STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
The Honorable Carmen Tevis Mullen, Circuit Court Judge

Case No. 2016-GS-38-0731

STATE OF SOUTH CAROLINA

Appellant,

vs.

CHARLES THOMAS RILEY,

Respondent.

Appellate Case No. 2016-002123

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

I. Did the trial judge err in granting defendant Charles Riley's request for immunity from prosecution pursuant to the Protection of Persons and Property Act where the evidence showed Riley was engaged in unlawful activity, was not attacked, was not without fault in bringing on the difficulty, and had no reasonable fear of imminent death or serious bodily harm?

STATEMENT OF THE CASE

Respondent Charles Riley sought immunity under the Protection of Persons and Property Act (the Act), S.C. Code Ann. § 16-11-410 *et seq.,* following the shooting death of Lee Edward Green. On September 19-20, 2016, the Honorable Carmen Tevis Mullen conducted a pretrial hearing to determine whether Riley was entitled to immunity. (Sept. 19-20, 2016 Transcript pp. 49–113.) Riley was represented by Bradley Hutto, Esquire. (Tr. p. 1.) The State was represented by Assistant Solicitor Ashley Cornwell. (Tr. p. 1.) After hearing from eight witnesses, including Riley, and after hearing argument from both sides, Judge Mullen granted the motion. (T. pp. 1-3; Order, dated October 4, 2016.)

Thereafter, the State served a timely notice of appeal, which it filed with the South Carolina Supreme Court on October 12, 2016. (Notice of Appeal). By order of October 18, 2016, and pursuant to Rule 204(a) of the South Carolina Appellate Court Rules, the Supreme Court transferred the appeal to the South Carolina Court of Appeals. (Order of Supreme Court dated Oct. 18, 2016.)

STATEMENT OF THE FACTS

Jeffrey Smith owed $300 to his friend, Lee Green (the victim). (T. pp. 8-10.) The money was to repay Green for drugs. (T. p. 280, lines 17-20.) Smith attempted to obtain the money in cash from a title loan business, but was unable to do so because he did not have a consistent stream of income. (T. p. 10, line 9 – p. 12, line 9.) According to Smith, the men agreed that Green would hold the title to Smith's truck until Smith was able to repay Green. (T. p. 12, lines 10-14.) Because he was low on gasoline, Smith drove his truck to his nearby niece's house and left the truck parked there. (T. p. 13, lines 1-11.) Green and his friend Keitt, who had followed Smith to the title company and then to his niece's house, gave Smith a ride home. (T. p. 13, lines 12-19.) Smith claimed he accidentally left a copy of his keys in Green's truck. (T. p. 16, lines 10-17.)

The next morning, Smith walked to Charles Riley's home and asked Riley for a ride to his niece's house and some money to purchase gasoline for his truck. (T. p. 14, lines 1-13.) When they men arrived at the house, the men found the truck was gone. (T. p. 14, lines 15-16.) Smith's niece said Green and Keitt had taken the truck earlier. (T. p. 14, lines 17-19.) Smith then asked Riley if he would give him a ride to Green's house so he could repossess his truck, and Riley agreed. (T. p. 15, lines 23-25.) Riley drove Smith to an area near Green's house, but because of a prior history with Green, dropped Smith off two streets down from the house. (T. p. 16, lines 1-5.) The men could see Smith's truck parked in the yard. (T. p. 16, lines 1-7.)

Smith put gasoline into his truck and then drove his truck to Charles Riley's house to park the truck there. (T. p. 17, lines 4-11, Court's Exhibit 1.) After approximately forty-five minutes, Green and Keitt drove up to Riley's driveway as Smith was standing outside. (T. p. 17, line 20 – p. 18, line 5.) Keitt was driving, and Green sat in the passenger side. (T. p. 17, lines 5-

8.) According to Smith, the men drove the truck into the yard and stopped about six feet from Riley's house. (T. p. 19, lines 8-12.) Donnie Green approached Smith, swinging his fists and telling Smith he was going to take the truck. (T. p. 21, line 19 – p. 22, line 4.) Smith argued with Green, telling him he only agreed to allow Green to hold his title until he repaid the loan. (T. p. 22, lines 4-5.)

A few minutes later, Riley came outside and told Green and Keitt to leave. (T. p. 22, lines 10-23.) Green began arguing with Riley, telling Riley he never liked him anyway. (T. p. 23, lines 21-25.) Angela Riley heard the commotion and came outside, as well. (T. p. 24, lines 5-7.) Ms. Riley was a cousin of Donnie Green, but she also told the men to leave. (T. p. 24, lines 9-16.) Smith testified that as the men were arguing, he heard Green tell Riley, "I ain't here to fight with you." (T. p. 49, lines 24-25.) He also claimed he heard Green tell Riley, "I been with you. I been with you. I did this before." (T. p. 26, lines 18-22.) Smith interpreted this statement to refer to a previous encounter in which Green and some other men were "involved in jumping on" Riley.[1] (T. p. 27, lines 1-6.)

