STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Beaufort County
Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2017-002012

THE STATE,

Respondent,

vs.

PRESTON RYAN OATES,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

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The Court of Appeals correctly affirmed the trial judge's denial of Oates's directed verdict motion because substantial evidence was presented during trial, including the evidence and testimony establishing Oates shot the victim multiple times in the back as the victim walked away from him, tending to disprove self-defense beyond a reasonable doubt.

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STATEMENT OF THE CASE

Procedural History

In December of 2010, Petitioner Preston Ryan Oates, a tow truck operator, fatally shot the owner of a vehicle he was preparing to tow and was arrested following an investigation into the shooting. In February of 2011, the Beaufort County Grand Jury indicted Oates for one count of voluntary manslaughter and one count of possession of a weapon during the commission of a violent crime. In July of 2011, Oates filed a motion seeking a pre-trial hearing to determine if he was entitled to immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. On November 17, 2011, a pre-trial hearing was conducted on the motion in

the Beaufort County Court of General Sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. Following the hearing, Judge Dennis denied Oates's request for immunity from prosecution. Thereafter, Oates filed a motion seeking reconsideration of the ruling, and a hearing was conducted on the motion on March 13, 2012, with Judge Dennis again presiding. Subsequently, Judge Dennis denied Oates's motion for reconsideration. Oates then filed an appeal. However, on August 21, 2013, the Court of Appeals dismissed that appeal as an improper interlocutory appeal, and the matter was remanded to the circuit court for trial.

Thereafter, in February of 2014, the Beaufort County Grand Jury indicted Oates for one count of murder, and the indictment was sealed at Oates's request. On June 16, 2014, a jury trial was commenced in the Beaufort County Court of General Sessions with the Honorable Brooks P. Goldsmith, circuit court judge, presiding. At the outset of trial, the solicitor dismissed the voluntary manslaughter indictment and elected to proceed forward on the remaining indictments. At the conclusion of trial, the jury acquitted Oates of murder and convicted Oates of the lesser-included offense of voluntary manslaughter along with possession of a weapon during the commission of a violent crime. Following the verdict, the trial judge sentenced Oates to concurrent terms of imprisonment of twenty-six years for voluntary manslaughter and five years for possession of a weapon during the commission of a violent crime. Oates then made several post-trial motions before filing a notice of appeal.

Subsequently, on July 7, 2014, the trial judge conducted a hearing on Oates's post-trial motions. At the conclusion of the hearing, the trial judge orally denied the majority of Oates's post-trial motions but granted Oates's motion for reconsideration of his sentence. The trial judge then issued an order reducing Oates's sentence for voluntary manslaughter to a twenty-four-year term of imprisonment. Oates then proceeded forward with his appeal.

On appeal, the Court of Appeals issued a published opinion unanimously affirming Oates's convictions. State v. Oates, __ S.C. __, 803 S.E.2d 911 (Ct. App. 2017). Thereafter, Oates petitioned the Court of Appeals for rehearing, and the petition was denied. Oates then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Around 8:00 p.m. on the evening of December 24, 2010, Carlos Olivera ("Victim") brought his family to the home of his brother, Nelson Olivera ("Nelson"), to visit with Nelson and his family. (R. p. 493; p. 589; pp. 616-618; pp. 646-647; p. 656; Court's Ex. # 5 (DVD); State's Ex. # 2 (Home Camera Recording)). Upon arriving, Victim parked his minivan in the roadway near Nelson's home and went inside with his family. (R. p. 493; pp. 592-593; p. 656; Court's Ex. # 5; State's Ex. # 2). Shortly thereafter, Oates, a tow truck operator who was contracted to tow illegally-parked vehicles in Nelson's neighborhood, arrived on the scene, placed a vehicle-disabling device called a boot onto Victim's minivan, and moved his tow truck into position to tow Victim's vehicle. (R. pp. 16-17; p. 594; p. 619; Court's Ex. # 5; State's Ex. # 2). Moments later, Victim and Nelson were notified of Oates's actions by Nelson's neighbor, Steve Varedi, and they went outside to discuss the matter with Oates. (R. p. 55; p. 486; p. 594; p. 619; p. 656; Court's Ex. # 5; State's Ex. # 2). Just minutes after that, Oates shot and killed Victim as Victim was walking away from Oates's tow truck. (R. p. 131; p. 140; p. 598; pp. 625-626; p. 650; pp. 658-659; Court's Ex. # 5; State's Ex. # 2).

In the immediate aftermath of the shooting, several calls were placed to 911. (R. p. 54; p. 614; p. 629; p. 660; p. 673; Court's Ex. # 3 (DVD of 911 Calls); State's Ex. #1 (911 Recordings)). One of the callers, Reba Bryant, who lived across the street from Nelson's and Varedi's homes, notified the 911 dispatcher that "the wrecker man came up in the truck and the

wrecker guy shot the guy and he's got a gun on the people." (R. pp. 61-62; p. 73). In recounting the incident, Bryant stated: "[I]t's a wrecker driver. He came to pull somebody's car and just fucking shot the guy whose car he was pulling. He just got out and shot the guy." (R. pp. 64-65). She further indicated: "He's got a gun on the people. I don't know whose gun it is. I don't know if that man – I see that man pull out a gun. There's a gun on the ground and the guy's got a gun in his hand and there's another gun on the ground. . . . I think the man must have pulled a gun out on him." (R. pp. 66-67).

