent Defense. This Brief of Respondent now follows.

STATEMENT OF FACTS

In its opening statement, the State said the case could be summed up by Appellant’s statement to police—“Y’all never would do anything about it, so I had to handle it myself”—a statement made as Bo Chapman (Victim), was receiving treatment in the back of an ambulance after Appellant “took a machete” to him. The solicitor said it was not a question of “who done it?” but instead was a question of “why did [Appellant] do it?” She briefly described the evidence the State intended to introduce at trial including: (1) the facts of the machete attack, (2) the machete itself, which was recovered from Appellant’s tent in the homeless encampment where both men lived, (3) Appellant’s statements to the police after the attack, (4) photographs of Victim’s injuries, and (5) statements Appellant made to a friend during a telephone call from the jail after his arrest. The solicitor concluded by describing the statutory elements of assault

and battery in the first degree (A&B-1st), including the definition of great bodily injury. She acknowledged the State's burden of proof before asking the jurors to use their common sense when deciding who to believe and to find Appellant guilty. (R.p.125-p.132).

In his opening statement, Appellant's counsel framed the case as one where Victim had come uninvited into Appellant's home, noting that people are entitled to feel safe in their homes. He focused on the State's high burden of proof and the presumption of innocence and asked the jurors: to keep an open mind, not to be swayed by any shocking injury photos, to use their common sense and experience to filter the things they heard from any police videos, and to return a verdict of not guilty when the trial would leave them with serious questions about the charges. (R.p.133-p.140).

Pretrial Proceedings

On February 18, 2025, following jury selection, the trial court convened a pretrial hearing on several defense motions, including Appellant's motions: (1) for immunity from prosecution under the Protection of Persons and Property Act (the Act) [S.C. Code Ann. § 16-11-410 through -450 (2024)]; (2) to dismiss on grounds the original arrest was made outside the jurisdiction of the officer; (3) to suppress evidence on the same grounds; (4) for a *Jackson v. Denno* hearing; (5) to suppress evidence based on the warrantless search of his tent; (6) to suppress evidence based on the chain of custody; and (7) to sequester all witnesses. (R.p.1-p.22). After hearing arguments on and denying Appellant's two motions challenging the jurisdiction of the arresting officer, the trial court held a "stand-your-ground" evidentiary hearing to address Appellant's motion for immunity under the Act. (R.p.22-p.37). The evidence and testimony introduced, arguments made, and trial court's ultimate ruling denying immunity are described in Argument III below. After denying immunity, the trial court asked the parties to address Appellant's motion to

suppress evidence as fruit of the poisonous tree based on the warrantless search of his tent. (R.p.87). The evidence and testimony introduced, arguments made, and trial court's ultimate ruling denying the motion to suppress are described in Argument II below.

Trial

The following morning, the jury was sworn, the trial court gave brief preliminary instructions, the parties gave opening statements, and the case proceeded to trial. (R.p.116-p.140). As its first witness, the State called Victim to the stand to describe the April 16, 2024, incident. Victim set the scene at a Lancaster County homeless encampment which was in a wooded area behind a church where he, Appellant, and several other people lived. He said he and Appellant first met at the detention center and described their relationship from that point forward as "very strained." Victim explained they lived on the same piece of property but in separate camps which were about fifty yards apart. He said he mostly stayed away from Appellant; however, he was good friends with Renee, a woman who lived in Appellant's tent at the time, and he was also friends with Rose, another woman who lived with Appellant. (R.p.140-p.151).

Victim testified that on the day of the incident he had found a red cooler in a dumpster which he intended to use to keep drinks cold. He cleaned the cooler and left it behind a nearby shopping center, intending to retrieve it later; however, when he returned, the cooler was gone. A woman working in a Vape store in the shopping center told Victim that Appellant had the cooler, so he headed to Appellant's tent, where he found Appellant and Rose. Victim said he never went into Appellant's tent and instead asked from outside the tent whether Appellant had his cooler. Appellant did not respond, but Rose said "He doesn't have your cooler." Victim asked how she knew but then simply told Rose he was going to return to his own tent and that he

could talk to Appellant about the cooler the next day. He said he never went into Appellant's tent or Rose's tent and never made any threats while he was there. (R.p.151-p.161).

Victim testified that as he started walking back to his own tent he heard a rustling sound behind him and turned to see Appellant with a machete raised over his head and swinging it down towards him. Victim threw up his arm in an attempt to stop the machete and was chopped three times before tripping over a stump as he tried to back away. He said Appellant continued swinging as he was on the ground, hitting him in the legs. Victim testified the incident was surreal and he felt like he was witnessing his own murder. He kicked at Appellant from the ground, knocking the machete out of his hands, which allowed Victim to get up and make it to the Vape store, where an employee called 911. Victim testified he was 20 to 30 feet away from Appellant's tent when he was attacked and did not believe he had done anything to provoke the attack. He identified several photographs of his injuries, and they were admitted into evidence over Appellant's objection and published to the jury. Victim made an in-court identification of Appellant as his attacker. (R.p.161-p.172; State's Exhibits 1, 2, & 3). On cross-examination, Victim testified that the day before the attack, the Vape store employee told him Appellant said he was going to kill Victim. (R.p.189, lines 4-16). On redirect, Victim testified that he did not have his walking stick with him on the night of the attack and that the knife he sometimes carried was in his pocket or backpack, but not out, and that he never reached for it. (R.p.196-p.197).

The State then proceeded to call various law enforcement officers and emergency workers who either responded to the incident scene or conducted some aspect of the investigation, as well as chain of custody witnesses and the records custodian from the detention center. Lancaster Police Department (LPD) Lieutenant Chrisopher Prince was the first officer to respond to the call for help at the North Park Square shopping center, which is in the city limits

of Lancaster. There he encountered Victim, who had a huge, concerning gash on his arm, so he called EMS and tried to keep Victim calm until EMS and other officers arrived. As other city officers arrived, including Marty Tolbert, Prince gave them directions. He testified he was concerned with locating both the attacker and the instrument that caused Victim's injury. When Prince learned Appellant's location, he sent Tolbert and another officer to find and detain Appellant so no one else would get harmed. He saw Appellant later that night and did not see any scratches or bruises on him. (R.p.201-p.210). On redirect, Prince explained that although he was wearing a body-worn camera on the night of the incident and turned it on, because he labeled his recording as "agency assist" rather than "major event," due to the incident site being outside the city's jurisdiction, that recording was purged before it was delivered to court personnel. (R.p.215-p.220).

Lancaster County EMS paramedic Danny Hyatt was the responding ambulance crew chief and talked to Victim about the injury to his arm. Victim told Hyatt it happened when he went to get his cooler back from the person he was told had taken it. Victim said he was standing outside Appellant's tent, there was an exchange of words, then Appellant attacked him with a machete. Hyatt checked the wound, which was dripping blood but was not bleeding severely, and checked Victim's carotid and radial pulses. He opined that the injury was certainly dangerous and could be fatal. Hyatt also noted Victim described a loss of sensation and mobility in the arm but was otherwise conscious and mentally intact. He said Victim said he had also suffered blunt force blows to his lower legs, complaining of pain in his shin area, but Hyatt did not see any signs of visible injury and then transported him to the hospital for treatment. (R.p.221-p.232).

LPD Officer Marty Tolbert arrived shortly after Lieutenant Prince, who directed him and Officer Jake Walters to go to the encampment next to the shopping center to find Appellant and to secure both him and the implement used in the attack. Tolbert believed the encampment was within city limits but learned later it was just outside the city line, but still in Lancaster County. He noted he was particularly concerned because: (1) the instrument that caused the injury had not yet been located; (2) the person he had been told to find had not yet been located; and (3) the person and the instrument might still be in close proximity to each other. Tolbert approached the tent, announced himself as LPD, and called out for Appellant. Appellant emerged from the tent and was placed in handcuffs for investigative detention. Tolbert asked where the machete was, and Appellant told him it was under his mattress. He passed Appellant off to Walters and then entered the tent where he was met by a lady who said: "It's right here under the mattress." Tolbert put on gloves, retrieved the machete, and walked Appellant back to the shopping center where he handed the weapon to LCSO Sergeant Kerry Aldridge. (R.p.240-p.248).

