STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
The Honorable Maité Murphy, Circuit Court Judge

Appellate Case No. 2013-002124

THE STATE

APPELLANT,

V.

SHANNON SCOTT,

RESPONDENT.

INITIAL BRIEF OF APPELLANT

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1. Whether the trial court erred in finding Respondent Shannon Scott was entitled to immunity under the Protection of Persons and Property Act under S.C. Code Ann. § 16-11-440(A) when there was no evidence the victim was in the process of unlawfully and forcefully entering Respondent's dwelling, residence, or occupied vehicle, and

2. Whether the trial court erred in finding Respondent Shannon Scott was entitled to immunity under the Protection of Persons and Property Act under S.C. Code Ann. § 16-11-440(C) [give reason here].

STATEMENT OF THE CASE

Respondent Shannon Scott ("Respondent") was indicted for Murder (2010-GS-40-1457) in the shooting death of Darrell Niles on May 14, 2010. (R. pp.). On July 30, 2013, Respondent filed a Notice of Motion for Hearing Pursuant to S.C. Code § 16-11-440(C) and Motions to Enforce the Protections of S.C. Code § 16-11-450(A). (Notice of Motion and Motion, R. pp.).

An evidentiary hearing on the Motion was held before the Honorable Maité Murphy, Circuit Court Judge, on August 12-14, 2013. (Tr. 1-305). Respondent was present and was represented by Todd Rutherford, Esquire. Id. The State was represented by Assistant Solicitors Dolly Garfield, Esquire, April Sampson, Esquire, and Brent Arant, Esquire, all of the Office for the Solicitor of the Fifth Judicial Circuit. Id.

On October 9, 2013, the trial court filed its Order granting Respondent immunity under the Protection of Persons and Property Act. (Order, R. pp.). Appellant subsequently filed its Notice of Appeal.

The State now respectfully requests this Court reverse the trial court's Order granting immunity and remand this case for trial.

STATEMENT OF FACTS

On April 18, 2010, Respondent Shannon Scott ("Respondent") shot and killed the victim, Darrell Niles. Niles was shot once in the head. At the time, Niles was sitting in the car he was driving. The windows of the car were up. Niles was unarmed, and there were no weapons in his car. Niles had not said anything to Scott. He was merely turning his car around on a street near Respondent's house.

Background Information

On April 17, 2010, Respondent was engaged to Rosalyn Fuller. (Tr. 80, 102). At the time of the hearing, Respondent had eleven children. (Tr. 101). On April 17, one of his daughters, Shade, went to a party at a teen club in Columbia with Rosalyn's daughters Ashley, Asia, and Ave; along with two young men, Denzel Davis and Antonio Bennett.[1] On that evening, Rosalyn was at Respondent's home. (See Tr. 81, 101). The children were supposed to return to Rosalyn's home after they left the teen club. (Tr. 102).

Confrontation Outside the Club

During the party and shortly after the party, Shade was involved in a confrontation with another girl named Teesha. (App. 8-9, 19-20, 36-7, 64, 159, 161-62, 220). After the confrontation was over, Shade's group left the club in a 1994 Grand Marquis driven by Denzel. (Tr. 10, 20, 49, 64-5, see Tr. 37-8). They were followed by a group of females that included Teesha. (Tr. 10, 20, 37-8, 159, 162, 258; see Tr. 64-5). The group of females was driving in a silver Ford

[1] Denzel Davis went by the nickname "Crackle." (Tr. 48, 49). Antonio Bennett went by the nickname "Tone." (Tr. 64).

Expedition. (Tr. 159, see Tr. 10, 20, 49, 69, 97, 107, 133, 154, 158, 250). Asia, Denzel, and Antonio testified at the hearing that when they initially pulled out in the median in front of the club, they saw a girl run up to their car with a gun in her hand.[2] (Tr. 20, 49-50, 64). Shade also testified that she recalled Denzel stating that he saw one of the individuals in the truck having a gun. (Tr. 10-11). Shade acknowledged that she did not see anyone from the truck with a gun that night. (Tr. 15).

Kiwiana Carter, the primary driver of the Expedition on the day of the shooting, admitted to law enforcement that there was a gun in the SUV. (Tr. 159). Carter also admitted that she followed the Grand Marquis. (Tr. 159, State's Exhibit 13, pp. 2-4; State's Exhibit 21, pp. 5-7). Teesha also admitted that her group followed the Grand Marquis. (Tr. 162, State's Exhibit 14, pp. 1-2). Sergeant Reese noted that no one in the Expedition indicated there was another car following them. (Tr. 166).