Charles Riley went back inside the house. (T. p. 24, lines 1-4.) Green did not follow Riley or start toward the house. (T. p. 43, lines 7-15.) Instead, Green turned to continue arguing with Smith. (T. p.50, lines 2-6.) When Riley returned from inside the house, he was carrying a shotgun. (T. p. 24, line 24 – p. 25, line 7.) Riley descended the steps to the front porch, into the yard, and toward the men's truck. (T. p. 27, lines 10-21.) Riley again told Green to leave and Green "went like he was going to get something out of the car." (T. p. 25, lines 10-14.) Smith said he saw Green reach into the back seat of the car and thought he was going to leave, but then

[1] According to Keitt's interview with an investigator with the Sheriff's Department, Riley was attacked by the men because he was boasting about assaulting his wife, Angela Riley, who was also Keitt's cousin. (Court's Exhibit 1.)

Green "ended up coming back out of it." (T. p. 31, lines 6-9.) On cross-examination, Smith acknowledged he told police Green "got back into the car." (T. p. 48, lines 11-13.) Smith turned to tell Ms. Riley to call the police. (T. p. 25, lines 14-15.) While he was turned around, he heard the gun fire. (T. p. 26, lines 1-7.)

Smith thought Riley fired into the air, but then he heard Green saying, "you shot me." (T. 28, lines 1-2.) Green appeared to be holding his shoulder, and Smith told Keitt to take him to the hospital. (T. p. 28, lines 3-14.) Keitt started the car and the men left. (T. p. 28, lines 15-17.) Riley called 911 and reported the shooting. (T. p. 28, lines 20-25.)

The other bystander presented a slightly different version of the facts. Thomas Keitt explained that even though Smith owed Green $300, Green paid for all the fees at the Department of Motor Vehicles required to transfer the title to Smith's truck into Smith's name. (T. p. 253, lines 6-20.) Smith agreed to hand over the title and possession of his truck to Green after the men learned the title company denied Smith a loan. (T. p. 254, lines 1 – 21.)

Smith drove the truck to his niece's house, which was two blocks away, and gave the keys and title to Green. (T. p. 254, lines 16-21.) Green asked Keitt to drive the truck to his house, but Keitt declined because it was late at night, and Smith had no insurance on the truck and a fake license plate on the rear of the truck. (T. p. 254, lines 22-24.) The men gave Smith a ride home that night. (T. p. 255, lines 12-17.) The next morning the men bought some gasoline for the truck, drove to the niece's house to retrieve it, and then drove the truck to Green's house. (T. p. 256, lines 6-10.) Keitt said Smith fully understood Green would take possession of the truck until Smith repaid the loan, and Green even called Smith Saturday morning to let him know the men had the truck and it was properly secured on Green's property. (T. p. 256, lines 13 – 24.) Green and Keitt ran some errands later that morning, and when they returned, they realized Smith had

taken the truck. (T. p. 257, lines 1-24.) The men reasoned Smith was likely at a neighbor's or a friend's house, so they drove through the neighborhood looking for him. (T. p. 258, lines 1-9.) The men saw Smith sitting on Riley's front steps. (T. p. 258, lines 10-13.) They drove up into the driveway, and Smith approached the men at the car when they stopped. (T. p. 260, lines 11-24.) Keitt parked with the driver's side door closest to the house, and the passenger's side facing away from Riley's house. (T. p. 261, lines 12-21.)

Green exited the car and pushed Smith. (T. p. 261, lines 1-2.) In return, Smith swung at Green. (T. p. 261, lines 6-7.) According to Keitt, Green and Smith began to "tussle." (T. p. 262, lines 20-21.) Green looked around as if searching for something with which to strike Smith, but he did not pick up anything. (T. p. 262, lines 20-23.) Keitt explained that Green got back into the car at this point, with the passenger window rolled down and his hands by his side. (T. p. 265, line 17 – p. 266, line 8; p. 272, lines 1-4; p. 277, lines 14-18.) Keitt, who had been looking away from the house and focused on Green and Smith, then noticed Riley "coming out" with a gun. (T. p. 262, line 24 – p. 263, line 2; p. 269, lines 2-9.) Riley descended the steps of the porch, walked up to the car, walked past the driver's side and walked around the front of the car to approach Green. (T. p. 269, line 18 – p. 270, line 15.) At this point, Green was in the car, the men were preparing to leave. (T. p. 268, lines 11-14.) Riley asked Green what he was doing in his yard. Green told Riley he was there to ask Smith why he took the truck. (T. p. 263, lines 2-10.) Green told Smith, "I'll catch up with you later, man. I'll get you." (T. p. 277, lines 18-20.) Keitt testified Green never touched or threatened Riley in any manner. (T. p. 265, lines 2-7.) Keitt said Riley asked Green a second time why he was on his property, and Green turned toward Keitt to look at him. (T. p. 263, lines 9-11.) The third time Riley asked Green why he was there, Riley shot Green. In his statement to law enforcement, Keitt reenacted the shooting, indicating Riley