Tolbert explained the "tent" where Appellant lived was more of a group of small tents under a single tarp, creating different "rooms" for different people, and that Appellant came out of the big tent in the middle, but was still under the tarp when he was placed in handcuffs. He authenticated his body-worn camera video from the night of the incident, which was admitted into evidence subject to Appellant's prior objection and was played for the jury while Tolbert narrated the events. He explained that even after securing Appellant, he was still concerned with finding the machete because emotions were running high and there were other people around. Tolbert also explained that he was concerned about preserving possible evidence on the machete itself, like fingerprints or DNA that could be removed if someone touched it before it was secured by law enforcement. (R.p.248-p.258).

Former LCSO Lieutenant Christy Rodgers was the supervisor over the crime scene and evidence unit at the time of the incident and provided chain of custody testimony regarding the machete. (R.p.265-p.268). LCSO Sergeant Kerry Aldridge, who was the supervising patrol officer at the time of the incident, responded to North Park Square after learning from LPD officers who had first responded that the actual assault occurred outside the city limits. When he arrived, EMS was already on the scene, attending to Victim, while LPD officers Prince, Tolbert and Walters were standing with Appellant in handcuffs. Aldridge secured the machete in his vehicle before giving Appellant *Miranda* warnings and asking what happened. Appellant said Victim came to his tent demanding the return of a cooler. He said he told Victim to leave and when he didn't, Appellant chopped him a number of times with the machete. Appellant said he did not remember how many times he chopped Victim, and did not care. (R.p.269-p.276).

Aldridge then went to talk to Victim in the back of the ambulance. Victim said his cooler had been stolen from North Park Square and he was told Appellant had it, so he went to Appellant's tent to confront him. Victim said he demanded the return of his cooler when Appellant came at him with a machete and struck him several times. Aldridge then authenticated his body-worn camera video, and it was admitted into evidence over Appellant's objection and was played for the jury with his narration. Based on the statements, Appellant was placed under arrest. Aldridge explained that Appellant was charged with A&B-1st because he believed Appellant offered or attempted to harm Victim by means likely to produce great bodily injury and there could potentially have been some protracted loss of the arm. (R.p.276-p.283).

LCSO Master Deputy Charles Payne responded to the scene to assist, arriving shortly after Aldridge. He authenticated the video recording from his body-worn camera and it was admitted into evidence over Appellant's objection and played for the jury. (R.p.297-p.301).

LCSO Deputy Seth Chapman was not involved in the investigation; however, he transported Appellant to the jail after his arrest. Chapman authenticated a video recording from the cabin of his car and it was admitted into evidence over Appellant's objection and played for the jury. (R.p.310-p.314). LCSO Lieutenant Victoria Rollins, second-in-command at the LCDC, was in charge of maintaining all recorded jail calls made by detainees. She authenticated a recorded jail call made by Appellant to an individual named Marc and described a portion of that recording where Appellant claimed he had a "dark side." The audio recording was admitted into evidence over Appellant's objection and was played for the jury. (R.p.317-p.322).

On the third day of trial, after the conclusion of Rollins' testimony, the State rested. Appellant renewed all of his pretrial motions including his jurisdictional challenges and his motions to suppress; however, he withdrew his challenge to the chain of custody. The parties offered brief additional arguments on those issues and the trial court made several on-the-record findings further explaining its earlier rulings "in the event anybody reviews it." (R.p.326-p.334).

Appellant then renewed his claim that he was entitled to immunity under the terms of the Act. The trial court construed Appellant's immunity argument as a motion for a directed verdict, found the evidence was sufficient to send the case to the jury and that it raised what was "quintessentially a jury question." (R.p.334-p.337).

The trial court then asked the parties to address jury charges, with Appellant requesting a charge on second-degree assault and battery (A&B-2nd) as a lesser included offense and the State arguing the evidence only supported a charge on first-degree assault and battery (A&B-1st). The trial court denied Appellant's request but advised the ruling was based on the evidence that had been presented so far and could be revisited at the close of all the evidence. (R.p.337-p.340). The arguments made and trial court's ultimate ruling regarding the jury charge are described in

Argument I below. After discussing the requested jury charge, the trial court questioned Appellant regarding his right to testify and the parties reviewed his prior convictions to determine which could be used for impeachment. Appellant ultimately elected not to testify and rested without presenting any evidence. (R.p.340-p.346). He then asked the trial court to charge the jury on the elements of immunity under the language of the Act. The trial court denied the request and the parties proceeded to closing arguments. (R.p.346-p.350).

During the State's close, the solicitor first described the relevant law that would be charged by the trial judge, focusing on the elements of A&B-1st, the State's burden of proof, reasonable doubt, the evidence elicited during trial, and the credibility of witnesses. (R.p.350-p.360). In his closing argument, Appellant asked the jury to carefully review the videos and compare them with what the witnesses said during trial when evaluating the State's case and determining why the incident happened. He argued the evidence showed Appellant had no other reasonable option than to react as he did where law enforcement repeatedly refused to assist. Appellant asked the jury to take as long as they needed to review the evidence and to ultimately return a verdict of not guilty. (R.p.360-p.372)

The trial court then charged the jury on the law including: the respective duties of the judge and jury, credibility of witnesses, direct and circumstantial evidence, statements by a defendant, the right not to testify, the right to remain silent, the burden of proof, the presumption of innocence, and reasonable doubt.¹ At the conclusion of the charge, Appellant renewed his request to charge A&B-2nd and that motion was denied. (R.p.372-p.383). After deliberation, the

¹ The trial court also attempted to charge the elements of the offense. After announcing it was giving a charge on A&B-1st, the court actually charged the jury on elements of the higher offense of assault and battery of a high and aggravated nature (ABHAN), which, under the facts presented in this case, would involve actually causing great bodily injury to another person rather than A&B-1st, which would merely involve an offer or attempt to injure another person with the present ability to do so, and if the act was accomplished by means likely to produce death or great bodily injury. S.C. Code Ann. § 16-3-600 (2024). It is unclear why the State indicted Appellant for A&B-1st rather than ABHAN under the State's theory of the case.

jury found Appellant guilty as indicted. He was sentenced to ten (10) years' imprisonment with credit for 310 days of time served. (R.p.385-p.395; p.414-p.416).

STANDARD OF REVIEW - GENERAL

In criminal cases, the appellate court sits to review errors of law only. *State v. Robinson*, 426 S.C. 579, 591, 828 S.E.2d 203, 209 (2019); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001); *State v. Holcomb*, 426 S.C. 557, 562, 827 S.E.2d 367, 370 (Ct. App. 2019). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Brown*, 402 S.C. 119, 124, 740 S.E.2d 493, 495 (2013); *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d. 216, 220 (2006). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829. 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. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

ARGUMENT

I.

The trial court properly denied Appellant's request to charge the jury on the lesser included offense of second-degree assault and battery because, even when viewed in the light most favorable to Appellant, the evidence presented at trial regarding the use of a machete to attack the victim did not support the lesser charge.

Appellant argues the trial court erred by refusing to instruct the jury on the lesser-included offense of A&B-2nd because Victim's injury was merely a gash on the arm. He contends the jury could reasonably have concluded he was guilty of A&B-2nd since it could have found the gash was a moderate bodily injury rather than finding the attempt to injure was likely to cause death or great bodily injury. Appellant claimed Victim was "prone to exaggeration based on his other testimony," and argues that when viewed in the light most favorable to Appellant, there was evidence to support the requested jury instruction. (Brief of Appellant, p.4-p.8). The State disagrees and submits this argument is entirely without merit. *See State v. Shank*, ___ S.C. ___, 929 S.E.2d 403, 407-08 (2026) (holding that a defendant's act of reversing a vehicle towards an officer while attempting to flee constituted a means likely to produce death or great bodily injury and therefore precluded an instruction on the lesser included offense of third-degree assault and battery).

Under the standard of review, the trial court did not abuse its discretion by refusing to charge the jury on the lesser-included offense of A&B-2nd because the evidence presented at trial did not support the instruction. Appellant's use of a machete during the assault established that the offer, attempt, or act, was accomplished by means likely to result in death or great bodily injury, thereby precluding the requested lesser-included instruction. It makes no difference whether Appellant *intended* to cause great bodily injury or whether great bodily injury actually

occurred. *Shank* at ___, 929 S.E.2d at 408. The trial court’s decision to decline the requested charge and Appellant’s resulting conviction should be affirmed.