Eric, the passenger in the victim's car, testified that he and the victim ended up following the two cars. (Tr. 222-23).

The children drive to Respondent's house.

A car chase ensued. (Tr. 11-2, 20-1, 37-8, 50-1, 69). None of the witnesses in the Grand Marquis testified they saw a red Honda chasing them. (Tr. 14, 42, 54; see Tr. 17, 256, 170, State's Exhibits 3, 4, 5, 19). Asia did

[2] Asia identified the girl as Teesha. (Tr. 20). Antonio indicated he recalled this happening at a red light, not in the median. (Tr. 64). None of the three witnesses had mentioned seeing a girl with a gun in their statements to police. (Tr. 40, 54, 69, 70, 79; see State's Exhibits 3, 4, 5, R. pp.). Investigator Reese noted that the first he heard of Teesha walking to the Grand Marquis with a gun was at the immunity hearing. (Tr. 172).

indicate that she saw a second car after they got to Respondent's house. (Tr. 22). She noted that she thought she saw the car turning around at the parking lot down the street. (Tr. 22). Rosalyn also testified that she recalled seeing a car turn around with the truck at the All State building down the street from Respondent's house.[3] (Tr. 87).

During the car chase, Shade called Respondent. (Tr. 11, 101-02). Shade testified that she told her father that they were being followed by a group of girls and that the group had a gun. (Tr. 11). Shade indicated that she never told Respondent about a second car. (Tr. 17). Asia, Ave, and Denzel were either not sure or did not recall if anyone mentioned a second car during the phone calls to Respondent and Rosalynn. (Tr. 30-1, 42, 57).

Rosalyn testified that she initially received text messages from Ashley that stated their group was being followed by Teesha D. (Tr. 81). Rosalyn later received a phone call from Ashley, who was then using Shade's phone. During that conversation, Ashley indicated the other group was following them. (Tr. 81, 83; see State's Exhibit 19, pp. 1-2). By all accounts, the individuals in the Grand Marquis were instructed to drive to Respondent's home instead of Rosalyn's home. (Tr. 11, 85, 102, State's Exhibit 19, p. 2).

Eric indicated the victim wanted to make sure the girls in the first car got were alright. (Tr. 223-24). Eric noted that the victim did not follow the chase closely, and at one point they lost sight of the other two vehicles. (Tr. 226). After following the two vehicles for a short while, the victim and Eric got lost once the

[3] Rosalyn did not mention seeing the car during her conversation with the 911 operator or in her statement to law enforcement. (Tr. 97, State's Exhibits 7, 8).

chase went down neighborhood streets. (Tr. 224-25). Eric testified they turned onto a cul de sac, and then they started to turn around. (Tr. 227-28). Eric noted that he saw the SUV parked on the road they were originally on. (Tr. 227-28).

The group arrives at Respondent's home.

When the group got to Respondent's house, they pulled their car into the backyard. (Tr. 12, 21, 38, 51, 86, 104). There was some discrepancy as to whether Respondent and Rosalyn were outside when the car arrived. (See Tr. 38, 86, 104). Respondent did not mention Rosalynn being outside. (Tr. 104). In her statement to law enforcement, Ave indicated that Respondent and Rosalyn were inside the home. (Tr. 40).

Shade and Asia testified that she saw the truck following them pass Respondent's house and later return with its headlights off. (Tr. 12, 21, 23). Ave testified that she saw the truck's headlights turned off as soon as the Grand Marquis pulled into Respondent's backyard. (Tr. 39). Denzel did not see the truck after he pulled the Grand Marquis into the yard. (Tr. 51). Rosalyn testified that she saw the SUV pass Respondent's house, and she indicated she saw it turn around by the All State agency that was at the end of the street. (Tr. 87). She noted that the when the SUV turned around, the headlights were turned off. (Tr. 99). Rosalyn also testified that she saw a second car make the same turn. (Tr. 87, 94). Respondent also testified that he saw the truck pass his house, and he saw another set of headlights following the SUV. (Tr. 104). Respondent further stated that he saw the SUV turn around, and there was another car

behind it. (Tr. 106). He noted that the SUV had turned its headlights off, but the car's headlights were still on. (Tr. 106).

