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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable Brian M. Gibbons, Circuit Court Judge

HOLLY JO THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001271

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the lower court erred in determining that Petitioner failed to show she was prejudiced by trial counsel's failure to move for an immunity hearing?

STATEMENT OF THE CASE

Petitioner was indicted during the April 2014 term of the Richland County grand jury for one count of murder. App. 861-862. The state called the case to trial on February 16, 2016, before the Honorable Robert Hood and a jury. The state was represented by K. Luck Campbell, Meghan Walker, and Laura Gregg; Petitioner was represented by Robert L. Bank, Jr., Alicia Goode, and J. Rhodes Bailey. App. 1. As she had from the beginning, Petitioner asserted she acted in self-defense. App. 95, ll. 22-24.

Evidence Presented at Trial

On January 27, 2014, Odell Middleton discovered James Solomon (Decedent), known as “Grill-Man” because he made his living building large grills out of 55-gallon and 300-gallon metal barrels, on the floor of the decedent’s trailer and called 9-1-1.¹ App. 98, ll. 8-19; App. 103, l. 20 – 104, l. 7; App. 112, ll.13-17. Middleton saw that there was blood and broken glass around Decedent’s head. He noted signs of a struggle in the home, such as the rugs being “kicked” and “tangled” up and the “sheets and stuff” having been “tore up on the bed.” App. 104, l. 18 – 105, l. 18; App. 109, ll. 5-13. Investigators with the Richland County Sheriff’s Department (RCSD) responded and processed the scene. Evidence collected included various blood swabs from the hallway, bedroom, and living room, a knife from the bedroom with blood on it, the bedroom sheets, and pieces of a glass vase. App. 267, l. 5 – 268, l. 21. The blood evidence recovered from the home matched Decedent. App. 382-398. A palm print in blood on the neck piece of the glass vase was matched to Petitioner. App. 172, l. 24 – 174, l. 4; App. 360, ll. 10-16.

Stan Richards, an expert in bloodstain pattern analysis opined the incident began in the bedroom and ended in the living room, based on drops of blood found in the bedroom. App.

¹ Decedent was found approximately two-to-three days after his death. App. 324, ll. 4-5.

288, l. 2 – 289, l. 4. He further opined that spherical blood spatter located in a HVAC in the hall indicated that Decedent had been struck while he was below waist height. App. 293, l. 18 – 295, l. 15. Richards however admitted that he based his opinion solely on photographs of the scene, despite the fact that “blood drops can fool you. You have to get down and look at them really, really closely to see if there is some evidence of some type of angle at all.” He further admitted that the supposed spherical spatter in the HVAC was not identified by officers on scene and was not swabbed, thus he could not say that it was actually a bloodstain. App. 301, l. 11 – 302, l. 24.

Dr. Amy Durso performed an autopsy which revealed that Decedent had died from exsanguination due to multiple blunt and/or sharp force injuries. App. 322, ll. 21-24. The blunt force injuries were contained to the head with several superficial or “shallow cuts” to other parts of the body, including the feet. App. 312, ll. 19-24; App. 318, ll. 11-18; App. 321, ll. 20-22; App. 325, ll. 9-12. She testified the superficial wounds could have been caused by sharp glass shards. App. 336, ll. 11-25. At the time of his death, Decedent was five-foot-ten inches tall, and he weighed 191 pounds. App. 308, ll. 17-25.

A toxicology of Decedent revealed alcohol,² a substantial amount of cocaine,³ and cocaine metabolites⁴ were all present in his blood at the time of his death. Tim Grambow, an expert with SLED, opined that Decedent had measurable amounts of cocaine in his body on the day of his death which meant the drug was having an active effect on him at the time of his death. He further confirmed that the presence and ratio of metabolites to active cocaine in

² Decedent’s blood alcohol level was .051 at the time of testing. App. 611, ll. 10-11.

³ Decedent’s blood showed .15 milligrams per liter of cocaine. App. 612, ll. 19-23.

⁴ Cocaine metabolites, called benzoylecgonine, are produced by the body breaking down cocaine as it metabolizes the drug. Decedent was found to have had greater than one milligram per liter of benzoylecgonine. App. 612 – 613.

