STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2016-000269

THE STATE,

Respondent,

vs.

ALPHONSO MORGAN, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant waived any issue he may have had with the circuit court judge's ruling on his pre-trial immunity claim by subsequently entering an unconditional guilty plea and readily admitting he was criminally responsible for shooting and killing his victim. Moreover, Appellant abandoned any issue he may have had with the circuit court judge's immunity ruling by raising his appellate challenge to that ruling in a wholly conclusory and unsupported manner. However, even assuming Appellant's challenge to the immunity ruling could somehow properly be considered on appeal despite the fact it has been waived and abandoned, the circuit court judge did not abuse his broad discretion by declining to find Appellant was immune from prosecution pursuant to the South Carolina Protection of Persons and Property Act because the circuit court judge considered the evidence and testimony presented during the pre-trial immunity hearing and, in light of the factual disputes that existed in regard to what actually occurred, expressly determined Appellant failed to meet his burden of establishing he was entitled to immunity from prosecution by a preponderance of the evidence.

STATEMENT OF THE CASE

In November of 2013, Appellant Alphonso Morgan, Jr. was arrested after he shot and killed a man outside a club located in Greenwood, South Carolina. In May of 2015, the Greenwood County Grand Jury indicted Appellant for one count of murder. In January of 2016, Appellant filed a motion seeking immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. On February 1, 2016, a pre-trial hearing was commenced on the motion in the Greenwood County Court of General Sessions with the Honorable Eugene C. Griffith, Jr., circuit court judge, presiding. At the conclusion of the multi-day hearing, Judge Griffith denied Appellant's request for immunity from prosecution. Thereafter, on February 5, 2016, Appellant appeared in the Greenwood County Court of General Sessions and entered a guilty plea to the lesser-included offense of voluntary manslaughter before Judge Griffith. At the conclusion of the plea hearing, Judge Griffith accepted Appellant's guilty plea, sentenced him to a twenty-five-year term of imprisonment, and directed the remaining balance of that sentence be suspended to a three-year term of probation after Appellant finished serving twelve-and-a-half years of his sentence. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the night of November 14, 2013, Captain Hugh Butler of the Greenwood Police Department was alerted of a fight taking place at the Triangle Social and Senior Citizens Club, which was colloquially known as the Cabstand, and quickly began heading to that location. (Tr. pp. 309-311; p. 409). As he made his way there, Captain Butler received a follow-up report indicating someone had been shot at the club. (Tr. p. 311). Moments later, he arrived at the scene and observed numerous people running around in a frantic manner. (Tr. p. 312; p. 319). Captain Butler then attempted to ascertain what had transpired but received no assistance from most of the people present at the scene. (Tr. p. 312; pp. 319-320). However, one individual approached him and reported he saw the victim engaged in an argument with an unknown person seated in a black Chevrolet Impala, the door to that vehicle swung open, the victim was shot, and the vehicle sped off. (Tr. pp. 313-314). Critically, that individual also provided Captain Butler with the license tag number of the vehicle involved in the shooting, and the captain quickly alerted his fellow officers to be on the lookout for the shooter's vehicle. (Tr. p. 314).

Shortly thereafter, Jamaal Aiken ("Victim"), the person who was shot in the parking lot of the club during the incident, died at the hospital as a result of the injuries he sustained in the shooting.[1] (Tr. p. 174; p. 182; p. 260; pp. 285-286; p. 312; p. 318). Meanwhile, officers quickly tracked down and arrested Appellant Alphonso Morgan, Jr., the individual who shot Victim, at the home of Lenwood Ramsey, the owner of the black Chevrolet Impala involved in the shooting.[2] (Tr. p. 203; pp. 212-213; pp. 364-365). Following his arrest, Appellant was

[1] While Victim was at the hospital, his pants were removed and a stolen .380-caliber pistol was discovered in his pocket along with twenty-eight grams of marijuana. (Tr. pp. 256-258).

[2] During the immunity hearing, Tonya Fuller indicated law enforcement officers arrived at that location only five minutes after Ramsey and Appellant returned to the home after the shooting. (Tr. pp. 193-194; p. 200).

transported to the police department and interviewed. (Tr. pp. 365-366). However, he invoked his rights and declined to provide a statement that night. (Tr. p. 367).

Thereafter, several months later, Appellant arranged to speak with officers with the assistance of defense counsel and provided a statement about the shooting. (Tr. p. 369; State's Ex. # 4 (Recording of Appellant's Statement)). In that statement, Appellant alleged he went to the Cabstand on the night of the shooting with a .44-caliber revolver he purchased after "doing time."[3] (State's Ex. # 4). Once there, Appellant indicated he got a "funny feeling" and left. (State's Ex. # 4). After that, Appellant stated he was alerted one of his friends had been "jumped" and he returned to the club in response. (State's Ex. # 4). When he got back to the club, Appellant claimed Victim approached his car in an "enraged" manner and snatched the door open. (State's Ex. # 4). At that point, Appellant stated he shot Victim. (State's Ex. # 4). Then, Appellant stated he directed the driver of the vehicle he was in to go, they travelled to Ramsey's house, he hid the gun he used to shoot Victim underneath a pile of leaves, and he was eventually arrested by the police. (State's Ex. # 4).