After pulling into the backyard, the individuals in the Grand Marquis were directed to enter Respondent's house through the back door into the kitchen. (Tr. 12, 21, 39, 51, 87, 104; see Tr. 66). At the hearing, several of the witnesses in the Grand Marquis testified that they heard gunshots while they were in the process of getting out of the car. (Tr. 21, 22, 26, 39, 52, 65, 66, 87-8, 104). Specifically, Asia stated that she heard gunshots after the truck started driving back with the lights off. (Tr. 21, 23). Ave asserted she saw a gun hanging out of a window in the truck, and she saw shots fired. (Tr. 39). Denzel also testified that he heard shots while they were still in the car in the backyard. (Tr. 52). Similarly, Antonio testified that he recalled hearing a gunshot as he was getting out of the car. (Tr. 65, 66). Rosalynn also indicated that she heard a gunshot as the individuals from the Grand Marquis were entering the house. (Tr. 87-8). Respondent also stated that he heard a "pow" while Rosalynn was getting the kids into the house. (Tr. 104). However, Ave, Denzel, and Antonio admitted that they did not mention hearing gunshots while they were exiting the Grand Marquis in their statements to law enforcement after the shooting. (Tr. 42, 54, 61, 72, 79; see Tr. 156, 171). Shade also testified she did not recall hearing a gunshot until she was in the house on the floor. (Tr. 14).

Shots are fired in the vicinity of Respondent's house.

Carter told Reese that while they were parked in the All State parking lot, they heard a shot. (Tr. 160). She indicated that after hearing the shot, she fired

the gun that was in the SUV into the air. (Tr. 160; State's Exhibit 13, p. 3; State's Exhibit 21, p. 7). Sergeant Arthur Thomas of the City of Columbia Police Department testified Carter had to him that she fired her gun, but she said she did so because someone had fired at their SUV twice. (Tr. 249, 259, 260, 261). Teesha told Reese that as they drove past Respondent's house, she saw a black female along with a heavy set male and Respondent in the yard. (Tr. 162). She also stated that they heard a gunshot while parked at the All State parking lot. (Tr. 162-63). After hearing a second shot, Teesha indicated Carter backed the SUV up and fired a shot into the air. (Tr. 162-63, State's Exhibit 14, p. 2). Reese also interviewed Kyasia Corbit, another female in the SUV. She denied that anyone in the truck fired first. (Tr. 164-5, State's Exhibit 15, p. 6). She also indicated in her interview that she heard two shots before Carter fired her gun once. (State's Exhibit 15, p. 6).

Respondent's recollection of what occurred after hearing the gunshot.

Respondent testified that after he heard the gunshot, he went into his roommate's room and took his roommate's handgun from beside his bed. (Tr. 105). Rosalyn called 911. (Tr. 105-06). Lenny Williams, Respondent's roommate recalled hearing some gunshots. (Tr. 129). He saw Respondent come into his room and grab Williams' gun. (Tr. 129). Williams noted that Respondent did not say anything or warn him to get down. (Tr. 130). Shawnta Brown, Williams' girlfriend, recalled Respondent running into the bedroom and getting the gun off the table. (Tr. 135-7). She also testified that he did not tell Williams or her to get down, take cover, or that someone was shooting at them.

(Tr. 136). She indicated she thought she heard one or two shots. (Tr. 136). Brown thought the shots sounded like they were close to the house. (Tr. 137).

Respondent ran outside the front door out to the front step of the house. (Tr. 105-06). He saw the SUV turn around and there was another car behind it. (Tr. 106). Respondent testified he saw the two vehicles in front of his house, a Honda Accord and a gray or Silver Ford Expedition. (Tr. 107). He noted that he saw the headlights of the Honda. (Tr. 106). The SUV turned its headlights off. (Tr. 106). As it drove back towards Respondent's house, Respondent fired a warning shot and told them not to come any farther. (Tr. 106). After he fired the warning shot, the cars continued to move slowly and he recalled seeing the two stop in front of his house. (Tr. 108-09). Respondent heard another shot. (Tr. 107).

He saw arms out of the truck hanging out of the window. (Tr. 109). He noted the red Honda was behind the truck. (Tr. 109). He also testified that the truck was facing the opposite direction that it had originally driven, and the Honda Accord was facing a different direction than it had originally gone. (Tr. 109-10). He also noted that he saw the car come close to his house. (Tr. 107). Respondent ducked behind the front hood of his vehicle that was in the front yard, and he fired two or three times. (Tr. 107, 108). He then went back into the house. (Tr. 107).

Others' testimony regarding the shooting.

Eric testified he saw a man come out of the house, and he saw the man shooting at the silver truck. (Tr. 228). He did not see the man do anything else.

(Tr. 228). Eric noted that as he and the victim pulled up to the intersection on the original road, the man who was shooting shot at the victim's car. (Tr. 229). Eric thought he felt the car swerve a little bit. (Tr. 229). After he called the victim twice, he saw the victim's eyes were closed. (Tr. 229). After hearing more gunshots, Washington got out of the car and ran away. (Tr. 232).