In addition to Bryant's call, Oates also called 911. (R. p. 79; p. 587; State's Ex. #1). At the outset of the call, Oates informed the 911 dispatcher shots had been fired. (R. p. 75). As the call continued, Oates stated the man with the gun was shot and could be heard ordering people on the scene not to get near a gun in the roadway. (R. pp. 76-78). He further indicated: "If they pick up that gun, they're threatening me, I'll shoot them." (R. p. 79). Oates then claimed to the dispatcher the man pulled a gun, the man stuck it in his face, he shot the man, the man dropped, and the man's gun fell. (R. p. 79). In recounting the incident, Oates claimed:

> I put the boot on the vehicle and I was pulling my truck around. He jumped up on the driver's side window, told me to unlock the vehicle, "Unlock it now, unlock it now!" So I opened the door and I stepped out of my truck. When I stepped out of my truck, he pulled a handgun on me, stuck it in my face and said "unhook my vehicle or I will kill you." I pulled mine out and shot him – I don't know how many times. I just shot him.

(R. pp. 80-81). Oates asserted he shot Victim in the face and chest. (R. p. 81). As the call continued, Oates informed the dispatcher she "might want to roll" the former coroner to his location. (R. p. 85). He also told someone at the scene he would see them in hell. (R. p. 82). The call then ended when Deputy Vincent Pullicino of the Beaufort County Sheriff's Office arrived on the scene. (R. p. 89; p. 323; p. 680; p. 683; Court's Ex. # 7; State's Ex. #1).

Upon arriving, Deputy Pullicino observed Victim on his back on the ground in the roadway and Oates standing in a nearby yard with a phone in one hand and a handgun in the other. (R. pp. 680; pp. 682-683). In response, Deputy Pullicino ordered Oates to drop the gun and get onto the ground, and Oates complied with his commands. (R. p. 683). The officer then handcuffed and detained Oates before observing another gun in the roadway. (R. pp. 684-685; p. 690). Meanwhile, Steven Manley, a paramedic with Beaufort County Emergency Medical Services, arrived on the scene and attended to Victim. (R. pp. 707-708). However, he was unable to detect any signs of life. (R. p. 709).

Shortly thereafter, several other officers arrived on the scene, including Sergeant Erick Hardy of the Beaufort County Sheriff's Office. (R. p. 693). Upon arriving, Sergeant Hardy advised Oates of his rights, and Oates waived his rights and began attempting to explain what happened to the officer. (R. pp. 694-698). During the ensuing conversation, Oates claimed he was confronted by three men after he placed a boot on a van and he heard one of the men ask someone to retrieve his shotgun. (State's Ex. # 15 (Video Recording)). After that, Oates stated one of the men ordered him to unlock the boot, grabbed his keys, and walked away while another man remained at his tow truck and asked him about paperwork. (State's Ex. # 15). In response, Oates indicated he became frightened and covertly retrieved his pistol before the man reached into his truck, unlocked the door, and began to open it. (State's Ex. # 15). At that point, Oates claimed he saw a gun in the man's waistband and warned the people nearby the man had a gun. (State's Ex. # 15). Then, Oates alleged the man backed away from his tow truck and reached for his gun, which led to the shooting. (R. p. 700; State's Ex. # 15). Sergeant Hardy then transported Oates away from the scene. (R. p. 698).

Subsequently, investigators from the Beaufort County Sheriff's Office responded to the location of the shooting and began conducting an investigation. (R. p. 12; pp. 729-730). During their investigation, the investigators located a minivan parked in the street with a boot placed on one of its wheels and a tool near the boot. (R. p. 12; pp. 19-20; p. 33; pp. 739-740). Additionally, they discovered Victim's body near the side of Oates's tow truck, which had the keys in the ignition and was running. (R. p. 39; p. 733). They also found Oates's set of keys at the back of the tow truck, a loaded .40-caliber handgun in the roadway, and six shell casings nearby. (R. p. 28; p. 32; p. 38; pp. 40-41; p. 732; p. 735; p. 740).

Several hours later, Oates was interviewed by Detective John Adams and Investigator Laurel Albertin of the Beaufort County Sheriff's Office. (R. pp. 12-13; p. 287; pp. 711-712; pp. 715-716; Court's Ex. # 7 (Interview Recording); State's Ex. # 16 (Interview Recording)). During the interview, Oates presented a version of the shooting in which he was confronted by three "hooting" and "hollering" Hispanic men after placing a boot on the tire of an illegally-parked minivan, retreated to his truck, spoke with the men while inside the truck, heard one of the men ask someone to retrieve his shotgun, heard a pistol round being chambered, advised the men it would be "no problemo" to get the boot off the minivan, and ultimately shot Victim after his keys were taken and Victim informed him he was going to remove the boot, instructed him to get out of his truck, unlocked the truck's door, opened it, backed up, pulled a pistol out of his belt, and began drawing it. (R. pp. 289-323; Court's Ex. # 7; State's Ex. # 16).