Following the interview, Appellant was indicted for murder as a result of Victim's death, and he filed a motion seeking immunity from prosecution before his case was called to trial. (Tr. pp. 9-12; Indictment; Motion Asserting Statutory Immunity from Prosecution, pp. 1-2; Immunity Hearing Memorandum and Pre-Trial Brief, pp. 1-19). In response, the circuit court judge conducted a pre-trial immunity hearing in regard to Appellant's motion. (Tr. p. 7).

During the hearing, defense counsel presented the testimony of numerous witnesses who offered varying accounts of the shooting.[4] [5] (Tr. pp. 18-68; pp. 186-228; pp. 260-319).

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[3] Notably, Appellant did not have a concealed weapons permit for that weapon. (Tr. p. 499).

[4] In addition to those accounts, multiple witnesses who did not actually witness the shooting testified about what allegedly occurred prior to it. (Tr. pp. 71-114; pp. 116-168; pp. 231-239; pp. 322-341). Specifically, Ernest

Regarding those accounts, Thomas Gilchrist, who was known as "Bug," testified he went to the Cabstand with Appellant on the night of the incident, they stayed for a little while, Appellant indicated he wanted to leave before anyone got into trouble, and they left the club. (Tr. pp. 18-20; pp. 28-30). A short time later, Gilchrist stated Appellant received a call and indicated they need to return to the club, they returned together in Ramsey's car, they observed a commotion near the door to the club, Victim walked alone towards their car "in a frenzy," Victim opened the rear door of the car and made an insulting comment to Appellant, and then Victim tried to reach into the car and pull Appellant out. (Tr. pp. 31-36; pp. 57-59; p. 68). At that point, Gilchrist indicated Appellant suddenly shot Victim before closing the door and directing Ramsey to drive them away. (Tr. pp. 37-38; p. 59). After that, Gilchrist indicated they returned to Ramsey's home, he eventually returned to the scene of the shooting, and he falsely claimed to have observed the incident from outside the vehicle to a police officer he encountered there. (Tr. pp. 38-42; p. 65). Similarly, Ramsey testified he went to the Cabstand on the night of the incident before returning to his home with Appellant and some other individuals after Brent Williams ("Brent") slapped Appellant's hat and cursed at him inside the club. (Tr. pp. 202-208; p. 217).

McCauley, a regular visitor to the Cabstand, testified a fight occurred at the club on the night of the shooting after Appellant left, he got some people to exit the club after the fight, and Victim struck him below the eye with an object that did not feel like a fist after he did so. (Tr. p. 71; pp. 75-77; p. 81; p. 111; p. 113). He further noted Victim was not involved in the fight that occurred inside the club. (Tr. p. 97; p. 99). Likewise, Courtney Lockhart testified she was present at the club on the night of the incident, indicated she observed Victim punch Clifton Robinson in the face after another fight broke out, changed her testimony to indicate Victim actually pulled Robinson down from behind before punching him, and stated the staff at the club had difficulty in getting Victim and several other individuals out of the club after the fighting occurred. (Tr. p. 116; pp. 119-123; p. 136). Similarly, Robinson, who was also known as "Crip," testified he was at the club on the night of the incident, stated Appellant showed him a gun before leaving the club, and indicated he was pulled to the floor from behind by someone after Appellant had left. (Tr. pp. 147-148; pp. 152-153). Additionally, Demond Brown indicated he was at the Cabstand on the night of the incident, got into an altercation, and saw Victim in the crowd while he was involved in the altercation. (Tr. pp. 231-233; p. 238). Furthermore, Tony Thomas testified he was present at the club on the night of the incident, saw a fight break out, and received assistance from Victim in stopping the fight. (Tr. pp. 332-334; pp. 336-330; p. 338). Thomas further stated he later observed Victim strike McCauley, but he indicated Victim did not have anything in his hands at the time and may have struck McCauley after one of the girls Victim was with was hit at the door to the club. (Tr. p. 331; pp. 339-341).

[5] In addition to the testimony offered in support of Appellant's claim of immunity, the parties stipulated a pistol and marijuana were recovered from Victim's pockets at the hospital after he was shot. (Tr. pp. 256-258).