The three girls from the SUV that law enforcement could identify all indicated that after they heard the shots, and after Carter fired a shot out of the window of the SUV, Carter switched seats with the fourth girl in the SUV. (Tr. 163, 176,; State's Exhibit 21, p. 7-8). The three also told law enforcement that they thought about doing a driveby shooting, and they drove back in front of Respondent's house. (Tr. 176). However, they all indicated that they decided not to go through with the driveby shooting, and no shots were fired from the SUV. (Tr. 163). Eric indicated he did not see any shots fired from the truck, and he did not see anyone with a gun other than the man in the yard. (Tr. 234). Eric stated that neither he nor the victim had a gun that night. (Tr. 235).

Shade noted that Respondent went outside. (Tr. 14). She heard a gunshot while she was in the house on the floor. (Tr. 14). Asia also noted she heard more gunshots after her group got into Respondent's house. (Tr. 22). She did not see Respondent that night. (Tr. 27). Both Denzel and Antonio testified that the group got down in the kitchen after they went in Respondent's house. (Tr. 51, 66). Antonio stated that he heard roughly three gunshots. (Tr. 66). Rosalyn noted that while she was calling 911, Respondent went outside. (Tr. 88). Rosalyn heard Respondent say "don't do it, don't do it." (Tr. 88, l 17). She

heard another shot. (Tr. 88). Rosalyn also indicated that Respondent's roommate and his girlfriend came into the kitchen after shots were fired. (Tr. 92-3). Williams testified that shortly after Respondent ran out of his room with the gun, he started hearing gunshots. (Tr. 130). Williams thought he heard three shots; one sounded close, but another sounded as if it was further away. (Tr. 130-31).

After the shooting ended.

After the shooting was over, Williams peeked out his bedroom window and saw an Expedition with its lights out. (Tr. 133). Rosalyn testified that when Respondent came back into the house, he was asking if everyone was ok. (Tr. 93). Shade noted that when he came back inside, he told the group to go to their stepmother's house. (Tr. 14).

An officer came to the scene in response to the 911 call. (Tr. 93-5, 112). Respondent testified that he told the officer that a vehicle was shooting at the house and he gave a description of what he saw. (Tr. 118). He did not tell the officer about firing shots in the air or at a vehicle. (Tr. 118). After Respondent and Rosalyn spoke with the officer, the officer left to pursue the SUV, and everyone inside the house left the scene. (Tr. 93-5, 112, 133, 137). Meanwhile, Eric ran to a nearby McDonald's, and then called his mother and requested a ride home. (Tr. 232-33).

Law enforcement did stop the SUV shortly after the shooting. (Tr. 154). Reese stated that the gun from the truck was seized, along with the gun used by Respondent. (Tr. 166-67). The SLED ballistics report indicated the projectile

retrieved from the victim's body was consistent with being fired by a .380, which was the caliber weapon Respondent fired. (Tr. 167-68). The victim died as the result of a gunshot wound to the head. (Tr. 168).

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING RESPONDENT WAS ENTITLED TO IMMUNITY UNDER THE PROTECTION OF PERSONS AND PROPERTY ACT UNDER S.C. CODE ANN. § 16-11-440(A); THERE WAS NO EVIDENCE TO SUPPORT THE COURT'S FINDING THAT RESPONDENT WAS INSIDE HIS RESIDENCE WHEN THE SHOOTING OCCURRED, AND THERE WAS NO EVIDENCE TO SUPPORT THE COURT'S FINDING THAT A REASONABLE PERSON WOULD HAVE BELIEVED THE VICTIM WAS IN THE PROCESS OF UNLAWFULLY AND FORCEFULLY ENTERING RESPONDENT'S RESIDENCE.

At issue in this case is whether Respondent is entitled to immunity under the Protection of Persons and Property Act when he shot and killed an innocent bystander not related to the individuals and vehicle that Respondent perceived to be a threat to the safety of his family. The trial court erred in finding Respondent was entitled to immunity from prosecution under S.C. Code Ann. § 16-11-440(A). First, contrary to the trial court's findings, there was no evidence presented at the evidentiary hearing that the victim forcibly entered or was in the process of forcefully entering the victim's dwelling, residence, or occupied vehicle or was attempting to remove someone from Respondent's residence. Second, when the shooting occurred, Respondent was in his yard and not in his dwelling, residence, or occupied vehicle when he fired shots at the victim. Since the victim was not forcefully entering or had not forcibly entered Respondent's residence when he was shot, Respondent was not entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(A). Third, the court's finding that Respondent's belief that a forcible entry was occurring is not supported by the record. As a result, the trial court abused its discretion in finding Respondent was entitled to immunity under the Act.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings.").