On the following day, Dr. Ellen Riemer, an expert forensic pathologist, conducted an autopsy on Victim. (R. p. 484; pp. 864-865). During the autopsy, Dr. Riemer discovered six different gunshot wounds to Victim's body: (1) one to the back of Victim's neck; (2) one to the right side of Victim's abdomen; (3) one to the middle of Victim's back; (4) one to the left side of

Victim's back; (5) one to the back of Victim's right arm; and (6) one to the left side of the upper portion of Victim's back. (R. pp. 486-488; p. 491; pp. 867-874). The gunshot to Victim's neck travelled in an upward trajectory, and the bullet exited Victim's body on the right side of his face. (R. p. 486; p. 869). The gunshot to the middle of Victim's back had a slightly upward trajectory, and the bullet struck Victim's vertebrae, spinal cord, liver, and heart before exiting through the front of Victim's body.[1] (R. p. 487; pp. 871-872; p. 876). The gunshots to the left side of Victim's back and the back of Victim's right arm resulted in fractures to both of Victim's arms. (R. pp. 487-488; p. 491; pp. 872-874). The gunshot wound to Victim's abdomen entered and exited on the right side of Victim's body. (R. pp. 486-487; pp. 870-871). The gunshot wound to the upper portion of Victim's back had a downward trajectory, and the bullet was recovered from Victim's body after it passed through Victim's left lung and sternum. (R. p. 488; p. 874). Based on her autopsy findings, the pathologist concluded Victim's manner of death was a homicide resulting from multiple gunshot wounds. (R. pp. 491-492; pp. 878-879).

Following the autopsy, Captain Robert Bromage of the Beaufort County Sheriff's Office conducted a second interview of Oates on December 27, 2010. (R. pp. 13-14; p. 92; pp. 367-368; pp. 749-750; pp. 752-753; p. 786; Court's Ex. # 8 (Interview Recording); State's Ex. # 22 (Interview Recording)). During that interview, Oates presented a version of the shooting in which he placed a boot on the tire of an illegally-parked minivan, saw three men running towards him, ran back to and locked himself inside his truck, was confronted by the men who "jump[ed] up in the window" of his truck and cursed at him, warned the men they would be responsible for any damage that resulted from any attempts to move the minivan, advised them it would cost

[1] During trial, Dr. Riemer noted the gunshot to the middle of Victim's back would have resulted in significant bleeding, paralysis, and rapid death. (R. pp. 876-878). She further noted the exit wound caused by the gunshot was shored, which was consistent with Victim's body being up against the ground at the time he was shot. (R. p. 872).

$300 for him to remove the boot, and looked over and saw a gun "sitting" in his vehicle's window. (R. p. 368; pp. 379-383; Court's Ex. # 8; State's Ex. # 22). After that, Oates indicated the armed man chambered his weapon, asked another person to retrieve his shotgun, and grabbed the tire lock tool and his keys from him. (R. pp. 382-383; pp. 385-387; Court's Ex. # 8; State's Ex. # 22). Thereafter, as the incident continued, Oates claimed the man with the gun shoved it into his face at such a close distance that he "could see the rifling in the barrel," demanded to be shown that there was no documentation or paperwork because he did not want anyone to come looking for him, told him to get out, and stated: "We're done." (R. pp. 389-390; pp. 396-397; Court's Ex. # 8; State's Ex. # 22). At that point, Oates asserted the man pulled the door to the truck open and started to draw his gun from his waistband. (R. pp. 397-398; Court's Ex. # 8; State's Ex. # 22). In response, Oates indicated he saw the muzzle of his own gun flash as he was stepping out of the truck and shot the man as the man stood with his body turned to him "a little bit."[2] (R. pp. 398-399; Court's Ex. # 8; State's Ex. # 22). Oates claimed he was then eye to eye with the man and could see the man's chest as he fired another shot and was face to face with the man as he fired his third and fourth shots. (R. pp. 401-404; Court's Ex. # 8; State's Ex. # 22). Furthermore, Oates claimed Victim was never running away from him or fleeing during the incident and there was no pause between the shots he fired. (R. pp. 380-381; Court's Ex. # 8; State's Ex. # 22).

Following the interview, Oates was placed under arrest, and he was subsequently indicted for murder, voluntary manslaughter, and possession of a weapon during the commission of a violent crime. (R. pp. 536-537; pp. 557-558; pp. 1108-1113). After that, Oates unsuccessfully

[2] Contrary to some of his earlier statements, Oates repeatedly characterized the shots he fired at Victim as "panic fire" during his interview with Captain Bromage. (R. pp. 403-404; p. 412; p. 445; p. 477; Court's Ex. # 8; State's Ex. # 22).

sought immunity from prosecution before proceeding to trial on the murder and weapon possession indictments. (R. p. 235; p. 284; pp. 557-558). At the conclusion of trial, he was convicted of the lesser-included offense of voluntary manslaughter along with the weapon possession charge, and the trial judge ultimately sentenced him to an aggregate twenty-four-year term of imprisonment. (R. p. 1024; p. 1043; p. 1105). .

Subsequently, Oates appealed his convictions, and the Court of Appeals unanimously affirmed on appeal. State v. Oates, __ S.C. __, 803 S.E.2d 911 (Ct. App. 2017). In affirming, the Court of Appeals first determined the circuit court judge did not abuse his discretion in declining to grant Oates's immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. Id. at 917-918. Specifically, in so ruling, the Court of Appeals concluded the circuit court judge committed no error in rejecting Oates's claim Victim was attempting to force him from his truck and, thus, properly declined to grant immunity pursuant to Section 16-11-440(A). Id. at 919. Similarly, the Court of Appeals concluded the circuit court judge committed no error in finding Oates was not entitled to immunity pursuant to Section 16-11-440(C) in light of the fact the circuit court judge determined Oates shot Victim multiple times in the back as Victim walked away from him and any perceived threat had ended. Id. at 920. Additionally, the Court of Appeals concluded the trial judge properly denied Oates's directed verdict motion on the issue of self-defense in light of the fact the evidence and testimony presented during trial was not uncontroverted and tended to disprove self-defense. Id. at 922-923. Finally, the Court of Appeals concluded the trial judge committed no error in instructing the jury on the lesser-included offense of voluntary manslaughter in light of the evidence and testimony presented during trial supporting a finding Oates killed Victim while incapable of cool reflection and acting under an uncontrollable impulse to do violence. Id. at 926.

