THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Court of General Sessions

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

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Respondent's Cases

Respondent's Statutes:

ISSUE ON APPEAL

Was the trial judge within her discretion 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 proved by a preponderance of the evidence that his actions were lawful?

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 of Lee Edward Green (a/k/a Donnie Green). On September 19-20, 2016, the Honorable Carmen Tevis Mullen conducted a pretrial hearing to determine whether Riley was entitled to immunity. After hearing from eight witnesses, including Riley, Judge Mullin granted the motion.

The State appealed, and the appeal was transferred to the South Carolina Court of Appeals.

STATEMENT OF THE FACTS

Charles Riley lives in Orangeburg County with his wife of 26 years in a home he has owned for 28 years. (R. p. 59, lines 11-12; p. 86, lines 4-7.) Riley has worked at Zeus, a local manufacturer of plastics, as an inspector for 26 years. (R. p. 86, lines 10-21.) The only time he had been unable to work was about four years earlier when he was recovering from injuries following an assault by Donnie Green. (R. p. 86, line 22 – p. 87, line 9.) The assault left Riley with lingering vision problems. (R. p. 84, lines 19-24; p. 88, lines 2-9.) Following this assault by Green, Riley had kept his distance from Green. (R. p. 88. lines 12-15.)

This incident occurred on a Saturday and Charles Riley was at home. (R. p. 88, lines 21-23.) Jeffrey Smith came to Riley's house and asked if Riley would take him to the gas station and then to get Smith's truck from his niece's house. Riley agreed to help him. (R. p. 89, lines 3-20.) The day before Smith had parked his truck at the home of his niece. (R. p. 12, line 24 – p.13, line 11.) Upon arrival at the home of Smith's niece, Smith was told that Donnie Green and Thomas Keitt had come by earlier and picked up the truck. (R. p. 14, lines 14-19.) Smith asked Riley to take him over to Green's house. Because of the earlier assault, Riley would only agree to take Smith to within a few blocks of Green's home. (R. p. 15 line 22 – p. 16, line 1; p. 90, lines 9-19.) Riley then returned to his home. (R. p. 90, lines 20-21.)

When Riley agreed to drive Smith on Saturday morning, he was not aware of what had already transpired regarding the truck. (R. p. 88, lines 16-20.) Smith apparently owed Green money for drugs (R. p. 280, lines 17-20.) and Smith had agreed to use his truck as collateral for the debt to Green. (R. p. 10, lines 9-12.) After the attempt to secure a loan to

repay Green failed, Smith agreed to let Green hold the title to the truck. (R. p. 12, lines 10-14.) On Saturday, Green went to the home of Smith's niece and moved the truck to Green's house. (R. p. 15 lines 17-21.) After Riley dropped Smith off near Green's home, Riley returned home, and Smith walked to Green's yard and retrieved his truck. When Green returned home, he saw that Smith's truck was gone. (R. p. 257, lines 20-24.) Green rode with Keitt to look for Smith and the truck. (R. p. 257, line 24 – p. 258, line 4.) Not finding Smith or the truck at Smith's house, Keitt and Green continued to ride in search of Smith. (R. p. 258, lines 4-10.) As they rode around, they spotted Smith sitting on the steps of Riley's home. (R. p. 258, line 11.)

Riley had been back at his home about 45 minutes when Smith came to Riley's home. (R. p. 91, lines 8-11.) About 20 minutes after Smith's return, Keitt and Green sped into Riley's yard. (R. p. 91, lines 12-14; p. 17, lines 19-22.) Keitt stopped the car about a car length from the front steps of Riley's home, and Green jumped out and confronted Smith about the truck. (R. p. 20, line 25 – p. 22, line 9.) Green was mad and upset when he got out of the car. (R. p. 282, line 22 – p. 283, line 5.) Blood tests showed that Green was on drugs when he came into Riley's yard. [benzodiazepine, cocaine and opiates] (R. p. 84, line 25 – p. 85, line 5.) As Green was attacking Smith, Riley came out of his house and told Green and Keitt to leave. (R. p. 22, line 10 – p. 23, line 3.) Then, Riley's wife Angela also came outside and asked Green to leave. (R. p. 64, line 24 – p. 65, line 8; p. 73, lines 9-16.) Keitt and Green refused to leave, and then Green started arguing with Riley. Green pushed Riley and threatened him by saying "... I got something for you." (R. p. 22, line 19 – p. 23, line 8; R. p. 64, line 20 – p. 65, line 3; R. p. 94, lines 2- 12.)