held the gun lower toward his waist when he pulled the trigger. (Court's Exhibit 1.) Keitt also told investigators it seemed Riley was trying to get even with Green for the assault from four years before. (Court's Exhibit 1.) Keitt said none of the shotgun pellets hit him because Green, who was a large man, absorbed the entire blast. (T.p. 265, lines 19-23.)

Green expressed surprise he had been shot by Riley and braced himself in the car. (T. p. 263, lines 12-15.) Keitt saw exposed muscle and internal tissue after a portion of Green's chest wall burst open. (T. p. 265, line 23 p. 266, line 2.) Keitt said blood was everywhere, and he started the car and drove to the hospital. (T. p. 263, lines 13-17.) Green held on to Keitt, who was shouting at Green to stay awake. When Keitt arrived at the hospital, he ran inside to tell the staff his cousin had been shot at close range with a shotgun. (T. p. 263, lines 23-25.) Keitt helped place Green in a bed, and the staff cut away the blood soaked T-shirt Green was wearing. (T. p.264, lines 5-11.) Green's shirt was not taken into evidence.

Angela Riley testified about the history between her husband and Green. (T. p. 63, lines 13-24.) Ms. Riley said Green and some other men "beat up" her husband four years before, and he was out of work for some time while he recovered from his injuries. (T. p. 63, lines 13-21.) On the day of the shooting, Ms. Riley said her husband told her someone might be coming to the house after he returned from taking Smith to pick up his truck. (T. p. 72, lines 4-14.) When the men arrived, Ms. Riley told her husband to leave it alone and not to go outside. (T. p. 72, line 21 – p. 73, line 3.) Ms. Riley heard Green tell her husband he was not there for him. (T. p. 64, lines 20-23.) Ms. Riley said she saw the men get back into the car, but then she went back inside the house. (T. p.76, lines 3-5.) Ms. Riley testified she told her husband not to go back outside with the gun. (T. p. 78, lines 2-5.) She did not see the shot; she only heard the shot and heard Green say something about being shot. (T. p. 66, line 12 – p. 67, line 3.) On cross-examination, Ms.

Riley acknowledged she told police in the past her husband has a temper and has assaulted her in the past. (T. p. 70, lines 20.)

Charles Riley, forty-nine years old, testified he had lingering vision problems from the assault by Green and other men four years earlier. (T. p. 85, line 18 – p. 88, line 7.) Riley said he stayed away from Green after the assault. (T. p. 88, lines 12-15.) When Smith asked him for a ride to Green's house to retrieve his truck, Riley told him he would drop Smith off near Green's house, but he would not take Smith directly to Green's yard. (T. p. 90, lines 9-19.) Riley dropped Smith off and went home. (T. p. 90, lines 19-23.) Riley testified that approximately an hour later, he heard a commotion outside in his front yard. (T. p. 91, lines 8-23.) The two men, Green and Keitt, were standing outside of their car. (T. p. 93, lines 1-2.) Riley admitted he inserted himself into the confrontation between the men. (T. p. 108, lines 8-15.) Riley testified Green said, "I've got something coming for you later." (T. p. 93, lines 20-21.) Riley said he turned around, went inside the house, retrieved his gun, loaded with bird-shot. Riley admitted he did not see Green with a weapon or reach for a weapon before he went inside to arm himself. (Tp. 119, lines 20-22.) Riley told his wife he was tired of Green and, despite her protestations that he stay inside, he went outside with the gun. (T. p. 11, lines 8-20.) Riley claims he told the men to leave again. When he saw Green reach for what looked like a weapon to him, Riley shot him. (T. p. 94, line 13 – p. 95, line 6.) Riley's testimony was inconsistent about whether Green pulled something that looked like a gun from the trunk of the car. (T. p. 112, lines 6-10.) Initially he testified the trunk was open, then he claimed he could not remember if the trunk was open or closed when the solicitor asked him how he could see a hand gun around an open trunk. (T. p. 112, lines 14-19.) Riley claimed he shot Green from about two feet away. (T. p. 114, lines 13-22.)