ARGUMENT

I.

The Court of Appeals correctly determined the circuit court judge did not abuse his discretion in determining Oates failed to meet his burden of establishing by a preponderance of the evidence he was entitled to immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act where the circuit court judge considered the evidence and testimony presented during the pre-trial hearing and made a factually-supported determination the most credible version of events was Oates shot the victim in the back while the victim walked away from him towards his own vehicle after any dispute between Oates and the victim had ended, which was a version of events that did not entitle Oates to immunity from prosecution under any provision of the legislation.

Oates contends the Court of Appeals erred by affirming the circuit court judge's 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, Oates maintains the circuit court judge erred in determining he was not being unlawfully removed from his vehicle and his conflict with Victim had ended at the time he fatally shot Victim. Contrary to Oates's contentions, the circuit court judge considered the testimony and evidence presented during the pre-trial hearing, which included statements from multiple witnesses to the shooting, recordings of 911 calls and Oates's law enforcement interviews, an autopsy report detailing Victim's injuries, and surveillance footage of the shooting, and made a factual determination Oates shot Victim in the back after any conflict between the two had ended, after Victim secured his pistol in his waistband, and while Victim was walking away from him. Thereafter, upon making his factual findings regarding the incident, the circuit court judge properly applied those findings to the provisions of the Act before concluding Oates's actions did not entitle him to immunity from prosecution, and the circuit court judge's ruling was neither unsupported by any evidence nor controlled by an error of law. As a result, the Court of Appeals properly affirmed the circuit court judge's factually-supported ruling on appeal. Oates's petition for a writ of certiorari should be denied.

RELEVANT FACTS

Prior to trial, defense counsel for Oates filed a motion seeking a hearing on the issue of whether Oates was entitled to immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. (R. pp. 1-2). In seeking immunity from prosecution, defense counsel alleged:

> The facts will show that [Oates] was lawfully in his work vehicle on the evening of December 24th 2010 when he was accosted by an attacker armed with a semi-automatic pistol and the armed attacker's brother. [Oates] was lawfully executing the duties of his employment when he was set upon by the armed attacker and his brother. The armed attacker presented and produced a fully loaded large caliber semi-automatic firearm causing and placing [Oates] in immanent fear of great bodily injury or violent death.
>
> The General assembly has found it fitting and proper for citizens, such as [Oates] to defend themselves from violent and unwarranted attacks, particularly armed assailants. Further, the General Assembly finds that person, such as [Oates] have a right to remain free, unmolested and safe in their homes, businesses and vehicles. The General assembly further finds that no person or victim of crime, such as [Oates], should be required to surrender his personal safety nor be required to retreat needlessly in the face of an attack.

(R. pp. 1-2).

Thereafter, a hearing was conducted on defense counsel's motion. (R. pp. 7-8). During the hearing, a recording of the shooting captured on a surveillance footage from a camera installed at Varedi's house was played for the circuit court judge, the report from Victim's autopsy was presented, the 911 calls were admitted, and numerous statements about the shooting were introduced into evidence or discussed, including statements from Oates, Nelson, Varedi, Bryant, Claudia Olivera ("Claudia"), Elizabeth Reyes, and Victim's wife. (R. p. 20; pp. 45-48; pp. 285-502; Court's Ex. # 3; Court's Ex. # 5; Court's Ex. # 7; Court's Ex. # 8).

In Nelson's statement, which he provided on December 28, 2010, Nelson stated Victim visited him at his home on Christmas Eve. (R. p. 493). Nelson indicated they were alerted only

a few minutes later Victim's vehicle was being towed so they went outside to attempt to explain to the tow truck driver Victim was only making a short visit and was preparing to leave. (R. p. 493). Nelson stated Oates then told them they would have to give him $300 on the spot or $400 if the vehicle was towed, Oates returned to the tow truck, and Oates showed them a gun and told them to go away if they did not have the money. (R. p. 493). Nelson indicated Victim then showed Oates he was also armed by lifting his shirt. (R. p. 494). At that point, Nelson indicated Oates agreed to let the vehicle go and gave them the keys and a tool. (R. p. 494). Nelson stated he then attempted to take the boot off of Victim's minivan, Victim turned towards him and started walking in his direction, and then he heard gunshots and saw Victim on the ground. (R. pp. 494-495). After the initial shots, Nelson stated Oates shot Victim several more times before removing Victim's gun from his waistband and throwing it away. (R. p. 495). Nelson indicated Oates then threatened other people at the scene prior to the police's arrival. (R. pp. 495-496).

In the statement of Claudia, who was Nelson's wife and Victim's sister-in-law, Claudia stated Oates began towing Victim's car only a few minutes after Victim arrived at their home. (R. p. 497). Claudia indicated Nelson and Victim then went to speak with Oates, Nelson came back with Oates's keys and told her Oates gave them to him, and Victim began directing traffic while Nelson attempted to remove the boot. (R. p. 497). Thereafter, Claudia stated Victim began walking towards them before Oates shot him in the back and on the ground. (R. p. 497). Claudia indicated Oates then threatened them until he was arrested. (R. pp. 497-498).