Standard of Review – Jury Charge

“The evidence presented at trial determines the law to be charged to the jury.” *State v. Gilliland*, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012). On appeal, an appellate court reviewing a trial judge’s jury charge must view the charge as a whole and in light of the evidence and issues presented at trial. *State v. Dent*, 440 S.C. 449, 453, 892 S.E.2d 294, 296 (2023); *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see *Todd v. State*, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) (“[J]ury charges should be examined in their entirety and not in isolation[.]”). The appellate court will only reverse a trial judge’s decision regarding jury instructions when that decision constituted a prejudicial abuse of discretion. *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); *Rauch v. Zayas*, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985). 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. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *State v. Morris*, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008).

The trial court is required 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. Williams*, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019); *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014); *State v. Payne*, 434 S.C. 121, 135, 862 S.E.2d 81, 88 (Ct. App. 2021). To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty *only* of the lesser offense. *State v.*

Geiger, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (2006); *State v. Sims*, 426 S.C. 115, 130, 825 S.E.2d 731, 738 (Ct. App. 2019). As such, the court looks to the totality of evidence in evaluating whether such an inference has been created. *Geiger*, 370 S.C. at 607, 635 S.E.2d at 673; *Sims*, 426 S.C. at 130, 825 S.E.2d at 738. In determining whether the evidence requires a charge on a lesser included offense, the court views the facts in a light most favorable to the defendant. *Sims*, 426 S.C. at 130, 825 S.E.2d at 738; *State v. Brayboy*, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010). The trial court should refuse to charge the lesser included offense where there has been no evidence tending to show the defendant may have committed solely the lesser offense.” *Geiger*, 370 S.C. at 607, 635 S.E.2d at 673.

Relevant Procedural History and Facts

After the jury was sworn, the trial court gave brief preliminary instructions, which included the following comment about the indictment:

In this case, the State is alleging that the defendant, Mr. David Michael Gordon, who’s seated right there with Mr. Freeman, “did on or about April 16th of last year, here in Lancaster County, commit the crime of *assault and battery in the first degree* against the victim, Robert Pope Chapman, *by injuring him with means likely to produce death or great bodily injury* in violation of the law.

So that’s the allegation. Okay. And I just read the allegation from this piece of paper which is called an “indictment,” which is nothing more than a written description of the criminal charges made against the defendant.

(R.p.118, line 24-p.119, line 6) (emphasis added).² In the State’s opening statement, the solicitor acknowledged there were different levels or degrees of assault and battery, but said Appellant was simply on trial for A&B-1st. She then described the statutory elements of A&B-1st,

² As it did in the jury charge given at the end of trial, the trial court also gave the jury a preliminary instruction that described elements of ABHAN rather than elements of A&B-1st. S.C. Code Ann. 16-3-600 (2024). Neither party objected to the preliminary instruction.

including the definition of “great bodily injury” as: “Injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss of impairment of the function of the bodily member or organ.” The solicitor emphasized that the offense of A&B-1st is committed when a person unlawfully “offers or attempts to injure the person.” (R.p.125-p.132). In his opening statement, Appellant’s counsel also recognized there were different levels of assault and suggested the trial court may address those levels at the end of the case when the judge instructed them on the law. (R.p.133-p.140).

At trial, Victim described the machete attack in detail. He explained that as he started walking back to his own tent, he heard a rustling sound behind him and turned to see Appellant with a machete raised over his head and swinging it down towards him. Victim threw up his arm in an attempt to stop the machete and was chopped three times before tripping over a stump as he tried to back away. He said Appellant continued swinging as he was on the ground, hitting him in the legs. Victim testified the incident was surreal and he felt like he was witnessing his own murder. Several photographs of Victim’s injuries were admitted into evidence and published to the jury. (R.p.161-p.172; State’s Exhibits 1, 2, & 3).

LPD Lieutenant Prince was the first officer to respond to the call for help. He testified Victim had a huge, concerning gash on his arm, so he called EMS and tried to keep Victim calm until EMS and other officers arrived. (R.p.201-p.210). Lancaster County EMS paramedic Hyatt checked Victim’s wound, which was dripping blood, and opined the injury was certainly dangerous and could be fatal. Hyatt noted Victim described a loss of sensation and mobility in the arm. (R.p.221-p.232).

LCSO Sergeant Aldrige gave Appellant *Miranda* warnings and asked him what happened. Appellant said Victim came to his tent demanding the return of a cooler. He said he

told Victim to leave and when he didn't, Appellant chopped him a number of times with the machete. Appellant said he did not remember how many times he chopped Victim, and he did not care. (R.p.269-p.276). Based on statements from Appellant and Victim, Appellant was placed under arrest. Aldridge explained that Appellant was charged with A&B-1st because he believed Appellant offered or attempted to harm Victim by means likely to produce great bodily injury and there could potentially have been some protracted loss of the arm. (R.p.276-p.283).

After the State rested, the trial court asked the parties to address jury charges, with Appellant requesting a charge on A&B-2nd as a lesser included offense and the State arguing the evidence only supported a charge on A&B-1st. The trial court denied Appellant's request but advised the ruling was based on the evidence that had been presented so far and could be revisited at the close of all the evidence. (R.p.337-p.340). Appellant elected not to testify and rested without presenting any additional evidence. (R.p.340-p.346).

During the State's close, the solicitor first described the relevant law that would be charged by the trial judge, focusing on the elements of A&B-1st, the State's burden of proof, reasonable doubt, the evidence elicited during trial, and the credibility of witnesses. (R.p.350-p.360). In his closing argument, Appellant asked the jury to carefully review the videos and compare them with what the witnesses said during trial when evaluating the State's case and determining why the incident happened. He argued the evidence showed Appellant had no other reasonable option than to react as he did where law enforcement repeatedly refused to assist. Appellant asked the jury to take as long as they needed to review the evidence and to ultimately return a verdict of not guilty. (R.p.360-p.372)

The trial court then charged the jury on the law including: the respective duties of the judge and jury, credibility of witnesses, direct and circumstantial evidence, statements by a

defendant, the right not to testify, the right to remain silent, the burden of proof, the presumption of innocence, and reasonable doubt. As mentioned in footnote one above, the trial court then attempted to charge the elements of the offense.³ Specifically, it charged:

What is *assault and battery in the first degree*? This is the legal definition. A person commits the offense of assault and battery in the first degree if the person *unlawfully injures another person* and great bodily injury to another person results or the act is accomplished by means likely to produce death of [sic] great bodily injury.

(R.p.379, line 24-p.380, line 5) (emphasis added). Neither party took exception to the charge as given. Appellant did, however, renew his request for a charge on second-degree assault and battery, and that motion was denied. (R.p.383).

Law / Analysis

Hacking a person with a machete is always “likely to produce death or great bodily injury.” *Shank*, ___ S.C. at ___. 929 S.E.2d at 407-08. Thus, offering or attempting to hack a person with a machete, with the present ability to do so, is an act that would always be “accomplished by means likely to produce death or great bodily injury.” Accordingly, such conduct constitutes A&B-1st regardless of whether any great bodily injury actually occurs. Indeed, there is no ambiguity in the statute simply because there are multiple ways an assault can rise to the level of A&B-1st, particularly where, as here, the evidence unequivocally satisfied one of those ways by proving Appellant acted, or offered or attempted to act, in a manner likely to produce death or great bodily injury.

Section 16-3-600 of the Code of Laws of South Carolina provides:

(A) For purposes of this section

³ The trial court charged the jury on elements of ABHAN rather than elements of A&B-1st. S.C. Code Ann. 16-3-600 (2024).

(1): “Great Bodily Injury” means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss of 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.

....

(B)(1) A person commits the offense of **assault and battery of a high and aggravated nature** if the person *unlawfully injures another person, and:*

(a) Great bodily injury to another person results; *or*

(b) *The act is accomplished by means likely to produce death or great bodily injury.*

....

(C)(1) A person commits the offense of **assault and battery in the first degree** if the person *unlawfully:*

(a) injures another person, and the act:

(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or

(b) *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; or*

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

....