After that, Ramsey indicated he returned to the club with Appellant and Gilchrist after Appellant was advised someone had "jumped on" an individual called "Crip," they pulled into the club's parking lot, he heard the door to the car open, he heard Victim yell some angry words, he heard a gunshot, and then Appellant directed him to drive away. (Tr. pp. 208-212; p. 221). Conversely, Brent testified he went to the Cabstand on the night of the incident with Victim and some other people, he got into a fight with Brown after Brown looked like he was going to hit his female cousin, Victim broke up the fight and helped get everyone outside of the club, and they exited the club. (Tr. p. 263; pp. 267-268; pp. 275-278; p. 294). Once they were outside, Brent stated Victim walked over to Ramsey's car possibly to let Appellant and his associates know the club had been closed, Victim appeared to partially open the vehicle's door and greet Appellant, and then Appellant suddenly shot Victim. (Tr. pp. 279-283; pp. 285-286; pp. 299-300). Brent further asserted Victim did not curse at Appellant, hit anyone, behave in an aggressive manner, or pull out a gun before he was shot.[6] (Tr. p. 285; p. 293; p. 296; p. 300). Additionally, Captain Butler recounted what he was told at the scene by the unknown eyewitness to the shooting. (Tr. pp. 313-314).

In addition to that testimony and evidence, Appellant elected to personally testify during the immunity hearing about what allegedly transpired on the date of the incident. (Tr. p. 360). Specifically, Appellant indicated he went to the Cabstand that night, Brent slapped his hat and told him to "get some balls" while he was at the club, he got a "funny feeling" about what occurred, he left the club after showing the concealed pistol he was carrying to "Crip," and he returned to Ramsey's home. (Tr. p. 361; p. 370; pp. 374-377; pp. 382-383; p. 395). While there, Appellant asserted he was contacted and alerted "Crip" had been jumped so he returned to the

[6] Regarding the victim, Brent noted Victim was known as "Smooth" based on his cool, calm, collected, and easy-going personality. (Tr. p. 305).

club.[7] (Tr. pp. 361-362; p. 384; p. 397). Thereafter, Appellant stated they pulled into the parking lot, Victim walked alone towards the vehicle with a "mean look on his face," Victim yanked the door opened and leaned in, Victim cursed him, Victim reached into the vehicle, and he responding by pulling out a gun and shooting Victim. (Tr. pp. 362-364; pp. 384-386; pp. 398-399; p. 408). After that, Appellant stated he returned to Ramsey's home, hid the gun he used to shoot Victim in Ramsey's backyard, and was subsequently arrested. (Tr. pp. 364-365; p. 403). Appellant further claimed he thought Victim was going to pull him from the vehicle to assault him and believed it was "[Victim's] life or [his own]" at the time he fired the fatal shot. (Tr. p. 385; p. 387).

Furthermore, defense counsel presented the testimony Dr. Brett Woodard, who conducted Victim's autopsy and was an expert in forensic pathology. (Tr. pp. 169-170). During his testimony, Dr. Woodard discussed the trajectory the bullet Appellant fired took through Victim's body and opined it could have been consistent with the narrative defense counsel presented to him, which was Victim was shot while reaching into the vehicle Appellant was seated in. (Tr. p. 172; pp. 178-179). However, Dr. Woodard expressly indicated the narrative presented by defense counsel constituted just one possibility as to how Victim was shot and was not the only possibility, and he stated he could not conclude any one possibility was more probable than another without having additional evidence. (Tr. p. 180). Dr. Woodard further opined Victim could have been shot as he approached the vehicle and indicated he believed Victim "would have

[7] During the immunity hearing, Shay Simon, who was the person that allegedly contacted Appellant about the fight that occurred inside the club after he left, testified on Appellant's behalf but indicated she did not actually observe the shooting in light of the fact she was not outside when it occurred. (Tr. p. 344; pp. 350-351). However, she did claim to have observed Victim grab or punch Robinson during the fight that occurred inside the club prior to the shooting. (Tr. p. 349; p. 355).

[had] to be back more than five to six feet in order to get the terminal ballistics" seen in Victim's body.[8] (Tr. p. 181; p. 185).

Beyond the testimony and evidence presented by defense counsel, the solicitor offered the testimony of several witnesses who presented accounts of the shooting that differed sharply from the accounts offered by Appellant and his witnesses.[9] (Tr. pp. 409-413; pp. 416-449; pp. 454-475; pp. 479-497). Regarding those accounts, Demecus Sayles, who was present at the club on the night of the incident, testified he was in the club's parking lot when a Chevrolet Impala pulled up without parking, the vehicle's back window rolled down, and someone fired a shot from inside. (Tr. pp. 416-420). Sayles further stated Victim did not approach the vehicle, open the vehicle's door, say anything to anyone inside the vehicle, or engage in an argument with anyone inside of the vehicle prior to being shot right after he walked outside of the club. (Tr. pp. 420-422; p. 431; p. 437). Similarly, Drina Morgan testified she was at the club on the night of the incident, she observed Victim help break up a fight that occurred inside the club after Appellant had left, she went outside of the club with Victim after the fight, she saw Ramsey's car pull into the club's parking lot with its headlights off, and she watched Appellant shoot Victim

[8] During his testimony, Dr. Woodard indicated Victim had a blood alcohol concentration of 0.119 percent at the time of his death and had no signs of marijuana, cocaine, methamphetamine, or opiates in his system based on the toxicology testing that was conducted. (Tr. p. 176; p. 180). However, later during the immunity hearing, Victoria Meek, an office manager and examiner at a private diagnostics company, testified she analyzed a urine sample collected from Victim and detected the presence of marijuana. (Tr. pp. 247-251). Notably though, she conceded she had to perform the analysis herself because a laboratory refused to accept the urine sample in light of the fact it was not properly sealed and acknowledged she could not even be sure the urine she tested had actually been collected from Victim. (Tr. p. 250; p. 254).