In the statement of Reyes, who was one of Nelson and Varedi's neighbors, Reyes indicated she was sitting in a car in her driveway when she saw a tow truck driver trying to tow a vehicle parked in front of a neighbor's home. (R. p. 501). Thereafter, Reyes stated some men came outside, one of the men stood on the ramp of the tow truck, and the men pleaded and

screamed for the tow truck driver to take the boot off of the vehicle. (R. p. 501). A few minutes later, Reyes indicated she heard a shot, looked towards the open door of the tow truck, saw a man shooting towards the ground, and saw someone's body on the ground. (R. pp. 501-502).

Additionally, Investigator Viens testified about her investigation into the shooting. (R. p. 12). As part of her investigation, she stated she interviewed several witnesses at the scene, including Nelson. (R. p. 20; p. 24). During her interview of Nelson, she testified Nelson stated he and Victim went to speak with Oates about not towing Victim's minivan, they begged Oates to leave the vehicle, Oates stated he would have to call someone because it was not his decision as to whether to leave the vehicle and told them it would cost between $300 and $400 for him to leave the vehicle, Victim pulled a gun from his pants and demanded the vehicle be released, Oates ran to his truck and appeared very nervous, and then Oates handed Victim a set of keys and told him it would be no problem. (R. pp. 25-29). She stated Nelson then told her Victim calmed down, put away his gun, and turned around before he was shot. (R. pp. 34-35).

As her testimony continued, Investigator Viens also discussed Bryant's statements about the shooting. (R. p. 44). She stated Bryant indicated she observed Victim and Nelson arguing and cursing and she suggested to them to call the police to allow them to straighten out the situation with Oates, who she noted was in his tow truck doing something inside, and was informed everything was under control and the police were not needed. (R. p. 45; pp. 47-48). Investigator Viens indicated Bryant stated she then returned to her house and was asked by Victim's wife not to call the police. (R. p. 45; p. 48).

Thereafter, on cross-examination, Investigator Viens noted Victim had taken several steps away before the shooting began. (R. p. 140). She further indicated the majority of the statements presented about the incident indicated Victim was no longer arguing with Oates and,

instead, had turned and was walking away without his gun drawn when he was shot. (R. pp. 143-145). Investigator Viens indicated there was even a remark Victim thanked Oates before he turned around and began walking towards the minivan. (R. p. 144). Additionally, she noted Oates gave three different accounts of the incident throughout his statements to the 911 dispatcher and the law enforcement officers who interviewed him. (R. pp. 145-147).

Following the presentation of the testimony, the solicitor called the circuit court judge's attention to the autopsy report, which established Victim was shot five times in the back and once in the side. (R. pp. 194-198; pp. 486-488; pp. 491-492). In response, defense counsel objected to the relevancy of Victim's gunshot injuries, and that objection was overruled. (R. pp. 195-198). In overruling the objection, the circuit court judge noted the injuries did not conclusively establish what occurred but were relevant to the issue of whether Oates was being pulled from his vehicle at the time he shot Victim. (R. p. 196; p. 198). On that issue, the circuit court judge acknowledged Oates would have had a right to shoot Victim if he was pulled out of his vehicle but noted the testimony establishing Victim was shot while he was walking away from Oates's truck was inconsistent with Oates being pulled from that vehicle. (R. p. 198).

At the conclusion of the hearing, defense counsel argued Oates was entitled to immunity from prosecution because the "uncontroverted" testimony from Oates's statements established he was removed or coerced from his vehicle at gunpoint or at the threat of gunpoint. (R. pp. 203-204). Following defense counsel's contention, the circuit court judge noted Oates's interpretation of the statute was correct but asked Oates to address the conflicting testimony presented that indicated the argument had ended and Victim was walking away at the time he was shot. (R. pp. 205-207). In response, defense counsel acknowledged it was Oates's burden to establish his version of events was more likely true than any other version and conceded the

issue would have been for the jury to resolve if the circuit court judge was considering it at the directed verdict stage of a trial. (R. pp. 207-208). However, defense counsel urged the circuit court judge to accept Oates's version of events, argued there was an ongoing threat at the time of the shooting, and noted there were inconsistencies in Nelson's statements. (R. pp. 211-215; pp. 222-223). In reply, the solicitor argued the immunity provision of the Act did not provide for immunity to a person who shot another person after an event had taken place and the other person was walking away. (R. pp. 223-224). The solicitor further noted Oates's own statements were internally inconsistent and inconsistent with the autopsy report, which established Victim had not been shot from the front as Oates claimed. (R. pp. 223-225). In rebuttal, defense counsel argued many of Oates's statements were supported by the evidence and contended the situation was not over when Victim walked away. (R. pp. 227-230). The circuit court judge then took the matter under advisement. (R. pp. 231-232).