(D)(1) A person commits the offense of **assault and battery in the second degree** if the person *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; or

(b) The act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

S.C. Code Ann. § 16-3-600 (2024) (emphasis added). “The degrees of assault and battery are, in descending order of severity, assault and battery of a high and aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees.” *State v. Middleton*, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014) (citing S.C. Code Ann § 16-3-600). Assault and battery in the second degree is a lesser-included offense of attempted murder, assault and battery of a high and aggravated nature, and assault and battery in the first degree. S.C. Code Ann § 16-3-600(D)(3) (2024).

Here, where Victim was attacked with a machete, the jury would have been properly charged with ABHAN or the lesser-included offense of first-degree assault and battery. But under either scenario, in order for Appellant to commit *solely* the lesser-included offense of second-degree assault and battery, the evidence would have to support a rational inference that the offered or attempted act was accomplished by means that were *not* likely to produce death or great bodily injury. S.C. Code Ann. § 16-3-600(B)(1) (2024). No such rational inference can possibly exist in this case.

Under the statute, a great bodily injury is described as an injury that causes a substantial risk of death. S.C. Code Ann. § 16-3-600(A)(1) (2024). “A substantial risk of death” does not mean that the injury must result in death. In this case, the uncontested facts were that Appellant intentionally hacked-at Victim with a 24-inch machete, which left a deep, two-inch long cut in his upper arm. Offering or attempting to use a machete in that manner, constitutes a means, if accomplished, that is likely to produce death or great bodily injury. *See* S.C. Code Ann. § 16-3-600(B)(1)(b) (2024). The risk to Victim here was not theoretical. It makes no difference that Appellant may not have intended to cause great bodily injury to Victim or that Victim’s injuries were arguably minor. Indeed, A&B-1st is a general-intent crime. *See United States v. Clemons*, 442 S.C. 670, 675, 901 S.E.2d 280, 283 (2024) (stating the general rule that when considering a criminal statute that is silent as to intent, “we consider the common law and the development of the statute to decide whether the Legislature intended the crime to require criminal intent and, if so, what level of intent”); *State v. Kinard*, 373 S.C. 500, 504, 646 S.E.2d 168, 169 (Ct. App. 2007) (stating that general intent is “ ‘the state of mind required for the commission of certain common law crimes not requiring specific intent’ and it ‘usually takes the form of recklessness ... or negligence’ ” (quoting *Black's Law Dictionary* 813 (7th ed. 1999))), *overruled on other grounds by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019). As such, the State did not need to prove an intent to cause great bodily harm, only that the defendant committed the act with the requisite mental state. *Shank*; ____ S.C. at ____, 929 S.E.2d at 407-08; *see also State v. Smith*, 430 S.C. 226, 234 n.9, 845 S.E.2d 495, 499 n.9 (2020) (“ABHAN is a general-intent crime”). Nor does the statute require that great bodily harm actually occur; it requires only that the means used be capable of producing it. *Shank*; *see also* S.C. Code Ann. § 16-3-600(B)(1)(b) (2024).

Based on these circumstances, the jury could not have found Appellant guilty of the lesser, rather than the greater, offense. *State v. Williams*, 427 S.C. 148, 156–57, 829 S.E.2d 702, 706 (2019); *State v. Drayton*, 293 S.C. 417, 428, 361 S.E.2d 329, 335 (1987) (holding the trial court did not err in failing to charge the lesser-included offense because, under the State’s version of the facts, the defendant was guilty of the greater offense, and under the defendant’s version of the facts, he was innocent of any charge). Thus, because no evidence supports a rational inference that Appellant committed only the lesser offense, the trial court properly refused the requested charge. *Shank*, ___ S.C. at ___, 929 S.E.2d at 407-08; *Geiger*, 370 S.C. at 607, 635 S.E.2d at 673 (holding to “justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense”). Appellant’s conviction and sentence should be affirmed.

II.

The trial court properly admitted evidence obtained in the brief warrantless search of Appellant’s tent to retrieve the machete used in the assault because: (1) exigent circumstances supported the search and (2) he consented to the narrowly tailored search. In any event, any possible error in admitting the machete into evidence was harmless under the circumstances of the case because it did not reasonably affect the result of the trial given the overwhelming evidence of guilt.

Appellant argues the trial court erred in admitting evidence that was obtained as a result of the warrantless search of his home/tent because no resident gave consent to search, and where exigent circumstances were inapplicable because he had already been detained. He contends the State did not demonstrate consent to enter the home because the officer did not specifically ask either Appellant or his roommate for consent and because neither person invited him to enter the

tent. Appellant further contends there was no exigency to enter and secure the machete where Appellant was already securely detained and police believed the machete to be under a mattress. He argues the trial court should have suppressed the machete and other derivative evidence of the unlawful, warrantless search. (Brief of Appellant, p.9-p.14). The State disagrees and submits Appellant's argument is without merit.

Under the deferential standard of review, the trial court did not abuse its discretion in admitting the machete Officer Tolbert retrieved from under Appellant's mattress approximately one minute after Appellant was handcuffed and secured in investigative detention. The trial court's decision that both exigent circumstances and consent justified the warrantless search is supported by ample evidence in the record and was not controlled by an error of law; therefore, its decision to admit the evidence should be affirmed. In any event, even if this court disagrees and finds the machete was admitted in error, any error was harmless in view of the overwhelming evidence presented of guilt, such that it could not reasonably have affected the result of the trial. For both of these reasons, the trial court's decision and Appellant's conviction should be affirmed.

Standard of Review – Motion to Suppress Evidence – 4th Amendment

Our appellate courts give great deference when reviewing the evidentiary rulings of the trial court. *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019); *State v. Davis*, 437 S.C. 93, 96, 876 S.E.2d 321, 322 (Ct. App. 2022). Indeed, the admission or exclusion of evidence is left to the sound discretion of the trial judge. *State v. Wallace*, 440 S.C. 537, 541, 892 S.E.2d 310, 312 (2023); *State v. Phillips*, 430 S.C. 319, 340, 844 S.E.2d 651, 662 (2020); *State v. Swaringen*, 446 S.C. 16, 26, 916 S.E.2d 343, 349 (Ct. App. 2025); *State v. Edwards*, 373 S.C. 230, 234, 644 S.E.2d 66, 68 (Ct. App. 2007). The trial court's ruling on the admissibility of

evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. *State v. Nelson*, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023); *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); *State v. Adams*, 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct. App. 2003). An abuse of discretion occurs when the ruling lacks evidentiary support or is controlled by an error of law. *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012); *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); *McDonald*, 343 S.C. at 325, 540 S.E.2d at 467.

Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. *State v. Frasier*, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022). This dual inquiry means the appellate court reviews the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion is a question of law subject to de novo review. *Id.* at 633-34, 879 S.E.2d at 766.

Relevant Procedural History and Facts

After handling several other pretrial motions, the trial court asked the parties to address Appellant's motion to suppress evidence as fruit of the poisonous tree based on the warrantless search of his tent. (R.p.87). Appellant's Counsel argued that a person was entitled to feel safest in their own home and complained that nobody got a search warrant before entering Appellant's "home" to retrieve the machete. The trial court noted the State was going to argue exigent circumstances and asked Counsel why that exception would not apply. Counsel responded: "Because it was not a gun. The man was clearly detained. He wasn't going anywhere. There was no indication that whenever it happened, at some point in the previous, it was continuing to happen. This is not a shooter who's still shooting. This is not somebody with a knife who is out rampaging. This is somebody who encountered one person, that encounter was over. There was

nothing else to go.” Following a brief discussion about the expectation of privacy, the trial court questioned whether Appellant’s roommate, Rose, effectively gave consent to the search by pointing out where the machete was hidden. (R.p.87-p.91).

The State then called Officer Tolbert to the stand in support of the brief warrantless search. He testified that upon learning about Victim’s serious injury and the fact that a violent crime may have been committed with a machete-type weapon, he went to the encampment in hopes of finding and detaining the individual responsible and finding the weapon used. Tolbert noted he was with an unarmed Victim and two unarmed EMT workers and wanted to find the person and secure the weapon so that person could not harm them or any other people in the encampment. He noted he did not know the person’s state of mind. Tolbert testified that when he got to the tent, he called out for Appellant. When Appellant came out, Tolbert placed him in handcuffs for the protection of himself and Officer Walters and then passed him off to Officer Walters. He described Appellant as having been placed in investigative detention. Tolbert said he then went inside the tent to retrieve the weapon, which Appellant had just told him was under his mattress. Tolbert testified he felt like Appellant had given him permission to go into the tent to get the machete and further noted that as he entered the tent, a lady who was inside showed him exactly where the machete was located. He said Appellant never asked him *not* to go into the tent to retrieve the machete after telling him it was under his mattress. (R.p.92-p.98; State’s Exhibit 4).