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(A) states,

> 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)(emphasis added).

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "Section 16–11–450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." Id. "Consistent with the Castle Doctrine and the text of the Act, 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. This includes all elements of self-defense, save the duty to retreat." Id. at 371, 752 S.E.2d at 266.

Findings by the Trial Court

In granting immunity under S.C. Code Ann. § 16-14-440(A), the trial court stated as follows:

> The Act clearly states that section (A) applies if force is used against someone who is entering or attempting to enter a dwelling, residence or occupied vehicle. The Act codifies "the common law Castle Doctrine which recognizes that a person's home is his castle" Section 16-11-420(A). The purpose of this Doctrine is to protect an individual from being ejected from his home, business, or automobile. The Victim had followed the defendant's daughters home while they were being chased by another vehicle. The Victim never identified himself to the defendant and in doing so left the Defendant to reasonably believe that he too was an imminent threat. If in fact the Victim was present merely to observe these

> events or even assist those being chased in some way, the credible evidence presented simply fails to support such a finding. The Legislature went to great lengths to outline circumstances in which the Act is applicable, and in the instant case the Defendant may use deadly force if he has reason to believe that an "unlawful and forcible act is occurring". At no point is it required that the Defendant retreat into his home to be fired upon without him being able to defend his family and himself.
>
> The Defendant is clearly entitled to the immunity provided by the Act because the curtilage of his home has long been considered his "castle" by the common law of this state. See State v. Quick, 138 S.C. 147, 135 S.E. 800 (1926). And his right to use deadly force against the victim whom he reasonably believed was engaged in an unlawful and forcible act against his home was codified in Section 16-11-420(A).

(Order at pp. 9-10, R. pp.).

A. Respondent was not entitled to immunity under S.C. Code Ann. § 16-11-440(A) because there was no evidence or testimony establishing the victim forcibly entered or was in the process of forcibly entering Respondent's residence when Respondent shot him, or removing or attempting to remove another person against his will from Respondent's dwelling, residence, or occupied vehicle.

At the evidentiary hearing, there was no evidence presented that supported a finding the victim was in any way involved in the alleged attack upon Respondent's residence. First, as noted by the trial court, there was no evidence or testimony indicating the victim was involved in the confrontation at the Kia House. Further, none of those witnesses indicated they saw a second car chasing them to Respondent's house. (Tr. 14, 42, 54, 156, 170; see Tr. 17, State's Exhibits 3, 4, 5, 19). Respondent admitted as much during his closing argument. (Tr. 286). Rosalyn did not mention a second car in her call to 911, nor did she mention the victim's car in her statement to law enforcement. (State's Exhibit 7, 8). Also, none of the individuals in the SUV indicated in their

statements that they knew the victim or that he was involved in their following the Grand Marquis. There was also no testimony or evidence indicating the victim was armed. Eric testified he did not see the victim with a gun, and to his knowledge, there was no weapon in the car. (Tr. 235). Further, the windows in the vehicle were rolled up when the shooting occurred. (Tr. 240, State's Exhibit 10, 11).

In all, the testimony and evidence presented at the hearing showed that the only action taken by the victim before he was shot was he turned his car around. The victim did not get out of his car. The victim did not attempt to enter Respondent's residence. The victim did not attempt to attack Respondent. The trial court made no finding that the victim made such an attempt in the Grant of Immunity. Since there was no evidence to support a finding the victim was "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," Respondent was not entitled to any protection under S.C. Code Ann. § 16-11-440(A).

The hearing court relied upon its determination that Respondent had reason to believe he was under attack by the victim as support for its finding that he was entitled to immunity under § 440(A). While the Respondent's belief may be relevant in assessing the existence of S.C. Code Ann. § 440(A)(2), it has no relevance or bearing upon the existence of evidence required by S.C. Code Ann. § 440(A)(1). The existence of evidence of both subsections is required for §

440(A) to apply. Thus, the Grant of Immunity should be reversed, and the case should be remanded for trial.

B. The hearing court erred in granting immunity under S.C. Code Ann. § 16-11-440(A); this subsection was not applicable to Respondent's case because the shooting occurred outside the residence as residence is defined in S.C. Code Ann. § 16-11-430.