Thereafter, the circuit court judge denied Oates's motion for immunity from prosecution. (R. p. 235). In reaching that decision, the Court made the following factual findings: (1) Oates placed a boot on Victim's illegally-parked vehicle and was preparing to tow it; (2) Victim and Nelson approached Oates, argued with him, and asked him to take the boot off of the vehicle; (3) during the argument, Victim displayed a handgun in his waistband to Oates and a factual dispute existed as to whether Victim ever drew the weapon and pointed it; (4) Oates agreed to release Victim's vehicle and gave the keys to the boot to Nelson; (5) Oates retrieved a gun while Nelson attempted to unlock the boot; (6) Victim walked away from the truck; (7) as Victim walked away, Oates exited the tow truck and shot Victim six times in total and five times in the back; (8) Victim was not facing Oates at the time he was shot; and (9) the argument had ended at the time

Oates shot Victim.[3] (R. pp. 235-236; p. 240). Based on those findings, the circuit court judge found Oates failed to establish he was entitled to immunity pursuant to S.C. Code Ann. § 16-11-440(A) or § 16-11-440(C). (R. pp. 238-240). Regarding Section 16-11-440(A), the circuit court judge held:

> The facts presented do not show that at the time of the shooting [Victim] was unlawfully or forcibly entering, or had entered, Oates' vehicle. [Victim] was walking away from Oates' tow truck at the time Oates got out of his vehicle and shot [Victim]. Statements from witnesses as well as the video of the incident support these findings.

(R. p. 239). Regarding Section 16-11-440(C), the circuit court judge held:

> The Act is specific that a person attacked in a place in which he has a right to be has no duty to retreat. The issue presented in this case, however, is whether this statute protects a person who shoots and kills another if the confrontation has ended and the victim is walking away. The Act allows a person to stand his ground and meet force with force if he *reasonably* believes it is necessary to prevent death or great bodily injury or to prevent the commission of a violent crime. In this case, while Oates was in a place that he was allowed to be, his use of deadly force against [Victim] was not necessary to prevent his own death or great bodily injury, or the commission of a violent crime.
>
> Assuming that there was an "attack" previously, there was no such event at the time of the shooting. In short, there was no force to be met. [Victim] was walking away from Oates when he was shot five times in the back and once in the side. Other evidence presented supports the Court's finding that the argument had ended at the time Oates fired the fatal shots. The Court will not interpret the language of the statute to mean that a person may shoot and kill another when a perceived attack has ended.

(R. pp. 239-240).

Following the ruling, defense counsel filed a motion seeking reconsideration of the circuit judge's decision to deny immunity. (R. p. 242). In the motion, defense counsel contended the circuit court judge made several factual determinations that were allegedly

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[3] Before finding the argument had ended at the time of the shooting, the circuit court judge acknowledged the testimony was in dispute with Oates claiming Victim ordered him out of the tow truck at gunpoint and with multiple other witnesses claiming the dispute had ended and everyone was calm just before the shooting. (R. p. 236).

contrary to the evidence presented. (R. p. 242). Specifically, defense counsel contended the circuit court judge failed to consider the evidence he claimed established Oates was the victim of an armed robbery. (R. pp. 242-245). Defense counsel further argued the circuit court judge erred in failing to consider the law of self-defense, the law of armed robbery, and the law of kidnapping. (R. pp. 245-248). For those reasons, defense counsel contended the circuit court judge erred in finding Oates was not entitled to immunity. (R. pp. 248-251).

Subsequently, the circuit court judge conducted a hearing on defense counsel's motion for reconsideration. (R. p. 254). During the hearing, the circuit court judge noted the key to his ruling in Oates's case was he determined the aggression had ceased at the point in time Oates chose to use deadly force against Victim, and the circuit court judge specifically declined to find Victim was guilty of armed robbery. (R. pp. 257-258). The circuit court judge further pointed out he had to evaluate credibility and believability, he considered Oates's recorded statements to be very important to that analysis, and he did not agree with the logic articulated by Oates in his statements. (R. pp. 259-260). The circuit court judge explained his ruling would not prevent Oates from pursuing a self-defense claim at trial but stated he believed the other versions of events presented over Oates's versions of events. (R. pp. 260-261). Specifically, the circuit court judge stated: "In this particular case, I believed the version of facts testified by the other witnesses, corroborated by the scientific evidence of the gunshot wound." (R. p. 261). Additionally, the circuit court judge indicated he found the testimony Victim had placed his pistol into his waistband and was walking away at the time he was shot to be credible evidence the argument had ended and rejected the logic of Oates's explanation as to why he believed it was necessary to use deadly force at the time it was employed. (R. p. 262). In response to the circuit court judge's remarks, defense counsel asserted an armed robbery and kidnapping had

occurred and were continuing at the time Oates used deadly force. (R. pp. 262-263). However, the circuit court judge indicated he did not agree with defense counsel in that regard. (R. p. 263). The circuit court judge then noted he did not believe Oates was permitted to use deadly force after the danger had ended while further acknowledging the acceptance of another version of events he did not agree with could have entitled Oates to immunity. (R. p. 263; p. 265). However, the circuit court judge concluded: "I just think the facts support my position more than they support yours." (R. p. 265). In rejecting Oates's version of events, the circuit court judge discounted defense counsel's claims of an armed robbery, noting Oates's "arguably" gave the key to Victim voluntarily and without threat. (R. p. 267). For those reasons, the circuit court judge denied the motion to reconsider his ruling rejecting Oates's immunity request. (R. p. 284).

ANALYSIS

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. 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 instructed:

> 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). The question of whether a defendant is entitled to immunity under the Act must be decided prior to trial by a preponderance of the evidence if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011).