After hearing from Tolbert, the trial court asked for any additional arguments. Appellant’s Counsel argued there were no exigent circumstances once Appellant was in handcuffs and that Tolbert’s personal feeling that he did not need a warrant because Appellant had given consent to enter the tent and get the machete was simply not sufficient to constitute

consent. The solicitor responded that where there was an officer safety issue, a safety issue for the EMTs, and a safety issue for Victim, exigent circumstances existed for the need to secure the weapon, even if Appellant was detained. She further argued that both Appellant and Rose gave consent for the warrantless search. The trial court agreed with the State, finding both that exigent circumstances existed and that consent was given based on Tolbert's credible testimony. Based on these findings, the trial court denied Appellant's motion to suppress, and the case proceeded to trial. (R.p.105-p.109).

In its opening statement, the State noted it intended to introduce the machete into evidence. (R.p.125-p.132). In Appellant's opening statement, Counsel noted the jury would see some shocking pictures of Victim's injury; however, he did not mention the search of Appellant's tent or the machete that was retrieved from under his mattress. (R.p.133-p.140).

At trial, Victim described the circumstances leading up to the incident, the machete attack he suffered at the hands of Appellant, and how he managed to escape and go to a nearby store for help. (R.p.140-p.161). Several photographs of his injuries were admitted into evidence and were shown to the jury. Victim also made an in-court identification of Appellant as his attacker. (R.p.161-p.172; State's Exhibits 1, 2, & 3).

LPD Lieutenant Prince was the first officer to respond to the call for help where he encountered Victim, who had a huge, concerning gash on his arm. He testified he was concerned with locating both the attacker and the instrument that caused Victim's injury, so that when he learned Appellant's location he sent Tolbert and another officer to find and detain Appellant so no one else would get harmed. (R.p.201-p.210).

LPD Officer Tolbert offered testimony similar to the testimony he gave during the suppression hearing. He arrived shortly after Lieutenant Prince, who directed him and Officer

Walters to go to the encampment next to the shopping center to find Appellant and to secure him and the implement used in the attack. He noted he was particularly concerned because: (1) the instrument that caused the injury had not yet been located; (2) the person he had been told to find had not yet been located; and (3) the person and the instrument might still be in close proximity to each other. Tolbert approached the tent, announced himself as LPD, and called out for Appellant. Appellant emerged from the tent and was placed in handcuffs for investigative detention. Tolbert asked where the machete was, and Appellant told him it was under his mattress. He passed Appellant off to Walters and then entered the tent where he was met by a lady who said: "It's right here under the mattress." Tolbert put on gloves, retrieved the machete, and walked Appellant back to the shopping center where he handed the weapon to LCSO Sergeant Aldridge. (R.p.240-p.248; State's Exhibit 4).

Tolbert explained the "tent" where Appellant lived was more of a group of small tents under a single tarp, creating different "rooms" for different people, and that Appellant came out of the big tent in the middle, but was still under the tarp when he was placed in handcuffs. He explained that even after securing Appellant, he was still concerned with finding the machete because emotions were running high and there were other people around. Tolbert also explained that he was concerned about preserving possible evidence on the machete itself, like fingerprints or DNA, that could be removed if someone touched it before it was secured by law enforcement. His concern for evidence preservation is clear in the recording from his body-worn camera where he directs Rose to simply point out the location of the machete but not to touch it, not to mess with anything, and to leave everything alone. (R.p.248-p.258; State's Exhibit 4). Later, after

LCSO Sergeant Aldridge provided testimony about the chain-of-custody, the machete was introduced into evidence without objection.⁴ (R.p.272, line 16-p.274, line 24).

On the third day of trial, after the conclusion of Rollins' testimony, the State rested. Appellant renewed all of his pretrial motions including his jurisdictional challenges and his motions to suppress; however, he withdrew his challenge to the chain of custody. The parties offered brief additional arguments on those issues and the trial court again made several on-the-record findings further explaining its earlier rulings "in the event anybody reviews it." (R.p.326-p.334).

Law / Analysis

Both the United States Constitution and the South Carolina Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; S.C. Const. art. I, § 10. A search compromises the individual's interest in privacy; a seizure deprives the individual of dominion over his or her person or property. *State v. Brown*, 401 S.C. 82, 88, 736 S.E.2d 262, 266 (2012); *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (quoting *Horton v. California*, 496 U.S. 128, 133 (1990)). For constitutional purposes, a search occurs when "an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement. *Brown*, 401 S.C. at 89, 736 S.E.2d at 266; *Wright*, 391 S.C. at 442, 706 S.E.2d at 327. *See Kentucky v. King*, 563 U.S. 452, 462 (2011) ("[W]arrantless searches are allowed when the circumstances make it reasonable . . . to dispense with the warrant

⁴ Arguably, Appellant's pretrial argument to suppress was waived and is therefore not preserved for appellate review because he affirmatively stated he had "no objection" when the machete was moved into evidence at trial. *State v. Byers*, 392 S.C. 438, 710 S.E.2d 55 (2011); *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999).

requirement.”). These exceptions include the following: (1) search incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile exception, (5) the plain view doctrine, (6) consent, (7) abandonment, and (8) exigent circumstances. *Brown*, 401 S.C. at 89, 736 S.E.2d at 266; *State v. Dupree*, 319 S.C. 454, 456, 462 S.E.2d 279, 287 (1995); *State v. Moore*, 377 S.C. 299, 309, 659 S.E.2d 256, 261 (Ct. App. 2008); *see State v. Herring*, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009) (“A fairly perceived need to act on the spot may justify entry and search under the exigent circumstances exception to the warrant requirement.”). The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. *Davis v. United States*, 564 U.S. 229, 230-31 (2011). However, the United States Supreme Court has fashioned a judicially created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment. *Id.* at 231-32; *Brown*, 401 S.C. at 88, 736 S.E.2d at 266. Generally speaking, any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007).

In Appellant’s case, it is abundantly clear the trial court did not abuse its discretion in admitting the machete Officer Tolbert retrieved from under Appellant’s mattress approximately one minute after Appellant was handcuffed and secured in investigative detention. Under the totality of the circumstances, the brief, narrowly tailored search to retrieve the machete was justified by exigent circumstances—officer safety and the threat of evidence being destroyed. Similarly, under the totality of the circumstances, an objective officer in a similar situation would understand that Appellant and/or Rose gave consent to the limited search. The trial court’s decision to deny Appellant’s motion to suppress is supported by ample evidence in the record

and was not controlled by an error of law; therefore, its decision to admit the evidence should be affirmed.

Exigent Circumstances

The rationale underlying the exigent circumstances exception is a “compelling need for official action and no time to secure a [search] warrant.” *United States v. Curry*, 965 F.3d 313, 321 (4th Cir. 2020) (citing *Missouri v. McNeely*, 569 U.S. 141, 149 (2013)). Thus, a warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling. *State v. Wright*, 391 S.C. 436, 444-45, 706 S.E.2d 324, 328 (2011) (citing *State v. Herring*, 387 S.C. 201, 210, 692 S.E.2d 490, 495 (2009); *Minnesota v. Olson*, 495 U.S. 91, 100, (1990)). Indeed, protecting the safety of police officers has long been held an exigent circumstance. *Herring*, 387 S.C. at 210, 692 S.E.2d at 494-95 (citing *Chimel v. California*, 395 U.S. 752 (1969)). In such circumstances, a protective sweep of the premises may be permitted. *Wright*, 391 S.C. at 444, 706 S.E.2d at 328; *Maryland v. Buie*, 494 U.S. 325, 337 (1990); *State v. Abdullah*, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004). Simply because a suspect has been subdued and secured does not foreclose an officer’s reasonable need to search the entire scene for suspects and victims. *Abdullah*, 357 at 352, 592 S.E.2d at 349. A warrantless search may also be justified to prevent the possible destruction of evidence. *See, e.g., State v. Dobbins*, 420 S.C. 583, 594-95, 803 S.E.2d 876, 881 (Ct. App. 2017) (finding, under the totality of the circumstances, that when officers were faced with the immediate threat of evidence being destroyed, a warrantless search of a camper was justified). In sum, “the Fourth Amendment’s concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances, *whatever* the subjective intent.” *Whren v. United States*, 517 U.S. 806, 814 (1996). In the Fourth Amendment context, a court is

concerned with determining whether a reasonable officer would be moved to take action. *Id.* at 815.