[9] During the State's case, Calvin Wells, who was the president of the club and was known as "Mr. Cocky," also testified about what occurred on the date of the incident, indicated a commotion occurred at the club that night, and stated Victim helped get everyone outside of the club subsequent to the commotion. (Tr. pp. 419-411). He further indicated Victim seemed like a "nice guy," and he stated he did not know if Victim struck anyone that night, did not see a gun that night, and never saw anyone threaten anyone else with a gun that night. (Tr. pp. 411-413).

from inside the vehicle before the vehicle quickly sped away.[10] (Tr. pp. 454; pp. 457-462; p. 469). Morgan further testified Victim did not approach Ramsey's vehicle, grab the vehicle's door, open the vehicle's door, or argue with anyone inside the car prior to the shooting. (Tr. p. 463; p. 465; p. 472; p. 474). Additionally, Shanina Williams ("Shanina"), who was Victim's fiancée at the time of his death, testified she was present at the club on the night of the shooting, observed Victim help get her brother outside the club after her brother got into a fight, saw a car pull into the club's parking lot with its headlights off, heard a gunshot, and then heard Victim state he had been shot by Appellant. (Tr. pp. 479-480; pp. 483-488). Shanina further indicated Victim did not hit anyone, pull anyone to the ground, say anything to Appellant, or do anything to prompt Appellant to shoot him on the night of the incident. (Tr. pp. 491-492; p. 497). Furthermore, the solicitor introduced a recording of Appellant's statement to police in regard to the shooting, and the circuit court judge reviewed that recording.[11] (Tr. pp. 498-499).

Following the presentation of that testimony and evidence, defense counsel readily acknowledged some of the facts involved in Appellant's case were in dispute but nonetheless argued Appellant had satisfied his burden of establishing he was entitled to immunity from prosecution. (Tr. pp. 500-515). In support of that argument, defense counsel contended Victim had alcohol and marijuana in his system at the time of his death while further noting Victim was in possession of a stolen pistol on the night he was killed. (Tr. p. 503). Furthermore, defense counsel contended the "competent" evidence presented during the immunity hearing established

[10] In regard to what occurred before the shooting, Morgan indicated she observed Victim and Appellant greet and speak with one another at the club prior to the shooting, saw Appellant and the group he was with leave at some point during the evening, and overheard Appellant state he was going to come back as he left. (Tr. pp. 457-459).

[11] During his immunity hearing testimony, Appellant acknowledged he did not indicate in his statement to law enforcement Victim was reaching into the vehicle at the time of the shooting. (Tr. pp. 399-400). After making that acknowledgement, Appellant initially attempted to explain that significant omission by claiming he was not asked that question during the interview before contending he actually physically demonstrated Victim was reaching into the car while speaking to the detective who conducted the interview. (Tr. pp. 399-400).

Victim approached the black Chevrolet Impala and opened the door, which he asserted triggered the protections of the immunity statute and permitted Appellant to act in self-defense and in defense of the vehicle. (Tr. pp. 507-508; p. 510; p. 512; p. 514). In rebuttal, the solicitor argued Appellant was not entitled to immunity from prosecution based on the testimony and evidence that had been presented. (Tr. pp. 515-530). In support of that argument, the solicitor noted numerous facts were in dispute in Appellant's case and contended those factual disputes could best be resolved by a jury. (Tr. pp. 516-517). Specifically, the solicitor pointed out factual disputes existed in regard to what happened inside the club while Appellant was still present, what happened inside the club after Appellant left, what role Victim played in the fight that occurred inside the club, and what actions Victim took towards the vehicle Appellant was in after exiting the club. (Tr. pp. 517-520). Furthermore, the solicitor contended Appellant's testimony during the immunity hearing was the only testimony presented suggesting Victim was trying to remove him from the vehicle and was inconsistent with Appellant's earlier statement about the shooting. (Tr. pp. 520-521). For those reasons, the solicitor asserted the evidence supported a conclusion the shooting was unjustified and Appellant's request for immunity should be denied. (Tr. p. 525).

Thereafter, upon considering the arguments of counsel, the circuit court judge denied Appellant's motion seeking immunity from prosecution. (Tr. p. 531). In denying the motion, the circuit court judge concluded Appellant failed to meet his burden of establishing by a preponderance of the evidence he was entitled to immunity from prosecution in light of the factual disputes that existed regarding what actually occurred. (Tr. p. 531). Due to the existence of those factual disputes, the circuit judge concluded Appellant's case should properly be resolved by a jury. (Tr. p. 531).