Decedent's blood indicated a good possibility that Decedent had used cocaine throughout the day of his death. He confirmed that cocaine is associated with aggressive behaviors, can cause paranoia, and lowers inhibitions. App. 611, l. 9 – 617, l. 22.

Petitioner was arrested for the murder of Decedent. Petitioner weighed 136 pounds at the time of her arrest. App. 521, ll. 9-12. After being arrested, Petitioner told officers that she had been at Decedent's home the night of the incident but that she "didn't kill the man." App. 628, ll. 10-14. Petitioner stated that she worked as a prostitute, and Decedent was a regular client of hers. He would generally provide her with drugs in exchange for sex. App. 522, ll. 2-13; App. 523, ll. 21-25. In the roughly nine-months-to-a-year that Petitioner had known Decedent, they had engaged in sex for drugs and/or money over one hundred times. App. 522, l. 22 – 523, l. 2; App. 635, ll. 19-22.

On the night of the incident, Petitioner received a message from her then boyfriend/pimp, Michael Richardson, stating that Decedent wanted her to come over to his trailer. App. 420, ll. 1-4; App. 524, ll. 13-16; App. 538, ll. 19-20. When she arrived, she went through the front door of Decedent's trailer⁵ which was locked at the time – she stated the door would be locked from the outside, but you did not have to unlock the door from the inside to leave the house. Decedent let her into his home where the two began conversing. Petitioner noted it was extremely warm in the trailer, and she started to undress. She also thought that Decedent was acting funny when she arrived and that he was not himself. The two used crack cocaine together, and Petitioner tried multiple times to engage Decedent in various forms of sex, but he was unable to achieve or maintain an erection. App. 526, ll. 2 – 527, l. 7. As the evening progressed, the pair continued smoking crack cocaine, with a "dope dealer" coming to Decedent's home in order for him to

⁵ Petitioner did not go in or out of Decedent's trailer through the back door because he had a large dog that she feared. App. 525, ll. 17-23.

purchase more drugs during the evening. Petitioner continued to attempt to arouse Decedent, but he was unable to perform sexually and started to become angry. App. 528, ll. 10 – 529, ll. 10.

After attempting to engage Decedent in sex in his bedroom again, but not being successful, Petitioner decided it was time for her to leave. Petitioner went to get her clothes and had succeeded in getting her pants on when Decedent started yelling at her to give his money and crack back, stating repeatedly that he was going to shoot her – rantings she referred to as “all kinds of craziness.” He had a knife⁶ that he had been using to cut the crack cocaine with and began to swing it at Petitioner. App. 529, l. 21 – 530, ll. 13; App. 534, ll. 10-12. Petitioner sustained defensive wounds on her hands and arms from where she attempted to avoid the knife Decedent was wielding at her. App. 530, ll. 7-13; App. 340, ll. 4-10. To protect herself, Petitioner grabbed a glass vase that was full of Decedent’s urine⁷ and swung it at him. The two continued to fight, he with a knife and her with a vase, until they both fell to the floor and the vase broke. At that point, Petitioner got up, grabbed her remaining clothing, and left the trailer. When Petitioner fled from Decedent’s trailer, Decedent was on his hands and knees, still yelling that he was going to kill her. App. 530, l. 17 – 531, l. 19; App. 534, l. 1 – 536, l. 22.

Petitioner thought she struck Decedent five or six times in the head with the vase prior to it breaking, but she was not sure. Petitioner maintained that she only grabbed the vase to defend herself against Decedent’s attack with the knife, that she was scared for her life, and that she did not feel she had any other option than to strike Decedent with the vase. App. 534, ll. 20 – 537, ll.

⁶ Police found a knife in the bedroom, a large butcher knife on a bookshelf in the living room, and a large knife on the floor in front of the stove. App. 165, ll. 9-11; App. 213, ll. 19-22; App. 217, ll. 3-6.

⁷ At trial, Petitioner testified that she noticed the vase because it was pretty but could not determine what was inside of it. When she asked Decedent, he stated that it was urine. When she asked why he peed in a vase, he stated because he did not want to go to the bathroom to relieve himself. This was not typical behavior for Decedent. App. 531, ll. 5-11.