Riley left the yard, went into his house, and retrieved a .28 gauge single-shot shotgun loaded with bird shot. (R. p. 94, lines 13-25.) Riley had a concealed weapons permit and a

loaded handgun in the home, but he chose to get the shotgun with birdshot. (R. p. 95, lines 12 -24.) As Riley was again asking Green to leave, he saw Green reach back in the car and grab something that Riley thought was a weapon. (R. p. 95, lines 4-7.) Fearing for his life, Riley fired the shotgun. (R. p. 96, lines 4-11.) Green was struck in the chest with birdshot, and Keitt drove Green to the local hospital. Immediately following the incident, Riley called 911 to report the shooting and waited at his home for law enforcement to arrive. Riley cooperated with law enforcement and turned the weapon over to the investigators. Riley did not request a lawyer and cooperated by giving written and video recorded statements on the date of the incident. Green died of his gunshot wound several weeks later.

SLED assisted the Orangeburg County Sheriff's Department in the investigation. SLED photographed the Keitt vehicle and processed it for blood and gunshot residue evidence. (R. p. 128, line 13; p. 131, lines 23-25.) The SLED crime scene investigator was unable to make any determination about what had occurred based on the crime scene investigation of the car. (R. p. 134, lines 21-24.) No shot pellets were found inside the car and no evidence of a shot pellet hitting the interior of the car was found. (R. p. 134, lines 11-17.) SLED also made photographs of the yard at Riley's house and retrieved the shotgun and the shell casing. (R. p. 137, lines 1-17.) Nothing was found at the scene of the shooting from which SLED could draw any conclusions. (R. p. 139, lines 9-12.)

SLED also processed the shotgun, the shotgun shell, and pellets retrieved from the autopsy. (R. p. 161, lines 21-24; p. 164, lines 6-11; p. 165, lines 7-8.) SLED determined that the shell would have contained between 354 and 368 pellets. (R. p. 165, lines 14-20.)

The gunshot residue (GSR) was submitted to the SLED lab for testing. (R. p. 174, lines 15-17.) Field testing has shown that GSR can be deposited up to 18 feet in front of the gun barrel and up to 3 feet to the peripheral sides of the circumference of the barrel. (R.

p. 181, lines 17-23.) In this case, GSR was found outside of the car on the rear driver's side quarter panel, the rear passenger's side quarter panel, and the trunk. GSR was also found inside the car on the passenger's head rest, the passenger's dash board, and the passenger's interior door and console. (R. pp. 182-189.) Based on these findings, the SLED trace analyst concluded that the victim was either inside the vehicle, or standing very close to the open door or window of the vehicle when he was shot at a range of only a few feet. (R. p. 195, line 6 – p. 196, line 22.)

Robert Tressel testified as an expert witness in crime scene investigation, homicide investigation, and medical legal death investigation. (R. p. 198, line 4 – p. 202, line 12.) Tressel opined that Green was outside the vehicle when he was shot because no shot pellets were in the vehicle (R. p. 228, line 15 – p. 229, line 23.)

ARGUMENT

The trial judge properly granted Defendant Charles Riley's request for immunity from prosecution pursuant to the Protection of Persons and Property Act where the evidence showed Riley was not engaged in unlawful activity, was attacked in a place where he had a right to be, and had the right to stand his ground.

In a pretrial hearing, Riley moved for immunity from prosecution pursuant to the Protection of Persons and Property Act, S. C. Code Ann. §16-11-410 *et seq.* (hereinafter the Act) and the common law Castle Doctrine. S.C. Code Ann. § 16-11-450(A) provides in pertinent part that an individual "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*...for the use of deadly force ..." *Id.* (emphasis added). 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); *See also State v. Curry*, 406 S.C. 364, 370, 752 S.E. 2d 263, 265-66 (2013). Moreover, "when 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.* 392 S.C. at 411, 709 S.E.2d at 665.