Crime scene analyst testified there was no indication of damage to the interior or exterior of the car from the shotgun blast. (T. p. 147, lines 21-25.) Blood was found in the interior of the car, but it was also found on the outside of the passenger door and the outside of the driver's door. (T. p. 148, lines 8-12.) The analysist testified it was possible the blood on the driver's side door was the victim's blood, but transferred to the driver from the victim when he helped the victim into or out of the car. (T. p. 148, lines 13-25.) Investigators made the following findings on the presence of gunshot residue:

1. Rear driver's side quarter panel near trunk of the car – associated with gunshot residue (T. p. 182, lines 7-11.)
2. Top of the trunk – one particle of gunshot residue, particles consistent with gunshot residue, and particles associated with gunshot residue. (T. p. 183, lines 5-14.)
3. Rear passenger's side quarter panel – gunshot residue, particles consistent with gunshot residue, and particles associated with gunshot residue. (T. p. 184, line 12 – p. 185, line 2.)
4. Front passenger head rest - gunshot residue and particles consistent with gunshot residue. (T. p. 186, lines 15-18.)
5. Passenger's side dashboard – gunshot residue. (T. p. 186, lines 20-22.)
6. Front passenger door interior - gunshot residue, particles consistent with gunshot residue, and particles associated with gunshot residue. (T. p. 188, lines 10-16.)
7. Center console – gunshot residue and a particle consistent with gunshot residue (T. p. 188, line 24 – p. 189, line 2.)

Based on these findings, the State's trace analyst believed the presence and amount of gunshot residue inside the vehicle indicated the victim was either inside the vehicle when he was shot, or standing very close to the open door of the vehicle and shot at close range, within only a few feet. (T. p. 195, line 6 – p. 196, line 22.)

The defense called Robert Tressel as an expert, without objection, qualified in crime scene investigation, homicide investigation, and medical legal death investigation. (T. p. 198, line 4 – p. 202, line 12.) In Tressel's opinion, investigators would have found bird shot pellets inside the car had the victim been shot while sitting in the car. Tressel agreed that the end of the barrel of the shotgun was about two feet from the victim's chest when Riley shot Green. Tressel also opined the wound indicated the gun was mostly level when fired, although the trajectory was angled slightly downward. (T. pp. 212, line 18 – p. 219, line 2.) Tressel theorized the injury to Green's chest that caused the chest wall burst open would have also allowed pellets from the shotgun blast to exit Green's body. (T. p. 228, line 23 – p. 229, line 23.) Based on the failure to find pellets inside the vehicle, the expert opined the gunshot occurred outside the vehicle. (T. p. 229, lines 15-21.) Tressel acknowledged, however, that the unavailability of the victim's shirt meant he did not know for certain whether pellets would have traveled outside Green's chest. (T. p. 237, line 3 – p. 238, line 5.) Tressel also visited the scene and determined the car was parked approximately sixteen feet from the edge of Riley's porch. (T. p. 222, lines 11 – 20.) From the open passenger's door to the front steps of the porch measured twenty feet. (T. p. 223, lines 5-8.) The expert also measured the distance between the window frame of the car and the chest of a man approximately the same size as the victim to be about one foot. (T. p. 224, lines 1-4.)

ARGUMENT

The trial judge erred in granting defendant Charles Riley's request for immunity from prosecution pursuant to the Protection of Persons and Property Act where the evidence showed Riley was engaged in unlawful activity, was not attacked, was not without fault in bringing on the difficulty, and had no reasonable fear of imminent death or serious bodily harm.

The statutory scheme under which Riley sought pretrial immunity is the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.* The Act provides, "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 . . . ." S.C. Code Ann. § 16-11-420(A) (2006). The South Carolina Supreme Court has concluded "that the legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act. Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial." *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In the instant case, following the pre-trial hearing Riley was granted immunity pursuant to subsection (C) because the shooting occurred in another place Riley had a right to be, or, the front yard of his home. However, the trial court abused its discretion in granting Riley's request for immunity because the evidence showed Riley was not attacked by Green, was not without fault in bringing on the difficulty, and was not reasonable in any belief he was in imminent danger of death or bodily injury.

Analysis

The common law Castle Doctrine provides "[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) (citation omitted). In South Carolina, the Legislature codified the Castle Doctrine and extended its reach to include an occupied vehicle and a person's

place of business. *See* S.C. Code Ann. § 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."). Subsection (C) addresses the use of force by one who is attacked in another place where he has a right to be:

> 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, i**f 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 (emphasis added); s*ee also State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (concluding defendant, who sought immunity under the Act after he fatally shot the victim, was defaulted into S.C. Code Ann. § 16-11-440(C) where the victim was a social guest and rightfully in the defendant's mother's apartment).

In *State v. Curry*, the South Carolina Supreme Court clarified that the Act does not require a trial court to accept a defendant's version of the underlying facts. 406 S.C. at 371, 752 S.E.2d at 266. Rather, "[c]onsistent 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.* The four elements required by law to establish self-defense are as follows:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the

> circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Curry at 371 n.4, 752 S.E.2d at 266 n.4. Thus, reading the pertinent language of the statutory requirements and the common law together, Riley must be 1) without fault in bringing on the difficulty, 2) attacked in a place he has a right to be, and 3) reasonable in his belief the shooting is necessary to prevent death or great bodily injury to himself or another person.