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 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 sub judice, the circuit court judge – after hearing the testimony presented during the pre-trial hearing, reviewing the various statements made in regard to the shooting, reading through the report of Victim's gunshot wounds, and viewing the surveillance footage of the shooting – made several key factual findings that precluded Oates from entitlement to immunity. Significantly, after concluding Victim and Oates were merely arguing prior to the shooting, the circuit court judge determined Victim put away his firearm and began walking away from Oates at the time he was shot six times in total and five times in the back. (R. pp. 235-236). In addition to those findings, the circuit court judge also specifically determined any argument or dispute that occurred between Oates and Victim had ended at the time Oates chose to employ deadly force against Victim. (R. p. 236; p. 240).

Importantly, those key findings were fully supported by the evidence and testimony presented during the pre-trial hearing, which included a report detailing the location of Victim's gunshot wounds, surveillance footage confirming Victim was walking away from Oates at the time he was fatally shot, and the statements of numerous witnesses indicating any confrontation or dispute between Victim and Oates had ended prior to the shooting. In fact, supporting the circuit court judge's determination the dispute had ended prior to the shooting, Oates himself confirmed in his statements given during his law enforcement interviews he repeatedly assured a witness on the scene everything was okay just before he shot Victim even though Oates later claimed what he said to the witness was not actually what he meant. Thus, the circuit court judge's factual findings in regards to the details of the shooting were fully supported by the evidence and are binding on appeal. See Reed, 333 S.C. at 684, 511 S.E.2d at 400 ("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)).

After making those key factual determinations, the circuit court judge properly applied his factual findings to the provisions of the Act. Initially, in regards to Section 16-11-440(A), the circuit court judge correctly determined Oates was not entitled to immunity pursuant to that provision because the facts found to be most credible by the circuit court judge did not establish Victim was unlawfully or forcibly entering Oates's occupied vehicle or had unlawfully or forcibly entered Oates's occupied vehicle at the time Victim was shot. Instead, at the time the shooting occurred, the circuit court judge concluded Oates had exited his vehicle, which resultantly was no longer an occupied vehicle, and was moving towards Victim, who was walking in the opposite direction, when he shot Victim from behind. Since the circuit court judge concluded Victim had not unlawfully or forcibly entered Oates's tow truck and was walking away at the time of the shooting, Victim was not making any attempt to enter Appellant's tow truck at the time he was shot, and Oates could not have been justified in employing deadly force against Victim on that basis. Likewise, as Victim was moving towards his minivan with his back turned to Oates, Victim was not attempting to remove Oates from his vehicle against his will, and the circuit court judge specifically found Oates's version of events in which he claimed to have been ordered from the tow truck to be less credible than the other testimony and evidence presented during the pre-trial hearing. Under those circumstances, Oates failed to establish he was entitled to immunity pursuant to Section 16-11-440(A).

Likewise, the circuit court judge also properly determined Oates was not entitled to immunity pursuant to Section 16-11-440(C). Critically, at the time Oates decided to use deadly

force against Victim, Victim was not attacking or threatening Oates in any way. To the contrary, the evidence the circuit court judge found to be credible established Victim had his weapon in his waistband and was simply walking away from Oates with his back turned to him when he was shot. Thus, under those circumstances, Oates was not under attack and, as no force was being directed towards him, was not meeting force with force when he fatally shot Victim. As a result, Oates could not have reasonably believed the use of deadly force against Victim was necessary to prevent death, great bodily injury, or the commission of any violent crime. Accordingly, Oates failed to establish he was entitled to immunity pursuant to Section 16-11-440(C).

Although any one of the different versions of the shooting presented by Oates could have potentially entitled him to immunity from prosecution if it had been found to be credible by the circuit court judge in his role as the fact finder for purposes of the immunity issue, the circuit court judge simply did **not** find any of Oates's versions of events to be the most credible account of what occurred and, instead, reached a contrary conclusion after considering the other testimony and evidence presented during the pre-trial hearing, including the evidence establishing Oates shot Victim in the back as he walked away from him. See 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."); see also 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). Critically, the factual conclusions reached by the circuit court judge were supported by the evidence and did not entitle Oates to immunity from prosecution when applied to provisions of the Act. Under those circumstances, the facts of

Oates's case did not warrant a grant of immunity and, instead, created a "quintessential jury question" as to whether Oates acted in self-defense or unlawfully killed Victim. Curry, 406 S.C. at 372, 752 S.E.2d at 267. Accordingly, the circuit court judge committed no error in denying Oates's request for immunity, and the Court of Appeals properly affirmed that ruling. See Duncan, 392 S.C. at 411, 709 S.E.2d at 665 ("[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence."); 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."). Oates's petition for a writ of certiorari should be denied.

II.

The Court of Appeals correctly affirmed the trial judge's denial of Oates's directed verdict motion because substantial evidence was presented during trial, including the evidence and testimony establishing Oates shot the victim multiple times in the back as the victim walked away from him, tending to disprove self-defense beyond a reasonable doubt.

Oates contends the Court of Appeals erred by affirming the trial judge's denial of his directed verdict motion on the issue of self-defense. In support of that contention, Oates maintains he was entitled to a directed verdict because the State allegedly failed to disprove he was acting in self-defense. Contrary to Oates's contentions, the evidence and testimony presented during trial when viewed in a light most favorable to the State as required established Oates unlawfully killed Victim by shooting him in the back as he was walking away from Oates while posing no threat or danger. Under those circumstances, the evidence and testimony presented during trial tended to disprove self-defense. Accordingly, the defense of self-defense was not established as a matter of law, the trial judge properly denied Oates's directed verdict

motion, and the Court of Appeals correctly affirmed the trial judge's ruling. Oates's petition for a writ of certiorari should be denied.