10. After she left Decedent's trailer, she went back to Richardson's house and then called for Moses Warren to come pick her up. Both Richardson and Warren testified that Petitioner admitted to getting in a fight that night but that she did not offer any details about the event. Additionally, both men testified that they noticed marks or scratches on Petitioner. Warren confirmed he picked up Petitioner from the side of the road in the rain and took her to his home. Once there, he told Petitioner to shower so that she could warm up, and he noted that "she had all these blue marks on her, looked like somebody was throwing her around or knocking her out or something." He stated the marks were on Petitioner's arms, back, and legs. Warren commented to Petitioner that she looked like she had gotten her "ass kicked." App. 421, l. 12 – 422, l. 3; App. 439, l. 10 – 442, l. 7; App. 450, l. 19 – 451, l. 2.

After a four-day trial, Petitioner was found guilty of murder and sentenced to forty-five (45) years' imprisonment. App. 758; App. 773, ll. 3-5. Petitioner's direct appeal was perfected by Senior Appellate Defender Kathrine Haggard Hudgins. App. 776-839. On June 13, 2018, the Court of Appeals affirmed Petitioner's conviction and sentence in an unpublished opinion. State v. Thompson, Op. No. 2018-UP-258 (S.C. Ct. App. filed June 13, 2018). App. 840-842.

PCR Hearing Testimony

Petitioner filed a timely application for post-conviction relief on August 29, 2018, alleging ineffective assistance of counsel. App. 843-49. The state filed a return dated January 10, 2019, requesting an evidentiary hearing. App. 850-56. A hearing was convened on October 29, 2019, before the Honorable Brian M. Gibbons. Petitioner was represented by Jonathan Waller. The state was represented by Samuel Key. App. 857.

At the evidentiary hearing, Petitioner testified that her claim had always been consistent, that she had been acting in self-defense, and that Decedent was alive when she left his house.

She confirmed that she had discussed the events of the incident with her lawyers many times. App. 865, ll. 4-20; App. 868, l. 20 – 869, l. 7; App. 877, ll. 16-25. However, Petitioner did not remember talking with her attorneys about pursuing an immunity hearing pursuant to the Protection of Persons and Property Act (the Act; S.C. Code Ann. § 16-11-410), stating that she did not know such a thing existed, so she did not ask them about it. App. 873, ll. 15-22; App. 875, ll. 5-7.

Trial counsel Bank testified that the case was assigned to him, and as trial drew near, he brought in co-counsels Goode and Bailey to assist him with the defense of Petitioner. He stated they had discussed the case many times, and he felt that Petitioner was always honest in her answers with him. He further testified that they had committed to asserting self-defense early on in the case. App. 879, ll. 20-25; App. 881, ll. 3-25. Counsel Bank could not recall having a specific discussion with Petitioner about pursuing immunity under the Act. He did not have anything in his case file notes concerning the matter. He testified:

I don't remember anything specifically other than just my general knowledge of the 30(b) (ph) statute in South Carolina. My first concern would probably be whether it was a place that she had a right to be, but I think it would have been. This was a place that she was invited into not only this night but regularly. So, I think it's definitely something that could have been explored.

He further clarified that it was his understanding that moving for an immunity hearing pre-trial would not have prevented him from asserting a claim of self-defense at trial. App. 882, ll. 4-22. When questioned by the state, Bank confirmed he was aware of the Act and that he could not recall a specific reason, “other than kind of typical pros and cons you do in any case” as to why he did not pursue an immunity hearing in Petitioner's case. App. 889, ll. 11-23.

Trial counsel Goode testified that she was technically the second chair during Petitioner's trial. She handled the opening statement and some of the crime scene witnesses. App. 894, ll. 8-

10. She also testified that she worked with Petitioner to prepare her for testifying at trial. App. 895, l. 17 – 896, l. 8. Counsel Goode was not asked about whether they discussed pursuing an immunity hearing. Trial counsel Bailey stated he was brought in as third chair to assist and supervise, as Bank was “still pretty new” as a lawyer, and he believed this was his first murder case. He testified that he did not think they discussed seeking immunity in Petitioner’s case, and he did not recall having an immunity hearing in Petitioner’s case. App. 900, ll. 4-22.

The PCR court issued an order of dismissal on July 28, 2021, finding that Petitioner failed to meet her burden of proof. App. 906-925. Regarding the failure to seek immunity claim, the PCR court found that Petitioner’s trial counsels were not deficient because they “articulated a valid strategy of focusing the defense efforts on pursuing a theory of self-defense.” App. 923. The PCR court did not make a prejudice determination because it had denied the application on the deficiency prong. App. 922-24.