Following the circuit court judge's ruling, Appellant decided to enter a guilty plea two days later to the lesser-included offense of voluntary manslaughter and appeared before the circuit court judge to do so. (Tr. pp. 532-533). During the plea hearing, Appellant indicated he wished to waive his right to trial and plead guilty, and he confirmed he wanted to enter a guilty plea after considering everything associated with his case, including the defenses he could present. (Tr. p. 533; p. 537; pp. 540-542). Likewise, defense counsel confirmed Appellant understood he was pleading guilty to an intentional killing and indicated he was in agreement with Appellant's decision to plead guilty. (Tr. pp. 534-535). Appellant then pled guilty to voluntary manslaughter and indicated he did, in fact, commit the offense. (Tr. pp. 542-543). Following the entry of that plea, defense counsel confirmed he believed the facts of what transpired fit the offense of voluntary manslaughter. (Tr. pp. 550-552). Appellant then apologized and expressed remorse, and the circuit court judge accepted Appellant's guilty plea. (Tr. p. 558). After that, the circuit court sentenced Appellant to a twenty-five-year term of imprisonment and directed the remaining balance of that sentence be suspended to a three-year term of probation following the service of twelve-and-a-half years of the sentence. (Tr. p. 558).

ARGUMENT

Appellant waived any issue he may have had with the circuit court judge's ruling on his pre-trial immunity claim by subsequently entering an unconditional guilty plea and readily admitting he was criminally responsible for shooting and killing his victim. Moreover, Appellant abandoned any issue he may have had with the circuit court judge's immunity ruling by raising his appellate challenge to that ruling in a wholly conclusory and unsupported manner. However, even assuming Appellant's challenge to the immunity ruling could somehow properly be considered on appeal despite the fact it has been waived and abandoned, the circuit court judge did not abuse his broad discretion by declining to find Appellant was immune from prosecution pursuant to the South Carolina Protection of Persons and Property Act because the circuit court judge considered the evidence and testimony presented during the pre-trial immunity hearing and, in light of the factual disputes that existed in regard to what actually occurred, expressly determined Appellant failed to meet his burden of establishing he was entitled to immunity from prosecution by a preponderance of the evidence.

Appellant contends the circuit court judge erred in finding he was not entitled to immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act ("the Act"). In support of that contention, Appellant maintains his entry of a guilty plea after the circuit court judge denied his request for immunity should not bar him from challenging that ruling on appeal. Furthermore, Appellant appears to maintain the circuit court judge erred by concluding he was not entitled to immunity from prosecution. However, aside from summarizing the testimony of several witnesses who were present during the immunity hearing, Appellant does not specifically indicate in what way the circuit court judge's ruling was erroneous. Initially, Appellant waived any issue he may have had in regard to the circuit court judge's ruling on his immunity claim by subsequently entering an unconditional guilty plea and admitting he was criminally responsible for shooting and killing Victim. Likewise, Appellant abandoned on appeal any issue he may have had with the circuit court judge's immunity ruling by only challenging that ruling in a conclusory and unsupported manner. However, notwithstanding Appellant's waiver and abandonment of any issue regarding his pre-trial immunity claim, Appellant's appellate challenge to the circuit court judge's immunity ruling is

entirely without merit because the circuit court judge properly considered the testimony and evidence presented during the pre-trial hearing and correctly found Appellant failed to meet his burden of establishing he was entitled to immunity by a preponderance of the evidence in light of the factual disputes that existed in regard to the circumstances surrounding Victim's death. As a result, even assuming Appellant's appellate challenge to the circuit court judge's immunity ruling could somehow properly be considered on appeal despite the fact it has been waived and abandoned, there are no proper grounds upon which to disturb the circuit court judge's ruling. Appellant's conviction should be affirmed.

A. Waiver of the Immunity Claim by Appellant's Subsequent Entry of a Guilty Plea

In South Carolina, a guilty plea has been recognized to be "a confession of guilt, made in a formal manner[,]" and such a plea "has the same effect in law as a verdict of guilty[.]" Sanders v. Leake, 254 S.C. 444, 447, 175 S.E.2d 796, 797 (1970). By entering a guilty plea, a criminal defendant admits all elements of the charged offense, waives all other non-jurisdictional defects and defenses, and leaves open for review only the sufficiency of the indictment. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000); see State v. Snowdon, 371 S.C. 331, 333, 638 S.E.2d 91, 92 (Ct. App. 2006) ("Generally, a knowing and voluntary guilty plea waives all non-jurisdictional defects and defenses, including claims of constitutional violations."). As a result, "[a] defendant who pleads guilty usually may not later raise independent claims of constitutional violations." Gibson v. State, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999). In fact, once a guilty plea has been entered, nothing remains but for a circuit court judge to enter judgment against the defendant and determine the appropriate punishment for the admitted crime. See Boykin v. Alabama, 395 U.S. 238, 242 (1969) ("A plea of guilty is

more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.").