The evidence presented at the hearing does not support the lower court's finding Riley was acting in self-defense in killing Green. The State submits the trial court erred in granting immunity under S.C. Code § 16-11-440(C). Because the grant of immunity was improper, the ruling of the trial court should be reversed and remanded.

The Court's Ruling on the Matter

At the conclusion of the testimony, the court allowed final arguments by the defense and the State. (T. pp. 299-318.) Riley argued he had no involvement in the dispute over the truck between the two men, and that "out of the blue," Green brought the confrontation to Riley's yard. (T. p. 300, lines 6-11.) The defense argued Riley told Green to leave, attempting to eject Green from the property, then went inside the house to get his gun. (T. p. 300, line 24 – p. 301, line 11.) Riley claimed Green threatened Riley when he told him, he "got something for you," then appeared to reach for something. (T. p. 301, lines 11-18.) Riley then argued that though he did retreat inside the house and return with a loaded gun, his failure to exercise other options should not preclude him from immunity under the statute. (T. p. 302, lines 12-19.) The defense said Green was particularly a threat to Riley because of the drugs remaining in his system and because he was agitated at Smith over the car. (T. p.303, lines 7-19.) The defense claimed the

evidence supported the theory that Riley shot Green while he was outside of the car because no pellets were found inside the car and the injury was such that some of the pellets would have pushed out of Green's chest wall and landed within the car. (T. p. 304, lines 18-24.) Riley added that he had a right to protect Smith from Green, as well. (T. p. 306, lines 2-12.)

The State argued Riley was not entitled to immunity pursuant to S. C. Code Ann. §16-11-440(A) because Green made no unlawful and forcible entry into Riley's home. (T. p. 308, lines 1-9.) The solicitor then addressed the merits of immunity under Subsection (C). The State cited *Curry* for the proposition that when the statement of two of the witnesses are in conflict over whether the victim attacked the defendant, that the finding of fact has to go to the jury. (T. p. 309 lines 5-12.) The solicitor pointed out that Riley knew about the conflict over the truck and participated in Smith's repossession of it. Riley also knew the men might come to his property later that day and when they did, Riley inserted himself into the argument between the men. (T. p. 309, line 18 – p. 310, line 8). The court inquired whether Riley had done anything unlawful at that point, and the solicitor responded that he had not, but she was referring to subsection (C), and his fault in bringing on the difficulty. (T. p. 310, lines 4-19.) The court then asked the solicitor whether Riley should have waited for Green to arm himself and return to shoot into the house before he opted to defend himself, and the solicitor responded that in such a scenario, subsection (A) would apply. (T. p. 311, lines 1-19.) Moreover, the solicitor pointed out that Mr. Green must have committed some sort of offensive action against Riley for the statute to apply. (T. p. 312, lines 2-5.)

The court then inquired how far a person must allow the situation to escalate before dealing the deadly blow, and the solicitor responded with another problematic element of the statute, which was whether Riley had a **reasonable** fear of imminent death or great bodily injury,

even in the defense of others. (T. p. 312, lines 11-22.) The solicitor noted Green and Smith were friends, despite the conflict over the truck, and no weapons were involved in their dispute until Riley brought out a gun. (T. p. 312, lines 22- p. 313, line 5.) When Judge Mullen suggested Green's push of Smith could constitute and assault and battery, the solicitor pointed out that a simple assault would not give rise to a reasonable fear of death or great bodily harm. (T. p. 113, lines 6-19.) The solicitor argued Riley returned from inside his home with a gun before Green took any action that could be construed as looking for a weapon, either in the back seat or on the ground. Citing Justice Beatty's dissent in *State v. Dickey*, 394 S.C. 491, 504, 716 S.E.2d 97, 104 (2011), the solicitor argued Riley could not have been in fear of his life if he willingly left a safe place inside his home to insert himself in the men's dispute outside in his front yard. (T. p. 314, lines 4-21.) A reasonably prudent man of ordinary firmness and courage would have called the police rather than go outside, as Ms. Riley begged him not to do. (T. p. 214, lines 22-25.) Further, the solicitor argued the prior history between the men supported Riley's desire for revenge against Green as strongly as it supported his fear of imminent death or bodily harm. (T. p. 315, line 2 – p. 316, line 3.) The solicitor argued Riley failed to present sufficient evidence supporting the required elements to claim immunity pursuant to §16-11-440 (C)