Court of Appeals Opinion

Petitioner filed a timely notice of appeal from the order dismissing her PCR application. A petition for writ of certiorari was filed on June 13, 2022. The state filed a return to the petition for writ of certiorari on September 23, 2022. By order dated October 16, 2022, this Court transferred the case to the Court of Appeals. The Court of Appeals granted certiorari on August 18, 2023. The Court of Appeals heard oral arguments in this case on December 3, 2024.

On January 23, 2025, the Court of Appeals affirmed the PCR court’s denial of Petitioner’s application in an unpublished opinion, holding that trial counsels’ failure to move for immunity under the Act was not deficient performance “because at the time of the trial, and even now, an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker’s home.”

Thompson v. State, Op. No. 2025-UP-17 (S.C. Ct. App. filed January 23, 2025). App. 926-931. The court continued “[t]rial counsel cannot be deficient for failing to pursue a course of action that would require expanding precedent and testing unproven theories of law.” Id. Like the PCR court, the Court of Appeals did not address prejudice, as it disposed of the claim on the deficiency prong. Petitioner filed a petition for rehearing on February 5, 2025, which the Court of Appeals denied on March 6, 2025.

Supreme Court Opinion

On April 7, 2025, Petitioner timely filed a petition for writ of certiorari to the Court of Appeals. App. 932-956. The state made its return on May 5, 2025. App. 957-978. On August 20, 2025, this Court granted the certiorari, dispensed with further briefing, and issued a memorandum opinion reversing the Court of Appeals, holding:

Trial counsel did not assert he had a valid strategic reason for failing to seek immunity under the Act. Instead, trial counsel articulated no strategy at all on this issue—he testified he could not remember why he did not move for immunity. Therefore, the PCR court’s determination that trial counsel was not deficient based on an articulated trial strategy is not supported by the evidence.

Thompson v. State, Op. No. 2025-MO-039 at 3 (S.C. filed August 20, 2025). App. 988-991. This Court also found that there was no ambiguity in the Act, holding “the plain language of this section [16-11-440(C)] includes a social guest, who is not engaged in any unlawful activity that was the proximate cause of the homicide, using force against an attacker in the attacker’s home.” Id. This Court continued that “[t]o show prejudice from trial counsel’s deficiency, [Petitioner] must show there is a reasonable probability the circuit court would have found her immune from prosecution under the Act had trial counsel requested a hearing.” Because neither the lower court nor the Court of Appeals reached prejudice, this Court remanded the matter back to the

lower court “to determine whether, on the existing record, Petitioner was prejudiced by trial counsel’s failure to pursue immunity under the Act.” App. 991.

The remittitur was issued on October 21, 2025. App. 994. On May 15, 2026, the PCR court issued a new order of dismissal finding that Petitioner had not shown prejudice from counsel’s deficient performance. App. 995-1015. Petitioner timely appealed the May 2026 PCR order. This appeal follows.

ARGUMENT

The lower court erred in determining that Petitioner failed to show she was prejudiced by trial counsel's failure to move for an immunity hearing.

In denying Petitioner's application for post-conviction relief, the lower court found the forensic evidence and the brutality of the beating, along with the fact that the state disproved self-defense at trial, precluded Petitioner from showing prejudice. The court additionally found that Petitioner was not entitled to any of the presumptions in the Act. These findings are not supported by the record. The forensic evidence in this matter was questionable, Petitioner's testimony was consistent, the "brutality of the beating," and the different burdens of proof at different stages of argument are without merit, and Petitioner was entitled to the presumptions found in 16-11-440(C).

Petitioner has shown the necessary prejudice in this case because the greater weight of the evidence supports a finding of immunity, thus there is a reasonable probability that the trial court would have found her immune from prosecution under the Act had trial counsels requested an immunity hearing. Applying the relevant law to the facts of the case: Petitioner was an invited guest who had a right to be present in Decedent's home at the time of the incident. She was not engaged in any unlawful activity that proximately caused the Decedent's death. She was not at fault in bringing on the difficulty, as she was merely trying to leave Decedent's home when he attacked her with a knife placing her at imminent danger of death or great bodily injury. Decedent was physically larger and stronger than Petitioner, and he was paranoid, upset that he could not perform sexually, and inebriated by cocaine and alcohol. These circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow to save themselves from serious bodily harm or losing their own life. Therefore, her

actions of striking back with whatever she could find to defend herself with, in this case a vase filled with urine, were reasonable and justified.