The trial court erred in finding that § 16-11-440(A) applied because none of the action in this case involved Respondent's residence. The shooting occurred in Respondent's yard, and there was no evidence that any action was taken by the victim upon Respondent's residence.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd, 313 S.C. 1, 437 S.E.2d 6 (1993)). All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted). "The legislature's intent should be ascertained primarily from the plain language of the statute. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." State v. Dupree, 354 S.C. 676, 693, 583 S.E.2d 437, 446 (Ct.App.2003) (internal citation omitted).

As already noted, for § 440(A) to apply, the person against whom deadly force was used must have either entered or attempted to enter a dwelling, residence, or occupied vehicle, or attempted to remove someone from a dwelling, residence, or occupied vehicle. The Protection of Persons and Property Act defines 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). Further, dwelling is defined as "a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or 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).

Contrary to the trial court's findings, § 440(A) does not apply when all of the actions occur in the curtilage. A plain reading of the statute's definition of residence and dwelling clearly reflects that curtilage is not included. Thus, § 440(A) would not apply in Respondent's case as the shooting occurred in Respondent's yard, not as the result of some entry or attempted entry into the residence. If the Act applied to Respondent's case, it would only be through § 440(C). As a result, the grant of immunity under § 440(A) should be reversed, and Respondent's case should be remanded for trial.

Appellant would note that if this Court finds that curtilage is covered as part of Respondent's residence by S.C. Code Ann. § 16-11-440(A), the hearing court necessarily erred in finding Respondent was entitled to immunity under S.C. Code § 16-11-440(C). Under that interpretation of the statute,

Respondent's residence would not constitute "another place" that would allow for immunity under the statute. S.C. Code Ann. 16-11-440(C) states:

> 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.

When read in conjunction with the other subsections of S.C. Code Ann. § 16-11-440, it is clear that "another place" in subsection 440(C) refers to places that do not include a defendant's residence, dwelling, or occupied vehicle.

S.C. Code Ann. § 16-11-440(A) states:

> (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
>
> (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered **a dwelling, residence, or occupied vehicle**, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A) (emphasis added). In subsections (B), (D), and (E), the statute specifically refers to the application of the presumption in subsection (A), reflecting that it applies to only a dwelling, residence, or occupied vehicle. In light of the specific references to dwelling, residence, or occupied vehicle in those other subsections, Appellant submits that it clear that "in another

place" in subsection (C) refers to a place other than a dwelling, residence, or occupied vehicle. This is further supported by the example of another place provided in subsection (C), one's "place of business," which does not fit within the definition of a dwelling, residence, or occupied vehicle. Thus, if this Court found curtilage is part of one's residence, as residence is defined in § 430, the hearing court's finding that Respondent was entitled to immunity under subsection (C) was in error.

C. There was no evidence to support finding that Respondent knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act from the victim was occurring or had occurred.

The hearing court erred in finding Respondent was entitled to immunity under S.C. Code Ann. § 16-11-440(A) because there was no support for a finding Respondent knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act from the victim was occurring or had occurred, as is required by § 440(A)(2).

There was no evidence or testimony indicating the victim was involved in the confrontation at the Kia House. Further, none of those witnesses indicated they saw a second car chasing them to Respondent's house. (Tr. 14, 42, 54, 156, 170; see Tr. 17, State's Exhibits 3, 4, 5, 19). Respondent admitted as much during his closing argument. (Tr. 286). In fact, the description of the individuals involved in both the confrontation and the car chase would have put Respondent on notice that the victim was not part of the group that threatened the folks in the Grand Marquis. By all accounts, those involved in the confrontation were female, and those involved in the chase were female.

Further, Rosalyn did not mention a second car in her call to 911, nor did she mention the victim's car in her statement to law enforcement. (State's Exhibit 7, 8). Also, none of the individuals in the SUV indicated in their statements that they knew the victim or that he was involved in their following the Grand Marquis. There was also no testimony or evidence indicating the victim was armed. Eric testified he did not see the victim with a gun, and to his knowledge, there was no weapon in the car. (Tr. 235). Further, the windows in the vehicle were rolled up when the shooting occurred. (Tr. 240, State's Exhibit 10, 11).

The basis for Respondent's contention that he believed he was entitled to immunity stemmed from the fact the victim's car was in the general vicinity of Respondent's front yard when the SUV passed by the front of his house the second time with its headlights off. This reasoning was both flawed and insufficient to warrant the grant of immunity. While he indicated he saw both pass after the Grand Marquis pulled into his yard, Respondent admitted during his testimony that he did not see either of the two vehicles turn around. (Tr. 109). Instead, he went back into the house, and he noticed that both had somehow turned around when he returned to the front of the house. (Tr. 109-10). Respondent's testimony reflects that he did not see any action taken by victim that would indicate he was acting in concert with the individuals in the SUV.