The trial judge told the parties she would take the matter under advisement. (T. p. 318, lines 23-25.) The court then issued an order on October 4, 2016, granting Riley immunity from prosecution pursuant to the Protection of Persons and Property Act. The trial judge found Riley was entitled to immunity under the "stand your ground" protections of section 16-11-440(C). The court found Riley met the burden of proving he was in reasonable fear of death or great bodily injury to himself or another person at the time he shot Green. (Order at p. 3.) The court made the following findings of fact:

> At the time the incident occurred, Green came on to Defendant's property uninvited, initiated verbal and physical altercation with Smith—a friend and guest of Defendant's, refused to leave Defendant's property when asked several times by Defendant and his wife, and threatened Defendant; thus, the Defendant was without fault in bringing about the difficulty. *See Davis*, 282 at 46, 317 S.E.2d at 453. Defendant actually believed he was in imminent danger of losing his life or sustaining great bodily injury—Defendant had been beaten by Green in the past; Green threatened Defendant when he demanded that Green get off his property; and Defendant believed he saw Green reaching for a gun after Green said "I've got something for you." Id Further, the Court finds a reasonably prudent person of ordinary "firmness and courage" would have entertained the same belief if in the position of the Defendant. Id. Therefore, Defendant had no duty to retreat from Green, and Defendant was justified in using deadly force because he believed such force was necessary to prevent death or great bodily injury to himself. Immediately following the incident, Defendant put down the shotgun, walked into his home and called 911 to report the incident. Defendant cooperated with law enforcement, made no attempt to conceal any evidence, did not request an attorney, and voluntarily gave both video and written statements to law enforcement.

(Order pp. 4-5.)

Standard of Review

"A claim of immunity under the [Protection of Persons and Property] 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); *see State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (recognizing that the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence).

The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). 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. *Id.; 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."). 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. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007).

Respondent Was Not Attacked

The evidence presented at trial was consistent on this point: the fight over the truck was between Riley and Smith and no one else. Only two witnesses testified about the entry to the property by Keitt, the driver of the vehicle. Keitt testified the men decided to look for Smith in neighborhoods where Smith was known to have friends. In fact, Keitt was looking for Smith at a nearby neighbor's house who lived on Riley's street when they happened to see Smith in Riley's front yard. (T. p. 258, lines 1-9.) Keitt's version of their arrival is markedly more restrained than Smith's. According to Keitt, he simply turned into the driveway, drove toward the house, and pulled into a dirt area just off the driveway near the house. (T. p. 260, lines 11-23.). Charles Riley and his wife were inside, so they could not testify to the men's arrival. Keitt said he remained in the car and observed the argument and Smith testified Keitt and Riley never argued, which supports the State's theory that Green was only interested in talking to Smith that day and was not interested in bringing others into the confrontation. (T. p. 23, lines 11-19; p. 269, lines 10-14.) Smith, Ms. Riley, and Keitt all testified or told the police they heard Green tell Riley he was not there to fight with him. Further, Smith and Ms. Riley gave statements to the police in which they said Green was sitting in the car when Riley shot him, though at the hearing Smith and Ms. Riley changed their stories. (T. p. 45, line 23 – p.46, line 16; p. 76, lines 3-5.) No one

presented evidence Green approached Riley or attempted to follow him into the house when Riley retrieved the gun.

Moreover, the witnesses were consistent in describing how Riley came out of the house, down from the porch, and over to Green, who was either standing near or sitting inside the car. Green appeared to be retreating, or at the most, staying within a close proximity of the automobile, when Riley returned with the shotgun and killed him. Only Riley claimed he mistakenly saw Green holding a handgun (T. p. 94, line 13 – p. 95, line 6), and that testimony is not credible when this Court considers the uncontroverted testimony Riley was standing no more than three or four feet from Green when he shot him. Although it is undisputed Green and Smith were involved in a heated exchange, Green repeatedly told Riley he was not interested on Riley's property to confront him. As the solicitor argued at the hearing, there must be some offensive action by Green or an attack, to justify a shooting in self-defense. The trial court abused its discretion in finding Riley proved by a preponderance of the evidence Green attacked him, for purposes on §16-11-440(C), before he shot and killed him.

Respondent Was Engaged in Unlawful Behavior and Not Without Fault in Bringing on the Difficulty

To be entitled to a grant of immunity pursuant to the Act, subsection (C), a defendant must not be engaged in unlawful activity and must prove by a preponderance of the evidence he is without fault in bringing on the difficulty. The trial court erred as a matter of law in finding this element satisfied when the evidence showed, without contradiction, Riley willingly participated in Smith's actions to retrieve the truck, knowing Green was involved in the dispute and anticipating Green and Keitt would come looking for the truck at his house.