In 2006, the South Carolina General Assembly adopted the Protection of Persons and Property Act. S.C. Code Ann. § 16-11-410, *et seq.* The General Assembly explained its intent was to “codify the common law Castle Doctrine which recognizes that a person’s home is his castle and to extend the doctrine to include an occupied vehicle and the person’s place of business.” S.C. Code Ann. § 16-11-420(A). The General Assembly found it “proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.” S.C. Code Ann. § 16-11-420(B). The General Assembly recognized “that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.” S.C. Code Ann. § 16-11-420(D). Finally, the General Assembly explained “that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.” S.C. Code Ann. § 16-11-420(E).

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

“This means a defendant may seek immunity from prosecution under the Act by ‘demonstrating the elements of self-defense⁸ to the satisfaction of the trial court by the preponderance of the evidence.” Glenn, 429 S.C. at 18, 838 S.E.2d at 496 (internal quotation omitted). “Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable.” Id.

The Act 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). Thus, “in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(C) is applicable because the provision was enacted to extend the protections of the Castle Doctrine to other places where he has a right to be.” Id. at 118-119, 838 S.E.2d at 496. “Where this section is applicable, it replaces the duty to retreat element required to

⁸ 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 at 116, 838 S.E.2d at 495 (2019) (internal citations omitted).

establish self-defense.” Id. at 119, 838 S.E.2d at 497. “In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be.” Id.

The bare assertion that the accused was engaged in an unlawful activity at the time of the incident does not automatically bar an individual from raising a claim of immunity under the Act. This Court has held that the trial court must perform a proximate cause analysis on the unlawful activity element to determine whether the unlawful activity was the cause of the incident. Further, the burden is on the state to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide. See Glenn at 121, 838 S.E.2d at 497-498 (2019) *citing* State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994).

Additionally, the fact that there are conflicts in the evidence is not grounds alone to deny immunity. As this Court has stated, “just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court must sit as the factfinder at this hearing, weigh the evidence presented, and reach a conclusion under the Act.” State v. Andrews, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019) *citing* State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019). The relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence. Id.

Turning to the relevant elements of section (C) of the Act:

A. Petitioner was in a place she had a right to be.

The Act defines a “dwelling” as “a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary, permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.” S.C. Code Ann. § 16-11-430(1). The Act further defines a “residence” as “*a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.*” S.C. Code Ann. § 16-11-430(3) (emphasis added). This Court explicitly held that the Act “includes a social guest, who is not engaged in any unlawful activity that was the proximate cause of the homicide, using force against an attacker in the attacker’s home. A social guest has a right to be in the host’s home, at least until the invitation is revoked.” Thompson v. State, 2025-MO-039 at 3; App. 990.

The PCR court did not address this element in its order, however it is undisputed that Petitioner was an invited social guest in the home of Decedent when the incident occurred. There is no evidence in the record to show that Decedent revoked Petitioner’s invitation into his home. Because the attacker was the homeowner, Petitioner was not entitled to the reasonable fear presumption in 16-11-440(A). Petitioner’s claim therefore defaulted into subsection (C), requiring the state to prove beyond a reasonable doubt any alleged illegal activity was the proximate cause of Decedent’s death. See Glenn at 121, 838 S.E.2d at 497-498 (2019) *citing State v. Goodson*, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994) (The burden is on the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.). As will be discussed below, the state failed to meet this burden.

B. Petitioner was not engaged in an unlawful activity that proximately caused the death of Decedent and therefore had no duty to retreat.

The order of dismissal asserts that because Petitioner was engaged in prostitution, illegal drug use, and possessed drug paraphernalia, that she was engaged in an unlawful activity and therefore is not entitled to the presumption of section (C). Unquestionably, Decedent and Petitioner were both using illegal drugs and attempting to engage in prostitution. Petitioner also had a crack pipe that she brought with her. However, none of these illegal activities were the proximate cause of the incident, and the order does not find that the illegal activities proximately caused the death but merely asserts that illegal activities occurred. This was error.