In the case sub judice, Appellant sought immunity from prosecution prior to trial, and the circuit court judge rejected Appellant's claim of immunity. Thereafter, following the circuit court judge's ruling on Appellant's immunity claim, Appellant knowingly and voluntarily elected to enter a guilty plea to the lesser-included offense of voluntary manslaughter. In entering that guilty plea, Appellant did **not** improperly condition his admission of guilt on an ability to appeal the circuit court judge's denial of his immunity claim or on any other ground. See Easter v. State, 355 S.C. 79, 81, 584 S.E.2d 117, 119 (2003) ("To be valid, a guilty plea must be unconditional."); see also State v. O'Leary, 302 S.C. 17, 18, 393 S.E.2d 186, 187 (1990) ("Guilty pleas are unconditional and, in an accused attempts to attach any condition, the trial Court must direct a plea of not guilty."); cf. State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 379-380 (2004) (finding Downs's guilty plea was unconditional because Downs "never attempted to reserve the right to later deny his guilt"). Instead, Appellant solemnly admitted his actions were criminal in nature and sufficient to satisfy the elements of voluntary manslaughter. Thus, by unconditionally admitting he was criminally responsible for shooting and killing Victim, Appellant waived any defects with his case and any defenses he may have had to his crime, including his claim of entitlement to immunity from prosecution. See Vogel v. City of Myrtle Beach, 291 S.C. 229, 231, 353 S.E.2d 137, 138 (1987) ("A plea of guilty constitutes a waiver of nonjurisdictional defects and defenses, including claims of violations of constitutional rights prior to the plea. **It conclusively disposes of all prior issues** including independent claims of deprivations of constitutional rights." (emphasis added and citations omitted)). Accordingly, Appellant's challenge to the circuit court judge's pre-trial denial of immunity is not

properly preserved for appellate review and cannot appropriately be considered on appeal. Cf. United States v. Adkins, 466 F. App'x 855, 857, n. 2 (11th Cir. 2012) ("Adkins also fleetingly mentions that he was immune from prosecution, but he presents no specific arguments in this regard, thereby abandoning the issue. In any event, he has **waived any defense of immunity by pleading guilty**." (emphasis added and citations omitted)); Burns v. United States, 323 F.2d 269, 272-273 (5th Cir. 1963) ("[T]he guilty pleas, in the absence of proof that they were coerced or made otherwise than freely, voluntarily and with a full understanding of the consequences as well as all constitutional rights involved, constitute a waiver of a previously attained immunity."). Appellant's conviction should be affirmed.

B. Appellant's Abandonment of the Immunity Claim on Appeal

Even if an issue is properly raised during a circuit court proceeding, that issue can subsequently be abandoned on appeal. See Mulherin-Howell v. Cobb, 362 S.C. 588, 600, 608 S.E.2d 587, 593-594 (Ct. App. 2005) (finding the appellant abandoned an issue on appeal by failing to cite any supporting authority and making only conclusory arguments in regard to the issue). Significantly, "[m]ere allegations of error are not sufficient to demonstrate an abuse of discretion" on appeal. First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). Instead, a party attempting to establish reversible error in a circuit court judge's ruling has "the burden [on appeal] of showing abuse of discretion[.]" Id.; see State ex rel. McLeod v. Wilson, 279 S.C. 562, 564, 310 S.E.2d 818, 819 (Ct. App. 1983) ("[T]he burden of showing abuse of discretion is on the party challenging the trial court's ruling."). In order to meet that burden, a party cannot simply make "conclusory statements unaccompanied by argument and citation to authority" or the party's issue will be deemed to be abandoned by the appellate court. State v. Crocker, 366 S.C. 394, 399, n. 1, 621 S.E.2d 890, 893 (Ct. App. 2005); see State v.

Howard, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."). Critically, appellate courts in South Carolina will not consider arguments or issues raised on appeal in a conclusory or unsupported manner. Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 252, n. 3, 734 S.E.2d 161, 164 (2012).

In the case at bar, Appellant contends on appeal the circuit court judge erred in denying his request for immunity from prosecution in light of the fact he was allegedly sitting in the back seat of a vehicle when he was attacked by Victim. In support of that particular contention, Appellant cites to a single provision of the South Carolina Protection of Persons and Property Act before offering brief summaries of the immunity hearing testimony of Gilchrist, Ramsey, and himself. After summarizing that testimony, Appellant does not present any further arguments or citations to authority, does not reference the circuit court judge's actual ruling on the immunity issue, and makes no attempt to explain how the circuit court judge abused his discretion in finding Appellant failed to meet his burden of establishing he was entitled to immunity. Instead, Appellant simply concludes his brief with a contention he should be allowed immunity without further explanation.