Here, where Tolbert was clearly taking precautions to protect his own safety, the safety of officers around him, and the safety of others by entering the tent to retrieve the machete from the specific location he was told it could be found, his minimal intrusion was objectively reasonable and did not constitute a Fourth Amendment violation. *See Herring*, 387 S.C. at 211, 692 S.E.2d at 495 (finding an officer looking into a garage to see if the suspect was there was justified by exigent circumstances because it was objectively reasonable for him to do so to protect his own safety and the safety of the officers around him). It was likewise objectively reasonable where Tolbert was concerned with the possibility of Rose destroying or tampering with evidence on the particular item he was trying to locate and secure. *Dobbins*, 420 S.C. at 595, 803 S.E.2d at 881. Accordingly, the limited search was made under exigent circumstances and there was no violation of Appellant's Fourth Amendment rights.

Consent

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); *State v. Harris*, 277 S.C. 274, 276, 286 S.E.2d 137, 138 (1982). Law enforcement must obtain consent voluntarily, which is a fact-intensive inquiry viewed under the totality of the circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973); *Frasier* at 638, 879 S.E.2d at 769. The “totality of the circumstances” test applies whether the consent was given in a non-custodial or custodial situation. *State v. Wallace*, 269 S.C. 547, 550, 238 S.E.2d 675, 676 (1977); *State v. Mattison*, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (Ct. App. 2003); *State v. Brannon*, 347 S.C. 85, 90, 552 S.E.2d 773, 775 (Ct. App. 2001). In a custodial situation, the custodial setting is a

factor to be considered in determining whether consent was voluntarily given. *Wallace*, 269 S.C. at 552, 238 S.E.2d at 677; *Mattison*, 352 S.C. at 584, 575 S.E.2d at 855. Custody alone, however, is not enough in itself to demonstrate a coerced consent to search. *United States v. Watson*, 423 U.S. 411, 424-25 (1976); *Mattison*, 352 S.C. at 584, 575 S.E.2d at 855. The issue of voluntary consent, when contested by contradicting testimony, is an issue of credibility to be determined by the trial judge. *Mattison*, 352 S.C. at 584-85, 575 S.E.2d at 856.

Here, Officer Tolbert credibly testified that Appellant's act of telling him the machete was under his mattress constituted consent for Tolbert to enter Appellant's tent to retrieve the machete. Appellant did not contest Tolbert's assertion with any contradicting testimony and instead chose *not* to testify at the suppression hearing. Even though he did testify at the immunity hearing, Appellant offered no testimony to suggest he did not consent to the limited search. Under these circumstances, the trial court's credibility determination controls. *Mattison* at 584-85, 575 S.E.2d at 856. That determination, and the fact that nothing in Tolbert's testimony or body-camera recording beyond the non-dispositive fact that Appellant was in custody, demonstrated that Appellant's conduct in granting consent was *not* made under Tolbert's direction. Therefore, it was a free and voluntary decision by Appellant to allow Tolbert to enter the tent for the limited purpose of securing the machete. *Compare Frazier*, 437 S.C. at 638-39, 879 S.E.2d at 769 (finding that where the defendant's conduct of putting his hands on top of the car and positioning himself in a manner such that the officer could search him was done at the direction of the officer, it was not a voluntary decision to allow the search) *with State v. Bruce*, 412 S.C. 504, 511, 772 S.E.2d 753, 756 (2015) (finding that a reasonable person would have understood that consent to enter a home to perform a welfare check for a woman would extend to looking in her car, which was parked just outside, particularly where the

person who gave consent failed to stop this alleged violation of his constitutional rights). As in *Bruce*, Appellant's consent to the limited search is supported by his failure to stop this alleged violation of his constitutional rights. *United States v. Jones*, 356 F.3d 529, 534 (4th Cir.2004) (“[A] suspect's failure to object (or withdraw his consent) when an officer exceeds limits allegedly set by the suspect is a strong indicator that the search was within the proper bounds of the consent search.”). When Tolbert entered the tent to retrieve the machete from under Appellant's mattress, Appellant did not object, but stood quietly beside Walters, just outside of the tent. Accordingly, the limited search was consensual and there was no violation of Appellant's Fourth Amendment rights.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. *State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012); *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Only errors so substantial that they result in a verdict which would not otherwise have been rendered require reversal. *State v. Jolly*, 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct. App. 1991). “A harmless error analysis is contextual and specific to the circumstances of the case.” *State v. Byers*, 392 S.C. 438, 447-48, 710 S.E.2d 55, 60 (2011). “No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.” *Id.* at 447-48, 710 S.E.2d at 60 (quoting *State v. Reeves*, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990)). A defendant seeking reversal based on error in admission of evidence has the burden of showing that evidence was prejudicial. *State v. McElveen*, 280 S.C. 325, 327, 313 S.E.2d 298, 299 (1984).

Here, any error in the admission of the machete was harmless because its introduction did not affect the result of the trial. *See Byers*, 392 S.C. at 447, 710 S.E.2d at 60 (“Where ‘guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached,’ an insubstantial error that does not affect the result of the trial is considered harmless.” (quoting *State v. Pagan*, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006))). The record is full of compelling evidence incriminating Appellant of the crime for which he was charged. From Victim’s direct testimony, including his identification of Appellant as his attacker and of photographs of his injury, to Appellant’s statement to the police that he did not remember how many times he chopped Victim with his machete, and did not care, it is clear the machete itself did not contribute to the verdict in any significant way. For all of these reasons, the State submits this argument should be denied and dismissed, and Appellant’s conviction should be affirmed.

III.

The trial court properly found Appellant was *not* entitled to immunity from criminal prosecution under the Protection of Persons and Property Act because he failed to carry his burden of proving by a preponderance of the evidence that he was entitled to immunity under the provisions of the Act.

Appellant argues the trial court erred in denying him immunity from prosecution under the terms of the Act because the evidence at the immunity hearing showed he satisfied the required statutory elements for a grant of immunity under the circumstances of his case. He contends he was without fault in bringing on the difficulty because he was asleep when Victim unlawfully and forcefully entered his tent, and he contends that because he only injured Victim after the unlawful entry *while attempting to remove Victim from his dwelling*, Appellant gained the statutory presumption that his fear of imminent peril or death or great bodily injury was

reasonable. Appellant further argues the trial court erred in denying immunity without making specific findings or conclusions which provided a basis for its denial of immunity. As a result of these alleged errors, Appellant argues he is entitled to a new immunity hearing. (Brief of Appellant, p.19-p.20). The State disagrees and respectfully submits Appellant's arguments, as well as his requested relief, are either misplaced or fail to adequately recognize the evidence, credibility determination, implied findings of fact, and conclusion of law, that support the trial court's ultimate conclusion that he failed to carry his burden of proving entitlement to immunity by a preponderance of the evidence.

Appellant's arguments should be rejected under this Court's standard of review. In this case, the trial court followed the appropriate procedure under rulings from this Court and our supreme court: holding a pretrial hearing, evaluating the credibility of the witnesses, weighing the evidence, and ultimately finding Appellant did not carry his burden of proving he was entitled to immunity under the Act. It then made an on-the-record ruling addressing Appellant's failure to establish entitlement to immunity under any provisions of the Act, a ruling that was not controlled by an error of law. The case was then properly submitted to the jury. The trial judge's pretrial immunity ruling should be affirmed and Appellant's conviction should stand. If this court disagrees and concludes the trial court's ruling was not detailed enough to enable adequate appellate review, then the matter should be remanded to the trial court for further proceedings. *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022).

Standard of Review – Denial of Immunity

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); *State v. Cervantes-Pavon*, 426 S.C. 442, 449,

827 S.E.2d 564, 567 (2019). The appellate court, in turn, reviews an immunity determination for an abuse of discretion. *McCarty* at 365, 878 S.E.2d at 908; *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). “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.” *McCarty*, 437 at 365, 878 S.E.2d at 908 (2022) (quoting *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016)); *see also Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) (“In appeals of pretrial rulings, this Court is ‘bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.’” (quoting *State v. Amerson*, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993))). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge’s ruling is supported by *any evidence*. *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added); *see also State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 885 (2012) (“The trial court will only be reversed when there is no evidence to support the ruling below.”).