“Proximate cause is the efficient or direct cause; the thing that brings about the complained of injuries.” McKnight v. S.C. Dep’t of Corr., 385 S.C. 380, 386, 684 S.E.2d 566, 569 (Ct. App. 2009). “Proximate cause is defined as the direct cause, the immediate cause, the efficient cause, or the cause without which the death would not have resulted.” State v. Dantonio, 376 S.C. 594 (2008). None of the illegal activities brought about the complained of injuries. It was Petitioner’s attempt to gather her personal belongings and leave the residence, not the parties’ joint use of drugs and unsuccessful sexual activity, that caused Decedent to physically attack Petitioner with a knife. App. 529, l. 21-530, l. 13. The state has not presented evidence beyond a reasonable doubt that the use of drugs and engagement in prostitution was the proximate cause of the death, and the PCR court’s order is merely a bare assertion insufficient to prove that these “illegal activities” *proximately caused* the death. See Glenn at 121, 838 S.E.2d at 497-498 (2019) *citing* State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994).

The testimony showed Petitioner was naked from the waist up at the time Decedent attacked her, that she grabbed a vase full of his urine to protect herself so that she could gather

the rest of her clothes along with her crack pipe, and that while she attempted to collect her personal belongings, she was further assaulted by Decedent. App. 529, l. 21-530, l. 13; App. 534, ll. 9-19. Petitioner was not required to run into the cold January night unclothed once attacked with a knife. Petitioner had the right to meet force with force and to continue to exert force until the danger to her life has passed. See State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (*quoting* State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978)). That she was collecting her personal property after attempting to engage in prostitution and drug use was not an illegal activity that proximately caused the death of Decedent.

C. Petitioner was not at fault for bringing on the difficulty.

The PCR court asserted the trial court likely would not have found Petitioner was “entirely without fault in brining on the difficulty,” presumably because police found a “really small knife” in Decedent’s bedroom that tested positive for Decedent’s blood. App. 123, ll. 10-12. However, this ignores that Decedent had numerous knives scattered about his home. Further, there was no evidence that Petitioner ever used the small knife, as her DNA was not found on it nor on any other obvious weapon in the home. App. 498, ll. 2-8. Her palm print was found on the weapon of opportunity, the glass vase filled with urine that she grabbed in a panic to protect herself.

There is, in fact, no evidence in the record to suggest that Petitioner was the initial aggressor or had done anything to bring on the difficulty. Petitioner had been called over by Decedent to engage in prostitution and drug use, which had been a regular occurrence for nearly a year. App. 523, l. 6- 524, l. 16. After numerous unsuccessful attempts at sexual activity, Petitioner attempted to leave Decedent’s trailer which caused the highly-intoxicated Decedent to become enraged and attack Petitioner with a knife. App. 529, l. 21-530, l. 13; App. 534, ll. 9-19.

Petitioner's actions of wanting to leave Decedent's home would not give Decedent the right to attack her or stop her.

Further, the forensic evidence also does not support a theory that Petitioner brought on the difficulty. The testimony of Richards should not carry significant weight, as the crux of his opinion, that Petitioner was hitting Decedent while he was on the ground, is based purely on an unverified assumption. The alleged "blood spatter" that the state asserted showed that Decedent was struck while on the ground was never marked by on-scene forensic teams and *was not tested* to confirm it was blood. Richards even admitted during cross-examination that he could not say the alleged spatter was in fact blood. App. 302, ll.7-24. He merely noted the stain in a photograph, *assumed it was blood*, and based his opinion that the evidence "shows [Petitioner] continued to beat [Decedent] while he was on the ground" on that entirely unvetted assumption. Further, Richards admitted that he based his opinions only on the photographs from the scene, not the actual scene itself, even though "blood drops can fool you" when you do not examine them closely. App. 301, l. 11-App. 302, l. 6. The failure of this "expert" to properly perform his job by going to the scene and examining it up close, in person, rendered his opinion nothing more than conjecture.