Because Appellant merely raised a conclusory and unsupported argument in support of his appellate challenge to the circuit court judge's immunity ruling, Appellant has wholly abandoned that issue on appeal. See State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (holding a conclusory, unsupported argument was abandoned on appeal); see also State v. Attardo, 263 S.C. 546, 551, n. 1, 211 S.E.2d 868, 869 (1975) (" 'The burden of proof is on the appellant to convince this Court that the lower court was in error.' " (citation omitted)). As a result, this Court should decline to address or consider Appellant's challenge to the

immunity ruling. See Howard, 384 S.C. at 218, 682 S.E.2d at 45 (declining to consider conclusory and unsupported argument on appeal). Appellant's conviction should be affirmed.

C. Propriety of the Trial Judge's Ruling on the Immunity Issue

Under the mandates of the Act, any person who uses deadly force in a manner permitted by the provisions of the Act is immune from criminal prosecution for the use of deadly force.[12] S.C. Code Ann. § 16-11-450(A). The intent of the legislature in implementing the Act was to "codify the common law Castle Doctrine" and "to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A). In carrying out that intention, the legislature instructed:

> 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 or 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). Additionally, the legislature further expressly instructed the presumption of reasonable fear established by the Act was **not** applicable if the person "who uses the deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity." S.C. Code Ann. § 16-11-440(B). Furthermore, the legislature instructed:

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[12] Specifically, Section 16-11-450(A) reads: "A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer." S.C. Code Ann. § 16-11-450(A).

> 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).

Importantly, the question of whether a defendant is entitled to immunity under the Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a particular 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.

In an appeal from a circuit court judge's pre-trial determination regarding a claim of statutory immunity, the appellate court reviews the circuit court judge's ruling for an abuse of discretion. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2015); see State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("[T]his court reviews [a claim of immunity under the Act] under an abuse of discretion standard of review."). An abuse of discretion occurs when the circuit court judge's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010); see State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) ("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."); see also Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " (citation omitted)). If **any**

evidence supports the circuit court judge's immunity determination, an appellate court must affirm that determination. Curry, 406 S.C. at 372, 752 S.E.2d at 267; see also Douglas, 411 S.C. at 316, 768 S.E.2d at 237 ("[T]he abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court's assessment of witness credibility.").

In the case at bar, multiple accounts of the shooting were presented by the various witnesses who were present at the club on the night of the incident. According to the accounts given by Sayles, Morgan, and Shanina, Appellant shot Victim without provocation from Ramsey's vehicle after that vehicle drove into the club's parking lot with its headlights off. Conversely, according to the accounts given by Gilchrist, Ramsey, and Appellant, Appellant shot Victim after walked over to Ramsey's car, opened one of the vehicle's doors, and directed an angry or insulting comment towards Appellant. Additionally, in Gilchrist's and Appellant's accounts from the immunity hearing, Victim allegedly reached into the car prior to being shot. Contrastingly, according to Brent's account, Appellant shot Victim after Victim approached Ramsey's car, greeted Appellant, and possibly started to explain to Appellant and the others that the club had been closed.

In addition to those conflicting accounts of the shooting, testimony was presented during the immunity hearing from an expert in forensic pathology who confirmed none of the various accounts of the shooting was more probable than any of the others based on the injuries Victim sustained, which he opined were most likely inflicted from a distance of more than five or six feet away. Furthermore, testimony was presented establishing Appellant committed a number of acts, including quickly fleeing from the scene, hiding the firearm used to shoot Victim, and refusing to reveal his version of what had occurred to law enforcement until several months after the shooting, that suggested he had committed a criminal offense as opposed to a justifiable

shooting. See Brecht v. Abrahamson, 507 U.S. 619, 628 (1993) (recognizing silence can be probative while noting "if the shooting was an accident, petitioner had every reason – including to clear his name and preserve evidence supporting his version of the events – to offer his account immediately following the shooting"); Jenkins v. Anderson, 447 U.S. 231, 239 (1980) ("Common law traditionally has allowed witnesses to be impeached by their previous failure to state a fact in circumstances in which that fact naturally would have been asserted."); see also State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) ("The flight of one charged with crime has always been held to be some evidence tending to prove guilt. Solomon wrote as a proverb the 'wicked flee when no man pursueth;' and Shakespeare made guilty Hamlet to soliloquize that 'conscience does make cowards of us all.' "); State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003) (recognizing attempts to run away have always been regarded as some evidence of guilty knowledge and intent).