In all, the testimony and evidence presented at the hearing showed that the only action taken by the victim before he was shot was he turned his car around. The victim did not get out of his car. The victim did not attempt to enter

Respondent's residence. The victim did not attempt to attack Respondent. Unlike the individuals in the SUV, the victim did not roll his window down and slowly drive in front of Respondent's house with his headlights off. To the contrary, his windows were rolled up, and his headlights were on. Appellant submits the evidence presented was not enough to support the hearing court's finding.

Appellant would also note that the reasoning applied by the hearing court, which essentially found the victim was a threat because he did not inform Respondent he was not a threat, is problematic. First, the victim was in a place where he had a right to be, driving on a public road. There was no evidence he took any threatening actions towards Respondent. Second, there was no evidence presented that the victim had any reason to believe he was being perceived as a threat by Respondent before the shots were fired. Eric's testimony reflected that he did not hear Respondent say anything prior to Respondent shooting at the car. (See Tr. 227-29, 238). In all, there was not sufficient evidence to support a finding that Respondent reasonably believed there was going to be a forcible entry or forcible act by the victim upon Respondent's residence in this case. Thus, the grant of immunity should be reversed, and the case should be remanded for trial.

II. THE TRIAL COURT ERRED IN FINDING RESPONDENT WAS ENTITLED TO IMMUNITY UNDER THE PROTECTION OF PERSONS AND PROPERTY ACT UNDER S.C. CODE ANN. § 16-11-440(C); THE STATUTE REQUIRES THE DEFENDANT TO ACTUALLY BE ATTACKED PRIOR TO USING DEADLY FORCE AGAINST THE VICTIM, AND THERE WAS NO EVIDENCE PRESENTED AT RESPONDENT'S HEARING TO SUPPORT A FINDING HE WAS ATTACKED BY THE VICTIM IN THIS CASE.

The court also erred in finding Respondent was entitled to immunity under S.C. Code Ann. § 16-11-440(C). The court's determination that subsection (C) was applicable was based upon its belief Respondent only needed to show that he believed he was under attack from the victim. The plain language of the statute reflects the defendant must be responding to an attack to be entitled to immunity under this section of the Protection of Persons and Property Act. Since there was no testimony or evidence presented at the hearing that the victim used any force against Respondent, he was not entitled to immunity under § 440(C).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829 (citing Cutter, 261 S.C. 140, 199 S.E.2d 61. The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts, 303 S.C. at 356, 400 S.E.2d at 782 ("In law actions, the

lower court must be affirmed where there is "any evidence" to support its findings.").

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. Duncan, 392 S.C. at 410, 709 S.E.2d at 665. "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(C) states,

> 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).

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." Curry, 406 S.C. at 370, 752 S.E.2d at 266. "Section 16–11–450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." Id. "Consistent with the Castle Doctrine and the text of the Act, 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. This includes all elements of self-defense, save the duty to retreat." Id. at 371, 752 S.E.2d at 266.

Findings by the Trial Court

In granting immunity under S.C. Code Ann. § 16-14-440(A), the trial court stated as follows:

> § 16-11-440(C), also known as the "Stand Your Ground" provision, provides immunity to an individual who uses deadly force against an attacker in places other than a business, automobile, or home. In order for an individual to be granted immunity from the Stand Your Ground provision of the Act the defendant must demonstrate three things. First, in order to be immune, the person using deadly force must be in a "place where he has a right to be." Second, that he not be "engaged in unlawful activity." And third, deadly force may be used only if the person "reasonably believes it is necessary to prevent great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60."
>
> When the Defendant fired the shot, he reasonably believed he was being attacked with deadly force directed at his home. There is absolutely no requirement that the defendant wait to be attacked by those that instigated the deadly circumstances. The Legislature intended that the defendant should not have to wait to be fired upon. In fact, the Legislature codified this belief in § 16-11-420
>
> (A) It is the intent of the General Assembly 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.
>
> (B) The General Assembly finds that it is proper for law abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.
>
> (C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.
>
> (D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

> (E) The General Assembly finds 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.
>
> I hereby conclude that the Defendant is entitled to the grant of immunity under the Act because he and his family were clearly under attack and that they had every reason to believe that the attack would have continued from both Ms. Carter and potentially the victim but for the actions of the Defendant. The Legislature clearly did not intend for any father to stand idly by as his family lay on the kitchen floor in fear of being shot and killed. The defendant meets all of the statutory requirements to be granted immunity for his actions on April 18, 2010.