That the front door was locked when Decedent was discovered is not inconsistent with Petitioner's testimony. She testified that the door would be locked from the outside but could be opened from inside the home without first unlocking the door. App. 525, l. 12-526, l. 15. She maintained that she never went out of Decedent's back door because she was afraid of his large dog. App. 533, ll. 11-12. She further testified that decedent was alive and attempting to get to his feet when she ran out of the front door. App. 536, ll. 13-22. Decedent had superficial injuries to his feet that likely were sustained while walking on the broken glass after the pair fell

and the vase broke. Dr. Durso even testified that the numerous *superficial* sharp force injuries to Decedent could have come from glass shards, such as from the broken vase. App. 336, ll. 5-25. Far from precluding immunity, the evidence supports Petitioner's testimony that she was fighting for her life against a much larger, stronger individual, who was on cocaine and acting crazy.⁹ The evidence shows that she fought until the danger had passed – until the parties fell to the ground after the vase broke – and then she was able to retrieve her clothing before fleeing Decedent's residence.

D. Petitioner was in imminent danger of losing her life or sustaining great bodily injury and the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save themselves from serious bodily harm or losing their own life.

The PCR court found that the brutality of the beating precluded a finding of immunity. This finding ignored that a party asserting immunity under the Act is entitled to meet force with force and to continue to exert force until the danger to their life has passed. *See State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978)). This finding also ignored the facts in the record. At the time of the incident, Petitioner weighed 136 pounds; Decedent stood at five-foot-ten inches tall and weighed 191 pounds. App. 308, ll.17-25; App. 521, ll. 9-12. Decedent made his living building grills out of metal drums. App. 98, ll. 8-19. He was a physically stronger, larger individual who was under the influence of a “measurable amount of cocaine” and alcohol at the time of the incident. App. 614, l. 18-App. 615, l. 8. Petitioner was partially naked and unarmed at the start of the attack. Evidence shows that Petitioner sustained defensive wounds on her body, and witnesses who saw her later that evening reported she looked like she had gotten her “ass kicked.” App.

⁹ As Petitioner testified: “James started talking about ‘Bitch, give me my money back or give me my crack back. I’m going to shoot you,’ all kinds of craziness. And he just kept repeating it” while swinging the knife he used to cut the crack at Petitioner. App. 530, ll. 1-13.

421, l. 12 – 422, l. 3; App. 439, l. 10 – 442, l. 7; App. 450, l. 19 – 451, l. 2. Given the size disparity between the parties, that Decedent attacked Petitioner without provocation, that he was armed with a deadly weapon and was under the influence of drugs and alcohol, the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow and continue striking until the danger had passed in order to save themselves from serious bodily harm or losing their own life.

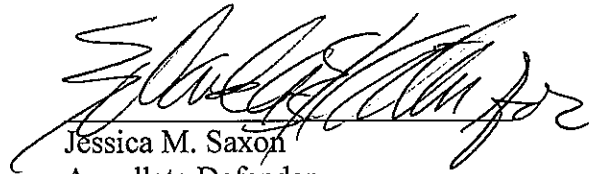
The PCR Court's Other Reason for Denying Immunity

The PCR court found that the jury's verdict somehow rendered consideration of defense counsels' failure to pursue an immunity hearing non-prejudicial because the state "disproved self-defense beyond a reasonable doubt." This argument rings hollow for several reasons. First, a jury determination is purely a matter of fact, while a judicial determination of immunity from prosecution is a matter of law. Second, this Court has made clear that the immunity hearing and the trial are separate proceedings with separate burdens. See State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) (A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard.); State v. Cervantes-Pavon, 426 S.C. at 452-53, 827 S.E.2d at 569 (The trial court's immunity ruling must be based solely on the evidence presented at a pretrial hearing, while the jury's verdict must be based solely on the evidence presented at trial, which may be considerably different.) Third, if a jury verdict precluded the finding of prejudice, the appellate courts of this state would never have cause to review a denial of immunity under the Act, and there would be no case law interpreting its reach. The jury's determination of facts would not and does not supplant a legal judicial determination of immunity. It was error for the PCR court to rely on this ground at all in denying immunity.

Petitioner has established that trial counsels' performance in failing to request a pre-trial immunity hearing was deficient. Petitioner has further established that she was prejudiced by counsels' deficiency, as the greater weight of the evidence in the record supports a finding that there is a reasonable probability that she would be granted immunity after a full immunity hearing.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari to allow full briefing of this issue.



Jessica M. Saxon
Appellate Defender

This 9th day of October, 2026.

ATTORNEY FOR PETITIONER