CODIFICATION OF THE CASTLE DOCTRINE

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). The General Assembly codified the Castle Doctrine and extended its reach to include any place that a person has a right to be.

The General Assembly's intent for passing the Act is stated in 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 castle doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that it is ***proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution*** or civil action for acting in defense of themselves and others.

(C) The General Assembly finds that § 20 Article 1 of the South Carolina Constitution guarantees the right of the people to bear arms, and ***this right shall not be infringed.***

(D) The General Assembly finds that persons residing in or visiting this State ***have a right to expect to remain unmolested and safe within their homes***, businesses, and vehicles.

(E) The General Assembly finds that ***no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.***

Because the General Assembly extended the Castle Doctrine beyond a person's home, a court in determining immunity must look to the provisions of S.C. Code Ann. § 16-11-440(C) to determine when immunity applies in situations where a person is not in his home.

S.C. Code Ann. § 16-11-440(C) provides as follows:

> 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 § 16-1-60. *Id.*

Thus, S. C. Code Ann. § 16-11-440(C) provides immunity to someone who uses deadly force when he is acting lawfully and is being attacked in a place where he has a right to be. This statute requires the following:

a. That the person seeking immunity not be engaged in unlawful activity; and

b. That the person seeking immunity be attacked in a place where he has a right to be.

If these two pre-requisites are met, the person is entitled to the following:

a. the right to stand his ground; and

b. the right 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.

In the instance case following the pre-trial hearing, Riley was correctly granted immunity pursuant to S.C. Code Ann. § 16-11-440(C). Riley was at home on a Saturday morning minding his own business and therefore not engaged in any unlawful activity. Riley was defending himself from an attack by Green in his own front yard, which was a place Riley had a right to be. Riley had no duty to retreat and had the right to stand his ground. Riley had the right to meet force with force, including deadly force, because he reasonably believed it was necessary to prevent death or great bodily injury to himself. The Court found all of the required elements were present and granted Riley immunity.

TRIAL COURT'S FINDINGS OF FACT

> At the time the incident occurred, Green came onto Defendant's property uninvited, initiated a 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)

STANDARD OF REVIEW

"A claim of immunity under the Act requires a pre-trial 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 the findings 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 court abused its 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 court'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 on 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).

DISCUSSION

1. Riley was not engaged in any unlawful activity.

On the Saturday morning of the incident, Riley left his home to give his friend Smith a ride to pick up Smith's his truck. After Smith learned that Green had taken his truck from his niece's house, Smith asked Riley to take him to the neighborhood where Green lived to get his truck. Riley dropped Smith off and went home. Riley was back at home minding his own business when Green arrived Riley was not engaged in any unlawful activity.

2. Riley was in a place where he had a right to be.

Riley was at home. Riley acted within his rights under the Act and under the common law Castle Doctrine. First, Riley both owned and lived in his home; as such, he held all the sticks in his bundle of rights—including the right to exclude others.[1] Because of the past criminal act by Green against Riley, it cannot be said that Green was a welcome invitee or guest. *See, e.g., State v. Bradley*, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923) ("A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser . . ."). Thus, Green's status was that of a trespasser not only when he forcibly entered onto

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[1] As the United States Supreme Court has repeatedly held, "the right to exclude [others is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *Nolan v. California Costal Comm'n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).

the property of Riley but also at the time when he was shot. *Id.* Riley had the right to ask Green to leave his property. There is no duty to retreat where an attack occurs in one's home. The absence of a duty to retreat also extends to the curtilage of a home, which includes the yard around a dwelling. *State v. Wiggins*, 330 S.C. 538, 548 n. 15, 500 S.E.2d 489, 494 n. 15 (1998).