Relevant Procedural History and Facts

On February 18, 2025, following jury selection, the trial court held a “stand-your-ground” evidentiary hearing to address Appellant’s pretrial motion for immunity. (R.p.22-p.37). Pursuant to the procedures set forth in *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), Appellant presented testimony and arguments to the trial court in an effort to persuade the judge he should be granted immunity under the Act. The State relied entirely on cross-examination of Appellant in response, without any need to put Victim on the stand. Appellant waived his Fifth Amendment rights and took the stand to offer his version of the machete attack in an attempt to support a grant of immunity. He explained that on the day of the incident, April 16, 2024, he and

two elderly roommates, Rose Deese and Renee Gainey, were living on a piece of property behind a local church where he had built a shelter using wooden pallets, two-by-fours, and a tarp for weatherproofing. The trial court made a finding that this temporary structure was a “dwelling” as defined in the Act. (R.p.37-p.42).

Appellant identified a diagram/map he had drawn of his tent and the general area where it was located and then used it to help describe the incident. By way of background information, Appellant explained that at that time, Victim was not living in the same tent but lived in another tent about 100 yards away. Appellant noted his tent was in Lancaster County but not the city of Lancaster. He testified that he and Victim had had their differences for at least six months before the incident and that on several occasions Victim had made threats to hurt Appellant if Appellant did not stay out of his way. He said he had called the police to complain about Victim numerous times, but they did very little to help. Appellant claimed Victim carried a walking stick and sometimes had a hunting knife in his possession. Appellant said Victim was not allowed in his tent even though: “we rescued him by the Belk shopping center parking lot in July.” (R.p.42-p.45).

Appellant testified that on the evening of the incident, he was asleep but woke up when he heard one of his roommates arguing with Victim. He claimed he told Victim to leave, but Victim did not leave. (R.p.44, line 17-p.45, line 4). Appellant described his interactions with the police after they arrived on the scene, including how they placed him in handcuffs and asked where his machete was located; however, during direct examination he did not offer any specific details about his act of hacking Victim with that machete prior to their arrival. He acknowledged an ambulance was on the scene with the police and said he understood somebody got hurt, but he did not initially admit he was the one who hurt Victim. (R.p.44-p.50).

On cross-examination, Appellant insisted that when he was first detained, he did not know anyone had gotten hurt; however, when he was confronted with video recorded statements he had given to the police indicating he did remember the incident, he claimed this was only because he figured out what had happened from standing around for an hour after the police arrived. (State's Exhibits 5 and 6). When asked if he thought Victim was going to hurt him that night, he said he did not think it would ever escalate to that point, but it was possible. Appellant repeated he did not think Victim was going to hurt him and then explained he went after Victim with a machete: "because he refused to leave and I was tired of having to deal with him." Appellant denied having told others prior to the incident that Victim "better straighten his life out before someone hurts him" and that he was going to kill Victim. He also denied his comment in a recorded jail call where he said: "I did it" in response to a comment: "I didn't think you were going to do it." (State's Exhibit 10).⁵ Appellant testified he and his roommates did not want to hurt Victim, they just wanted him gone. When questioned about another comment from the jail call that he had "a dark side," he explained he sometimes gets so angry he "can black out and have no idea somewhat is going on for minutes, hours or even days." (R.p.50-p.56).

Under further cross, despite claiming on direct that he did not know anyone was hurt when the police arrived, Appellant testified that when he went at Victim with a machete, Victim was facing him like he was going to rush him or something. He admitted this was the first time he had ever made this claim about Victim, but said this was because nobody ever asked him. Appellant further admitted that although he claimed to be working towards starting a new life, he was so angry that night he threw it all away to go after Victim, basically because he was

⁵ Notably, in that jail phone call, when responding to a story about Victim returning after the incident and trying to make Rose move out of the tent, Appellant commented: "which means that Rose might be the next one that wants to, uh, cause bodily harm." (State's Exhibit 10: 12:34 to 13:12).

annoying. Ultimately, the solicitor asked: “So [Victim] pushed your buttons that night. He wasn’t threatening you. He pushed your buttons like he does to you and your roommates. And that’s when you decide to take matters into your own hands because law enforcement would not stop him from pushing your buttons. Isn’t that correct?” Appellant responded: “A little blunt, but yes.” Appellant then admitted Victim was *outside* the door of Appellant’s tent when he was attacked, but maintained Victim was facing towards him, despite having a cut to the top of his arm. Appellant said he was not trying to kill Victim, because if he was trying to kill him, he would be dead. When directly asked what he was trying to do by attacking Victim he said: “Give him a lot more incentive to stay away from us.” Appellant did not say he was trying to remove Victim from his dwelling. (R.p.56-p.64).

On redirect examination, Appellant acknowledged he swung at Victim several times. He testified: “I wasn’t trying to kill him. I was trying to prove a point to leave. Don’t bother us. You’re not welcome here. Go away.” He said Victim was about two steps outside his door during the attack, not inside his tent. (R.p.64-p.70). On recross, Appellant emphasized the reason for the machete attack was to prove a point—for [Victim] to go away and leave us alone because “we did not want [Victim] around.” (R.p.71-p.72).

At the conclusion of Appellant’s testimony, the trial court asked for legal arguments on whether the Act was even applicable to the facts of Appellant’s case. The judge said he had heard all the testimony he needed to make a finding on whether or not immunity applies, but nevertheless asked to hear arguments. (R.p.72, lines 14-23). The solicitor argued Appellant had failed to show the elements of self-defense that would qualify him for immunity under the Act because: (1) Appellant did not meet force with force where Victim had not unlawfully entered Appellant’s dwelling to hurt him or steal anything and instead was only there to ask for his

cooler; (2) Appellant did not reasonably believe the force used was necessary to prevent death or great bodily injury or to prevent the commission of a violent crime; and (3) Victim was in the act of leaving the dwelling (outside) when Appellant attacked. (R.p.73, lines 1-16).

Appellant responded that, where: (1) Victim had multiple drugs in his system—as stipulated to by the State; (2) Appellant lived in a tent with no actual door; and (3) Victim knew he was not welcome in Appellant’s tent for any reason, Victim was either “forcefully entering” or had unlawfully and forcibly entered Appellant’s dwelling, which established a presumption of reasonable fear. (R.p.74, lines 1-24). As the parties began arguing about the content of statements that had been given by Appellant’s roommate, the trial court reminded them the decision depended in large part upon *credibility*, the weight of the evidence, and Appellant’s burden of proof, and asked again why Appellant believed that burden had been met. (R.p.74, line 25-p.76, line 3). Appellant argued the history and pattern of Victim’s behavior, which was known to Appellant, coupled with the Victim’s unlawful entry of Appellant’s dwelling, entitled Appellant to stand his ground and to attack Victim with a machete just outside the doorway of that dwelling. He further argued Appellant did not lose this presumption because he was not “engaged in an unlawful activity” at the time of the attack. (R.p.76, line 4-p.79, line 3).

Ultimately, the trial court ruled as follows:

I’m making a decision based upon the testimony of the defendant himself. That’s the most important testimony in an immunity hearing, is to determine whether or not this [A]ct actually applies.

Anyway, bottom line, I’m going to deny your motion for immunity. I find that the defendant has failed to sustain his burden of proof to prove that he is immune from prosecution.

Certainly he can raise the defense of self-defense and I fully expect him to raise that defense of self-defense. Then, again, he testified here - - y’all know how he testified. Y’all see what he said

in his statement, so I don't know how much that self-defense defense will go over with the jury but that's not my determination. That's something the jury will have to possibly determine unless I - - we'll see where it goes.

The State has the burden of proving - - disproving self-defense beyond a reasonable doubt. So certainly, the defendant can claim that and I'm not preventing him from claiming that but he is not immune from prosecution under the law.

(R.p.79, line 17-p.80, line 14) (emphasis added).