(Grant of Immunity at pp. 10-11, R. pp.).

The trial court erred in granting immunity under S.C. Code § 16-11-440(C); there was no evidence the victim was meeting force with force when Respondent shot him.

Respondent was not entitled to immunity under § 440(C) because there was no evidence or testimony presented at the immunity hearing that when he shot the victim, he was meeting force with force. Section 440(C) states that "[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. . . ."

"The legislature's intent should be ascertained primarily from the plain language of the statute. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." Dupree, 354 S.C. at 693, 583 S.E.2d at 446 (internal citation omitted).

> When a statute's language is plain and unambiguous, and conveys clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct.App.1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Id. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. Id.; City of Sumter Police Dep't v. One 1992 Blue Mazda Truck, 330 S.C. 371, 498 S.E.2d 894 (Ct.App.1998).

State v. Landis, 362 S.C. 97, 102-03, 606 S.E.2d 503, 506 (Ct.App.2004).

Section 440(C) is clear and unambiguous in that it allows a defendant to respond with force if he is attacked. Contrary to the court's findings, the language of this section does not support a grant of immunity if the defendant is not attacked by the victim before using force against that individual. There was no evidence or testimony presented at the immunity hearing that would support a finding the victim attacked Respondent. No weapon was found on the victim, and Eric testified he did not see the victim with a weapon on the day of the shooting. (Tr. 235). Further, Eric indicated there was no weapon in the victim's car. (Tr. 235). Respondent did not even mention seeing a weapon in the victim's car. He did not indicate he saw shots fired from the car. In fact, Respondent's testimony reflects that the basis for his belief that the victim's vehicle was a threat was because he saw both the SUV and the victim's car pass in front of his house when the Grand Marquis arrived. (See Tr. 107-09). Respondent did not see either vehicle turn around. (Tr. 109). In all, there was no testimony or evidence indicating the victim attacked Respondent. The hearing court did not find as

much. Thus, Respondent was not entitled to "meet force with force" against the victim because the victim had not utilized any force against Respondent.

The hearing court's finding that the legislature incorporated the right to act on appearances in the Protection of Persons and Property Act is not supported by a review of the Act. First, nothing within S.C. Code Ann. § 16-11-420 references or implies that the Act codifies the right to act on appearances. To the contrary, § 420(A) only notes that the legislature intended to codify the common law Castle Doctrine. None of the other subsections of § 420 directly address the right to act on appearances.

While the right to act on appearances is certainly within the common law regarding self-defense, it is not within the common law of the Castle Doctrine. In common law, under the Castle Doctrine, "[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." State v. Gordon, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924); see State v. Bowers, 122 S.C. 275, 115 S.E. 303, 305 (1923)("One who is assaulted in his own house is not required to retreat before exercising his right of self-defense, and I charge you that a man's place of business is within the meaning of this rule and is deemed his dwelling, and he need not retreat therefrom in order to invoke the benefit of the doctrine of self-defense."). As noted by this Court in Curry, the doctrine applies to the fourth element of self-defense, the duty to

retreat.[4] Curry, 406 S.C. at 371, 752 S.E.2d at 266. The right to act on appearances addresses a completely different element of self-defense. It focuses on a portion of the second element of self-defense, which requires the defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. See State v. Starnes, 340 S.C. 312, 320, 531 S.E.2d 907, 912 (2000).

Since the right to act on appearances is not within the Castle Doctrine, and it was not codified as part of the Protection of Persons and Property Act, it was improper for the hearing court to rely upon the principle in finding § 440(C) applied to Respondent. As a result, the grant of immunity should be reversed, and this case should be remanded for trial.

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[4] Self-defense is a complete defense. If established, you must find the defendant not guilty. There are four elements required by law to establish self-defense in this case. 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. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense. These are the elements of self-defense.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court reverse the trial court's Order granting Respondent immunity from prosecution under the Protection of Persons and Property Act and remand for a trial on the murder indictment.

Respectfully submitted,

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March 14, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
The Honorable Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2013-002124

THE STATE OF SOUTH CAROLINA,

APPELLANT,

V.

SHANNON SCOTT,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Initial Brief of Appellant and Designation of Matter on Respondent by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record, James Todd Rutherford, Esq., The Rutherford Law Firm, LLC, P.O. Box 1452, Columbia, South Carolina 29202-1452, and to Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 14th day of March, 2014.

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