The circumstances surrounding the exchange and retrieval of Smith's truck were suspicious, to say the least. Smith testified the men agreed Green would keep the title to the truck

to hold until he repaid Green the money he owed him, and Keitt testified the understanding was Green would take possession of the truck as collateral until the debt was repaid. (T. p. 12, lines 10-14; p. 256, lines 13-24.) However, neither man disputed Green was the truck's owner at that point because he held its title pursuant to the men's agreement. Smith testified he accidentally left his keys in Green's car the night before, but Keitt said Smith gave Green the keys. (T. p. 16, lines 10-17; Court's Exhibit 1.) Green even called Smith the next morning to let him know the truck was secure at his house. Smith asked Riley to help him take the truck back from Green, and Riley agreed, dropping Smith off a few blocks down from Green's home so Green would not see him. (T. p. 90, lines 9-19.)

Thus, Riley participated in a predictably volatile repossession of a truck, even though he was assaulted by Green and some other men in an incident four years before the shooting. Riley claimed to stay away from Green, but his statement to his wife indicated he knew the retrieval of the truck would have repercussions. Oddly, Riley allowed Smith to park the truck at his house, presumably to help conceal the truck from Green. Per the men's understanding, the truck belonged to Green until Smith repaid Green, so Smith's repossession of the truck was unauthorized. Riley was an accomplice to this scheme, and the storage of the truck on his property meant he was engaging in unlawful behavior when Green arrived. Under the plain and ordinary meaning of the statute, Section 16-11-440 (C) would not apply. Moreover, considering the relationship between Green and Riley, and knowing the men would be looking for Smith, Riley's involvement in the repossession and concealment of the truck places him squarely at fault for bringing on the difficulty. *See State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319, 322 (1999) ("one who provokes or initiates an assault cannot escape criminal liability by invoking self-defense").

Lastly, Riley willingly participated in and escalated a confrontation he clearly anticipated when he walked outside and joined the argument between Smith and Green in his front yard. As the solicitor argued to the trial court, Riley could have called the police or simply stayed inside his home. (T. p. 214, lines 22-25.) Although a person is ordinarily entitled to eject a trespasser from his property, it must be a good faith effort to exercise that right. *State v. Brooks*, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969) ("if in the exercise of the right by a proprietor to eject a trespasser from his premises, the proprietor is assaulted by the trespasser and subjected to the danger of losing his life or of receiving serious bodily harm as would justify the killing of the assailant under the right of self-defense, obviously, he would have the right to stand on that defense and, if, in fact, engaged in the legitimate exercise in good faith of his right to eject, he would in such case be without fault in bringing on the difficulty, and would not be bound to retreat.") Riley knew the argument between the men involved Smith's repossession of the truck. When Riley walked outside, he was not engaging common trespassers on his property. Instead, he was confronting a man with whom he had a hostile relationship over a truck he willingly participated in taking earlier that morning. Further, despite Green's assurances he was at Riley's house to speak to Smith, and not Riley, Riley went inside his house and returned with a gun. It is undisputed that Riley introduced a gun into a situation in which no one was armed. Thus, Riley cannot be without fault in bringing on the difficulty; by his assistance to Smith in taking the truck, by confronting the men when the argument did not involve him, or by introducing a loaded weapon into what appeared to be a shoving match. The trial court's finding he was without fault in bringing on the difficulty lacks evidentiary support from the record.

Respondent's Belief He Was in Imminent Danger of Losing His Life or Sustaining Serious Bodily Injury Was Not Reasonable.

Although the evidence at the pre-trial hearing is applicable to refute simultaneously multiple elements of a self-defense argument, the entirety of the circumstances must be considered in determining whether Riley had a **reasonable** belief he was in imminent danger of losing his life when he shot and killed Green. As noted, the witnesses presented did not testify they saw the victim hit or attack Riley while they were arguing in the front yard prior to the shooting. Taking all of the evidence into consideration, Riley's behavior was decidedly unreasonable and disproportionately aggressive towards Green, who were no threat to Riley at all and no serious threat to Smith. *See, e.g. State v. Manning*, 418 S.C. 38, 791 S.E. 2d 148 (2016) (trial court's denial of immunity was proper when testimony was undisputed the victim was unarmed her when boyfriend shot her); *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013) (finding disputed testimony of whether victim attacked defendant presented a quintessential jury question); *State v. Jones*, 416 S.C. 283, 786 S.E.2d 132 (2016) (finding defendant's belief that she was in imminent danger of losing her life or sustaining great bodily injury reasonable given boyfriend actions toward her earlier in the evening of punching defendant, dragging her by her hair, and forcing her back into their apartment).

The following evidence contradicted Riley's claim of fear for his life:

1. Riley knew the men who pulled into his driveway were looking for Smith because he helped Smith repossess his truck forty-five minutes before the men arrived. (T. pp. 89-90.)
2. Riley heard a commotion in his front yard and decided to engage Green rather than call the police. (T. pp. 91-92.)