Although he did not testify at the immunity hearing, during trial Victim testified Appellant attacked him with the machete as he was walking back to his own tent, after he asked for the return of his cooler. *He testified he was 20 to 30 feet away from Appellant's tent when he was attacked* and did not believe he had done anything to provoke it. (R.p.161-p.164) (emphasis added). Paramedic Hyatt later testified that when he was treating Appellant in the back of the ambulance, he asked Appellant how the injury occurred. Appellant responded that [Victim] "was standing out in front of the tent and there had been an exchange of words and then [Appellant] attacked [Victim] with a machete." (R.p.223-p.224).

After the State rested, Appellant renewed his claim that he was entitled to immunity under the terms of the Act. He argued the State had not met its burden of proving he was acting unlawfully under the disqualifying portions of the statute. The State responded by pointing to Victim's trial testimony that he was *outside* Appellant's tent and *walking away* when Appellant attacked him with the machete, which effectively eliminated any possible statutory presumption that Appellant was in reasonable fear of imminent peril [Section 16-11-440(A)] regardless of whether he was engaged in an unlawful activity [Section 16-11-440(B)(3)]. The trial court agreed and, construing Appellant's immunity argument as a motion for a directed verdict, found

the evidence was sufficient to send the case to the jury because it raised what was “quintessentially a jury question.” (R.p.334-p.337).

After the defense rested, Appellant asked the trial court to charge the jury on the elements of immunity using the language and definitions from the Act. The trial court denied the request finding: “That’s not in evidence in the trial of this case. That’s a matter that the Court determines without jury involvement. The only thing I would be inclined to have charged would be self-defense. But since your client did not testify, there is no evidence of self-defense for the jury to consider so, therefore, I’m not - - and you’ve rested, so I’m not charging self-defense. Okay?” Appellant’s counsel responded: “I understand, your Honor.” (R.p.346-p.349).

Law

In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act (the Act) to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force. *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 495 (2019); S.C. Code Ann. § 16-11-450 (2024). The Act codified the common law Castle Doctrine and extended its reach. *Id.*; S.C. Code Ann. § 16-11-420(A) (2024). Under 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. *Glenn*, 429 S.C. at 117, 838 S.E.2d at 495-96 (citing *State v. Jones*, 416 S.C. 283, 291, 786 S.E.2d 132, 136 (2016)). The Legislature adopted the Act based on its finding that “no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.” *Id.*; S.C. Code Ann. § 16-11-420(E) (2024).

A claim of immunity under the Act must be determined pretrial and the defendant has the burden of proving entitlement to immunity by a preponderance of the evidence. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496; *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011).

Specifically, the immunity section of the Act provides:

A person who uses deadly force as permitted by the provisions of this article *or another applicable provision of law* is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450(A) (2024) (emphasis added). Our supreme court has acknowledged that “another applicable provision of law” includes the common law of self-defense. *Glenn*, 429 S.C. at 117, 838 S.E.2d at 496; *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018).

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 118, 838 S.E.2d at 496. For immunity claims under this theory, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity. *Id.* Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. *Id.* There are four elements a defendant must establish to justify the use of deadly force under the common law of self-defense:

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.

Glenn, 429 S.C. at 116, 838 S.E.2d at 495; *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). 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. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496.

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*, 429 S.C. at 118, 838 S.E.2d at 496; S.C. Code Ann. § 16-11-440(A) (2024). Specifically, the Code provides that:

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) (2024). The presumption of subsection (A) does not apply, however, if the victim has an equal right to be in the dwelling or residence. *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496; *Jones*, 416 S.C. at 292, 786 S.E.2d at 137 (citing *Curry*, 406 S.C. at 370, 752 S.E.2d at 266).

Similarly, in cases where the 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 that provision was enacted to extend the protections of the Castle Doctrine to “ ‘[]other place[s] where he has a right to be.’ ” *Glenn*, 429 S.C. at 118-19, 838 S.E.2d at 496; *Scott*, 424 S.C. at 475, 819 S.E.2d at 121 (quoting S.C. Code Ann. § 16-11-440(C)). The section provides:

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

S.C. Code Ann. § 16-11-440(C) (2024) (emphasis added). Where the section is applicable, it replaces the duty to retreat element required to establish self-defense. *Glenn*, 429 S.C. at 119, 838 S.E.2d at 497; *Curry*, 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4.

Analysis / Discussion

As an undergirding principle, the legislative intent to significantly restrict when a court may grant pretrial immunity for the use of deadly force is evident when considered in the context of the principles of self-defense upon which the Act is founded. Prosecutors are already imbued with broad discretion to decline to prosecute where they determine the circumstances of the case do not merit pursuit of criminal charges. *Ex parte Littlefield*, 343 S.C. 212, 218-19, 540 S.E.2d 81, 84 (2000). Also, individuals may avail themselves of the common law Castle Doctrine and the common law defenses of habitation, of others, and self-defense in the event of a trial. Granting an individual immunity from prosecution rather than letting a jury determine whether the State has disproven self-defense beyond a reasonable doubt is an extreme result and should

occur only in circumstances where a defendant has adequately carried his burden of proof as to each and every aspect of the Act as determined by the trial court. Any other result would be absurd and would lead to a society akin to the wild-wild-west, where an individual in an altercation can shoot (or swing a machete) first, and if he kills another person, attempt to justify his actions by giving self-serving facts which cannot be contested by the person who has been killed. Even where a person fails to convince the trial judge of his entitlement to immunity under the Act, he may still be able to rely on self-defense before the jury where the State has the burden of proof. Thus, a pretrial denial of immunity does not eliminate the presumption of innocence or the State's high burden of proof for a criminal conviction.

Here, the trial court properly considered whether Appellant carried his burden of proving, by a preponderance of the evidence, his entitlement to immunity when ruling on his request, and that ruling should be affirmed. It did so with specific enough findings to enable this Court to undertake its appellate review. *Compare State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022) (remanding for further proceedings where the circuit court improperly abdicated its role as fact-finder to determine defendant's entitlement to immunity under the Act because there were no specific findings to enable the appellate court to undertake its appellate review). Indeed, the trial court made its decision "based upon the testimony of the defendant himself," (R.p.79), which included: (1) Appellant's admission that he did not think Victim was going to hurt him that night and that he went after Victim with a machete: "because he refused to leave and I was tired of having to deal with him;" (2) Appellant's explaining his "dark side," by noting he sometimes gets so angry he "can black out and have no idea somewhat is going on for minutes, hours or even days; (3) Appellant's admission that although he was working towards starting a new life, he was so angry that night he threw it all away to go after Victim because he was annoying; (4)

Appellant's admission that Victim was not threatening him that night but had merely pushed his buttons so he decided to take matters into his own hands; (5) Appellant's admission that Victim was at least two steps *outside* the door of Appellant's tent when Appellant attacked; (6) Appellant's claim that he attacked Victim to "give him a lot more incentive to stay away from us;" and (7) Appellant never making a claim that he was trying to remove Victim from his dwelling. (R.p.50-p.64; p.71-p.72).

In this case, the trial court followed the appropriate procedure under rulings from this Court and our supreme court—holding a pretrial hearing, evaluating the credibility of the witnesses and weighing the evidence, and ultimately finding Appellant did not sustain his burden of proving he was entitled to immunity under the Act. The trial court issued an on-the-record ruling, ultimately concluding Appellant: failed to carry his burden of proving the necessary statutory elements to warrant a grant of immunity. In addition to implicitly weighing Appellant's credibility, the trial court's denial of immunity was appropriate. Appellant's arguments to the contrary simply cannot prevail under this Court's standard of review. The trial court's finding that Appellant failed to carry his burden of proving the elements needed for immunity has evidentiary support and is not controlled by errors of law. It should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the trial court's denial of immunity under the Protection of Persons and Property Act be affirmed, and that Appellant's conviction and sentence likewise be affirmed. If this Court concludes the denial of immunity was not sufficiently fleshed-out by the trial court, the State alternatively requests a remand for more specific findings consistent with this Court's decision.

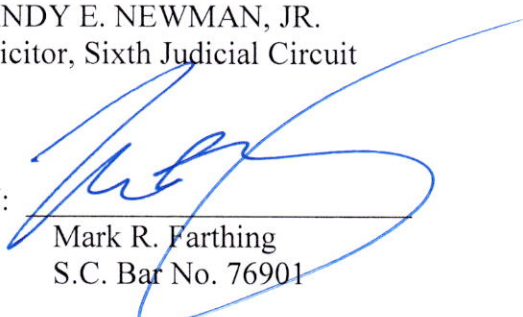
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