A defendant is entitled to immunity from prosecution pursuant to S.C. Code Ann. § 16-11-440(C) when acting in self-defense at a place where he has a right to be. A person's residence is "another place" that he has a right to be. *State v. Jones*, 416 S.C. 283, 786 S.E. 2d. 132 (2016).

3. Riley was without fault in bringing on the difficulty.

There is no evidence that Riley was aware of any dispute between Smith and Green regarding the truck. Riley was not present on Friday when Green and Smith had discussions about the truck. (R. p. 281, lines 8-11.) Green had no knowledge that Riley had given Smith a ride to pick up the truck from Green's house. (R. p. 281, lines 12-15). According to Keitt, he and Green did not intentionally go to Riley's house. (R. p. 258, lines 14-23.) In fact, Green and Keitt were not seeking Riley out. The difficulty was brought on when Green saw Smith sitting on Riley's porch and decided to enter Riley's yard. Green knew when he entered the yard that he was entering the home of Charles Riley, a person with whom he had a previous physical altercation. Conversely, Riley was home minding his own business. Riley was unaware that Green was out looking for Smith. (R. p. 121, lines 17-19.) Riley's initial response to Green's presence on his property was to ask him repeatedly to leave. A person who is at home and attempting to eject an unwanted intruder is not at fault in bringing about any difficulty. At the time of the incident, Green came on to Riley's property uninvited and initiated a verbal and physical altercation with Smith.

Green refused to leave the property after being asked several times by Riley and his wife. Green then threatened and assaulted Riley. The trial court properly found that Riley was without fault in bringing about the difficulty, and the record provides clear evidentiary support of its findings.

4. Riley was attacked by Green.

When he entered the Riley property, Green was high on drugs. (R. p. 84, line 25, p. 85, line 5.) Green was mad and upset and looking to confront Jeffery Smith about a drug debt and a truck that was to be used to secure the debt. (R. p. 282, line 22- p. 283, line 5). Green was searching the neighborhood for Smith and the truck when he spotted Smith sitting on the Riley's porch. (R. p. 257, line 24- p. 258, line 11.) Riley did not know about the debt or the dispute about the truck. The car carrying Green sped into Riley's yard, and (R. p. 17, lines 19-22.) Green jumped out assaulted Smith. (R. p. 38, lines 6-12). Upon hearing the commotion, Riley went outside and saw that Green was in his yard. Riley asked Green to leave, (R. p. 22, line 10 – p. 23, line 3.; R. p. 40, lines 14-18.) but Green refused to leave and started arguing with Riley. Green pushed Riley and threatened him by saying "... I got something for you". (R. p. 22, line 19 – p. 23, line 8; R. p. 94, lines 2-12.) The court properly found that Riley was attacked by Green. The attack took place in Riley's front yard, a place where he had a right to be. The record provides clear evidentiary support of the Court's finding that Riley attacked Green.

5. Riley actually believed he was in imminent danger of losing his life or sustained great bodily injury.

Riley wanted Green out of his yard because in 2012, Riley had been attacked by Green and severely beaten. Green assaulted Riley, beat him with his fists, and kicked and stomped Riley while he was on the ground. (R. p. 87, lines 5-13.) Riley had to seek

medical treatment for his injuries from the severe beating. [2] Because of this prior criminal conduct by Green directed at Riley, Riley had made it a point to stay away from Green.

When Green appeared in Riley's yard, Riley had reason to fear for his safety. Riley repeatedly told Green "You know you are not supposed to be here". (R. p. 93, lines 11-16.) Green became irate with Riley, and began pushing him. Green was threatening and telling Riley that he "had something for him" and that he "was going to F him up." (R. p. 93, lines 19-21; R. p. 98, lines 1-7.) Riley asked Green to leave but Green refused. Then Riley's wife came onto the porch and asked Green to leave, but Green still refused. Riley testify that he was scared for his life. (R. 123, lines 13-15.)