3. Green remained within close proximity to the car and never attempted to advance toward Riley, Riley's front porch, or Riley's house. (T. pp. 43, 49-50, 265.)
4. Riley walked down from the porch and over to the vehicle within approximately three feet of Green.(T. pp. 27, 114, 263-268, Court's Exhibit 1.)
5. Multiple witness statements to the police from both Smith and Keitt indicated Green had returned to the car and was sitting inside when he was shot. (Court's Exhibit 1.)
6. The trajectory of the shotgun blast, which the defense expert testified as being almost level but slightly downward, is consistent with the testimony Riley shot Green while he was sitting in the car and through the open passenger window. (T. p. 226.)
7. Gunshot residue inside the passenger side of the vehicle was consistent with the shotgun being fired at or near the open passenger's window and inside the car. (T. pp. 182-189.)
8. Green's location inside the car indicated he was attempting to leave when Riley shot him. (Court's Exhibit 1.)
9. No evidence was presented showing Green was armed or had any weapons available to him.
10. Riley's claim to have mistakenly seen a handgun is suspicious considering he was within three feet of Green when he shot him.
11. Riley called the police only after he shot Green, bypassing two opportunities to call for help safely before taking matters into his own hands.
12. Despite their dispute over the truck, Smith and Green were friends and Green had loaned Smith money in the past. (Court's Exhibit 1.) Smith did not call for help or otherwise indicate he was afraid for his life. (T. pp. 17-25.) Only Riley escalated the dispute into a

deadly confrontation, and Smith encouraged Ms. Riley to call the police after Riley brought out the gun. (T. p. 25.)

Considering the totality of the evidence presented at the hearing, there was not sufficient evidence to support a finding Riley had reason to fear any serious bodily injury or death. Riley clearly had no reasonable fear of imminent death when he chose to approach an unarmed man and shoot him while he sat inside the car, trying to retreat from the confrontation. Indeed, Green appeared to be trying to leave when Riley walked out with the gun. Riley was not within his rights to shoot Green before he had a chance to leave. *See, e.g. State v. Petit*, 144 S.C. 452, 142 S.E. 725 (1928) (holding a trespasser ordered to leave may not be forcibly ejected for the failure to leave immediately upon request, but is entitled to reasonable time to depart).

Moreover, Smith never testified he was afraid for his life or called Riley to assist him, and Smith certainly cannot claim he was without fault in bringing on the difficulty. As such, Smith would not have been entitled to immunity had he shot Green instead. Riley, standing in Smith's shoes, is thus not entitled to immunity on the basis he acted in defense of Smith. *See,* e.g.*State v. Cook*, 78 S.C. 253, 59 S.E. 862 (1907) (holding a person will not be allowed the benefit of self-defense unless it would have been available to the person on whose behalf he acted).

In sum, because the lower court's ruling regarding Riley's fear of imminent danger for himself or for Smith are not supported by the record, the lower court's determination that Riley established he acted in self-defense was an error of law. As a result, the grant of immunity was improper, and it should be reversed and remanded.

CONCLUSION

For all the foregoing reasons, Appellant respectfully requests this Court reverse the lower court's Order Granting Immunity from Prosecution to Defendant and remand the case back to the circuit court for further proceedings.

Respectfully Submitted,

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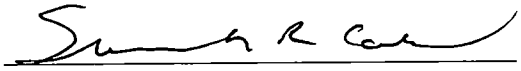

Susannah R. Cole
ATTORNEY FOR APPELLANT

February 8, 2017
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
The Honorable Carmen Tevis Mullen, Circuit Court Judge

Case No. 2016-GS-38-0731

STATE OF SOUTH CAROLINA

Appellant,

vs.

CHARLES THOMAS RILEY,

Respondent.

Appellate Case No. 2016-002123

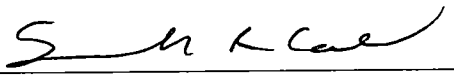
PROOF OF SERVICE

I, Susannah R. Cole, counsel for 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 United States mail, first class, postage prepaid, addressed to his attorney of record at:

C. Bradley Hutto, Esquire
Williams & Williams
1281 Russell Street
Orangeburg, SC 29115

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

This eighth day of February, 2017.



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SC Court of Appeals

February 8, 2017

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Charles Thomas Riley
Appellate Case No. 2016-002123

Dear Ms. Kitchings,

Enclosed please find the original and one (1) copy of the ***Initial Brief of Appellant and Designation of Matter***, dated February 8, 2017, along with proof of service, in the above-referenced case.

By copy of this letter, I am serving opposing counsel with same. Thank you for your consideration in this matter.

Sincerely,

Susannah R. Cole
Assistant Attorney General

SRC/pjc
Enclosures

cc: C. Bradley Hutto, Esquire
The Honorable David M. Pasco, Jr., Solicitor, First Judicial Circuit
Trisha Allen, Victim Services