In light of the factual disputes raised by the evidence and testimony presented during the immunity hearing, the circuit court judge correctly concluded he could not find by a preponderance of the evidence Appellant's act of the shooting the victim was justifiable or excusable and properly determined the issues in Appellant's case could best be resolved by a jury.[13] See State v. Rosier, 312 S.C. 145, 149, 439 S.E.2d 307, 310 (Ct. App. 1993) ("The

[13] Moreover, because Appellant was engaged in unlawful activity by unlawfully possessing a concealed weapon and was using Ramsey's vehicle to further his unlawful act of possessing a concealed weapon in **every** version of the shooting presented during the immunity hearing, Appellant could not avail himself of the presumptions of Section 16-11-440(A). See S.C. Code Ann. § 16-11-440(B) (instructing the presumptions established by Section 16-11-440(A) do **not** apply if the person "who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity"); see also S.C. Code Ann. § 16-23-20 (mandating it is unlawful "for anyone to carry about the person any handgun, whether concealed or not," excepted in limited circumstances, including when the person has a concealed weapons permit); see generally In re Tracy B., 391 S.C. 51, 71, 704 S.E.2d 71, 81 (Ct. App. 2010) ("Although [unlawful possession of a weapon] alone does not automatically bar a self-defense charge, it is evidence of an unlawful activity which can preclude the assertion of self-defense."); cf. Dawkins v. State, 252 P.3d 214, 217-218 (Okla. Crim. App. 2011) ("Dawkins had an illegally modified weapon – his sawed-off shotgun – and used it to shoot Sanford. At the time he used deadly force, he was engaged in an unlawful act, and he does not get the benefit of the ["stand your ground"] statute. . . . Dawkins asks this Court to read into the statute a nexus requirement between the unlawful act and the use of deadly force. He

determination of credibility must be left to the trial judge who saw and heard the witnesses and is therefore in a better position to evaluate their veracity."); see also State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997) ("In criminal cases, appellate courts are bound by fact findings in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law."); cf. Curry, 406 S.C. at 372, 752 S.E.2d at 267 (finding Curry's "claim of self-defense present[ed] a quintessential jury question, which, most assuredly, [was] not a situation warranting immunity from prosecution"). Thus, even though Appellant's preferred version of the shooting could have potentially entitled him to immunity from prosecution if that version had been found by the circuit court judge to be more credible than any of the other versions that were presented during the immunity hearing, the circuit court judge did not abuse his discretion by finding Appellant failed to prove he was entitled to immunity by the required preponderance of the evidence standard. See State v. Johnson, 413 S.C. 458, 468, 776 S.E.2d 367, 372 (2015) ("[T]here is no requirement under the law that the trial court must believe a criminal defendant's version of events."); cf. Curry, 406 S.C. at 371, 752 S.E.2d at 266 (finding the General Assembly did not intend for a circuit court judge considering an immunity issue to be limited to accepting the accused's version of the underlying facts). Accordingly, the circuit court judge committed no error in denying Appellant's request for immunity after finding Appellant failed to meet his burden of establishing he was entitled to immunity from prosecution by a preponderance of the evidence. See Duncan, 392 S.C. at 411, 709 S.E.2d at 665 ("[W]hen a party raises the question

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suggests that, under such a reading, the type of weapon he used had nothing to do with his use of deadly force and there is no nexus between his unlawful act (possession of an illegal weapon) and the crime. . . . The statute neither specifies a type of unlawful activity nor requires that it be connected to the use of defensive force. That is, the statute contains no nexus requirement. This Court should not interpret the statute to require a nexus where such a requirement is neither included nor necessary to effect the Legislature's intent. . . . The Legislature has the power to do so. This Court should not attempt to create such distinctions.").

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."); see generally State v. Lee, 274 S.C. 372, 375, 264 S.E.2d 418, 419 (1980) ("We cannot say that [the trial judge's] finding that the defendant was capable of standing trial was without evidentiary support or against the preponderance of the evidence and, accordingly, we find no error on the part of the judge in ordering the defendant to trial."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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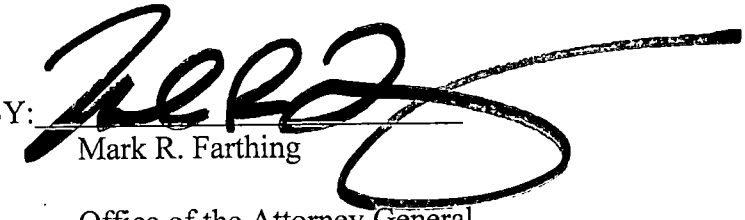
Attorney General

MARK R. FARTHING
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 
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April 19, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

Appeal from Greenwood County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2016-000269

THE STATE,

Respondent,

vs.

ALPHONSO MORGAN, JR.,

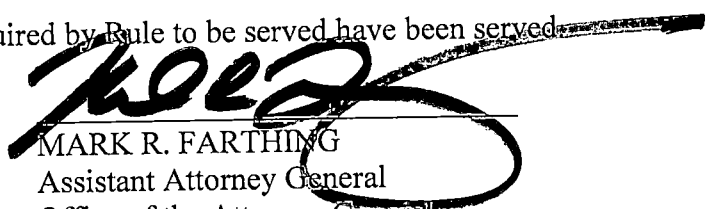
Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 19th day of April, 2017.



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RE: State v. Alphonso Morgan, Jr. – Appellate Case No. 2016-000269

Dear Mr. Pachak:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services