When it became apparent that Green remained hostile and was refusing to leave, Riley went back into his house. He retrieved a shotgun that was loaded with No. 8 birdshot. (R. 98, lines 8-11.) Riley, with shotgun in hand, walked back onto his front porch. He again told Green to leave his home. (R. p. 98, lines 19-21.) Thomas Keitt, the driver of the car that Green arrived in, testified that he heard Riley tell Green to leave three times. (R. 287, line 22 - p. 288, line 3.) As Riley was exiting his house, Green threatened Riley and said that he had something for Riley. Riley perceived that Green was reaching for something. [(Riley's testimony, R. p. 95, lines 3-7); (Smith's testimony, R. p. 57 lines 14-19); (Keitt's testimony R. p. 285 line 20 – p. 286, line 1.)] Riley believed Green was reaching for a gun. (Riley testimony R. p. 100, line 25 – R. p 101 line 7). Based on Green's previous violent assault of Riley and his present aggression and refusal to heed Riley's repeated warnings to leave, Riley was justified in arming himself with a lawful weapon.

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[2] Medical records from Riley's treatment from the attack describes two black eyes, contusions, closed head injury, possible concussion, and some blurred vision. X-rays were performed to rule out a fracture of the bones near his left eye. Riley was treated by doctors on at least four occasions. He was kept out of work for two weeks. (T. p. 84, lines 19-24.)

Reasonably fearing for his life, Riley fired the gun in self-defense and as allowed by the Castle Doctrine.

In so doing, Riley was aware of—and reacted to—the unlawful and forcible acts of Green. Under these circumstances, Riley's use of force was justified. Riley had the right to stand his ground. A person being threatened and attacked on his own property has a right to meet force with force under the Act. [3]

6. Riley meets the elements of self-defense, save the duty to retreat.

In the case at bar, Riley easily meets the elements of self-defense, save the duty to retreat, by a preponderance of the evidence. As provided by our Supreme Court, a person is justified in using deadly force in self-defense when:

(1) The defendant was without fault in bringing on the difficulty;

(2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;

(3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and

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[3] *See Bradley*, 126 S.C. at 533, 120 S.E. at 242 ("A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion."); *See also State v. Bryant,* 391 S.C. 225, 234, 705 S.E. 2d 465, 470 (Ct. App. 2010) (*citing State v. Sparks*, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936)). To, this end, "... if the entry itself is made in a reckless, riotous, or violent manner, or is effected by overcoming the physical or verbal opposition of the occupant, or is made under such circumstances as manifestly evidence a purpose to endanger the life or limb of any inmate, or to commit a felony on them, the habitation or property therein, in other words, is not quiet and peaceable, no request to depart, or the laying on of hands, need precede, as a legal requirement, the act of ejectment by such force as is necessary, even to the killing of the assailant, for the very obvious reason, as is well said in one of the cases, 'since the trespasser knows as well without express words as with, that his absence is desired.' " *Bradley*, 126 S.C. at 534, 120 S.E. at 242.

(4) 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.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011); S*ee also State v. Douglas*, 411 S.C. 307, 311, 168 S.E.2d 232, 238-39 (Ct. App. 2014) (affirming trial court's finding of immunity from prosecution). However, "the last element, i.e., the duty to retreat, need not be shown when seeking immunity under the Act." *Douglas*, 411 S.C. at 311, 168 S.E.2d at 238-39 [*citing State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013)].

Here, Riley was without fault in bringing on the difficulty, as the residence in which the incident occurred was his—not Green's—and he repeatedly told Green to leave his property. Riley had suffered abuse at Green's hand on a previous occasion and at the present time was being threatened. Further, it was Green who came to Riley's home in an aggressive and threatening manner. It was Green who assaulted Smith and Riley by forcibly pushing them while continuously making threats to cause more harm. As such, Riley did not bring on the difficulty.

Riley actually believed he was in imminent danger of sustaining great bodily injury or losing his life. Riley had felt and seen first-hand the abuse Green could, would, and had dealt when angry. [4] That day, Green acted violently toward Riley at his home despite the fact that Riley repeatedly told him to leave. Even after Riley retrieved his weapon and told Green again to leave, Green—a big man weighing 260 pounds [5] showed escalating aggression and continued to make threats. Both Riley and Smith saw Green reaching into

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[4] Belief of imminent danger of losing one's life or sustaining great bodily injury is reasonable in light of earlier aggressive actions of the decedent. *See State v. Jones*, 416 S.C. 283, 786 S.E. 2d 132, 142 (2016).

[5] See Page 2 of Autopsy Report (State's Exhibit 43).

the car as he was threateningly telling Riley, "I got something for you". Riley saw an object in Green's hand that he believed was a gun. While no gun was found, the car that Green left in was not inspected until more than sufficient time had elapsed for Green to dispose of any weapon.

Our Courts have addressed the issue of the belief or appearance that someone is reaching for a weapon. A person has the right to act on appearances, even if the belief is ultimately mistaken. *State v. Dickey*, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011) [*citing State v. Fuller*, 297 S.C. 440, 443-44, 377 S.E.2d 328,331 (1989)]. Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act. *Dickey* (*citing State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913; (2000); [*citing State v. Hendrix*, 270 S.C. 653, 244 S.E.2d 503 (1978)]). Here, Riley believed that Green had become armed with a weapon. Thus, not only did Riley actually believed he was in imminent danger, but a reasonably prudent person of ordinary firmness and courage would also have entertained the same belief under these circumstances. [6]

Finally, because of the escalating aggression, Riley 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. As stated above, he was at his own home facing an abusive, angry 250- pound man pushing and threatening him. Both Riley and Smith had knowledge

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[6] The test is whether Riley believed he was in imminent danger of death or serious bodily harm, and he is not required to show that such danger actually existed because he had a right to act upon such appearances as would cause a reasonable and prudent man of ordinary firmness and courage to entertain the same belief. *State v. Jackson*, 227 S.C. 271, 278, 87 S.E. 2d 681, 684 (1955).

of Green's drug use.[7] After repeatedly ordering Green to leave, Riley felt compelled to retrieve and present a weapon to protect himself from Green. Under the Act, Riley was within his constitutionally protected and statutorily enacted right to do so. Simply stated, at the time the shooting occurred, Riley made every effort to eject Green from his property. When Green failed to heed Riley's directives and Green's aggression continued to escalate, Riley felt he had no other means to avoid the danger then to act as he did.

The Court properly found by a preponderance of the evidence that Riley should be immune from prosecution. He was assaulted at his own home and acted in self-defense to repel further attack by Green. The Court's grant of immunity pursuant to S. C. Code Ann. § 16-11-440(C) of the Act is supported by the evidence.

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[7] *See Hendrix* 244 S.C. 2d 503, 507 (1978). Factors that would give Riley the right to judge the conduct of Green more harshly than otherwise include: (a) the fact that Green had beaten Riley a few years earlier (i.e. prior bad blood between the two men); (b) the presence of illicit drugs in Green's system; and (c) the prior threat of Green towards Riley immediately preceding the shooting.

CONCLUSION

For the foregoing reasons, Respondent Charles Riley, respectfully submits that the pre-trial immunity hearing was properly convened; that the preponderance of the evidence and testimony heard by the trial court supported the granting of immunity; and that the trial Court acted properly in issuing its Order Granting Immunity from Prosecution pursuant to the Protection of Persons and Property Act and the common law Castle Doctrine.

Based on the foregoing reasons, Respondent respectfully requests this Court to affirm the lower Court's Order Granting Immunity from Prosecution.

Respectfully Submitted,

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May 2, 2017
Orangeburg, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Court of General Sessions

Honorable Carmen Tevis Mullen, Circuit Court Judge

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MAY 03 2017
SC Court of Appeals

Case No. 2016-GS-38-0731

State of South Carolina ..... Appellant,

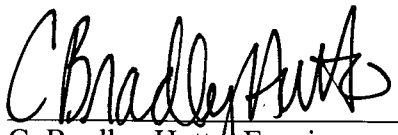
vs.

Charles Thomas Riley .....Respondent.

Appellate Case No. 2016-002123

CERTIFICATE OF COUNSEL

The undersigned counsel for Respondents certifies that the Final Brief of Respondent in this matter complies with Rule 211(b), SCACR.



May 2, 2017

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