RELEVANT FACTS

During trial, several different accounts of the shooting were offered into evidence and presented to the jury. (R. pp. 584-586; pp. 595-598; p. 612; pp. 619-626; p. 698; p. 713; p. 751). Likewise, the surveillance recording of the shooting was played for the jury, and Dr. Riemer testified about Victim's injuries, which included five gunshot wounds to the back and one gunshot wound to the side of the abdomen. (R. pp. 869-879).

Regarding the accounts of the shooting presented to the jury, the jury heard several differing versions of the shooting through the introduction of the multiple statements made by Oates in the minutes, hours, and days after Victim was shot and killed that suggested Oates shot Victim upon being ordered out of his vehicle at gunpoint after Victim either pointed a gun in his face or was in the process of drawing a gun on him. (State's Ex. #1; State's Ex. # 15; State's Ex. # 16; State's Ex. # 22). Conversely, through the testimony of the witnesses who testified during trial, the jury heard sharply divergent accounts of the shooting that suggested Victim was shot in the back as he walked away from Oates. (R. pp. 595-598; pp. 619-626). Specifically, Varedi testified Oates shot Victim in the back, and he noted he never heard any yelling or shouting prior to the shooting. (R. pp. 595-598). Likewise, Nelson testified he personally pleaded with Otaes to release Victim's vehicle, Victim produced a pistol for just a few seconds and stated no one was going to take his car, he told Victim to put his pistol away, and Victim complied without ever pointing or aiming the gun at Oates. (R. pp. 621-624; pp. 635-637; p. 641). Moments later, Nelson stated Oates shot Victim while Victim directed traffic in the road, and Nelson further indicated the shooting was not preceded by Victim threatening, arguing with, or fighting with

Oates. (R. pp. 624-626; p. 629; p. 639; p. 645). Additionally, Claudia testified Oates exited his truck "very, very quickly" and shot Victim from behind while Victim was engaged in directing traffic. (R. pp. 648-650; p. 652). Similarly, Dhayan Olivera ("Dhayan"), Victim's wife, testified Victim was directing traffic during the incident when Oates came out of the truck with a gun, Victim tried to run, and Oates shot him from behind and continued firing after he fell to the ground. (R. pp. 658-659). Finally, Reyes testified she saw Oates walking towards Victim and firing shots at him from behind as Victim walked towards her. (R. pp. 667-668).

At the conclusion of the State's case, Oates moved for a directed verdict, arguing the State failed to disprove "each and every element" of self-defense beyond a reasonable doubt. (R. pp. 891-896). In response, the solicitor initially noted the State was only required to disprove a single element of self-defense before asserting the testimony and evidence established Oates shot Victim multiple times in the back as he was walking away from Oates and after he fell to the ground. (R. pp. 896-897). Based on that testimony and evidence, the solicitor contended the issue of self-defense was in dispute, and defense counsel responded: "I agree with you." (R. p. 898). The trial judge then denied the directed verdict motion after finding the evidence and testimony created an issue necessitating jury resolution. (R. p. 899).

ANALYSIS

When presented with a motion for a directed verdict, the trial judge should deny such a motion and submit the case to the jury if there is any substantial evidence reasonably tending to establish guilt or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to

grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."). On appeal from the denial of a directed verdict, the appellate court must affirm the trial judge's ruling if there is **any** direct evidence or substantial circumstantial evidence reasonably tending to prove the accused's guilt. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

When a defendant raises a claim of self-defense, the State is required to disprove self-defense beyond a reasonable doubt. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011); see State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2d 489, 492-493 (1998) ("[C]urrent law requires the State to disprove self-defense, once raised by the defendant, beyond a reasonable doubt."). The State's burden of disproving self-defense is satisfied when the State disproves any one of the elements of self-defense by proof beyond a reasonable doubt. State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010). In making a determination as to whether the State met its burden of disproving self-defense, an appellate court should apply the traditional standard of review applied when reviewing the denial of any other directed verdict motion and affirm if there is any direct or substantial circumstantial evidence viewed in a light most favorable to the State reasonably tending to prove the guilt of the accused or from which guilt could be fairly or logically deduced. See State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (applying

the traditional directed verdict standard of review when considering whether Butler was entitled to the grant of a directed verdict based on a claim of self-defense).

Four elements must be present to establish the defense of self-defense in South Carolina. State v. Bryant, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999). Those required elements are: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must either have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or have actually been in imminent danger; (3) if the defense is based on the belief of imminent danger, the belief must have been the same as one that would have been entertained by a reasonably prudent person of ordinary firmness and courage in the same situation; if the defendant was in actual imminent danger, the circumstances must have been such that would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to prevent serious bodily injury or loss of life; and (4) there was no other probable means of avoiding the danger than to act as the defendant did in the situation. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). "It is an axiomatic principle of law that the defense has not been established if any one element is disproven." Bixby, 388 S.C. at 554, 698 S.E.2d at 586.

In the case at bar, when viewing the evidence in a light most favorable to the State as required, the evidence and testimony presented during trial, if accepted by the jury, established Oates was not acting in self-defense when he unlawfully shot and killed Victim. Specifically, pursuant to one version of events established by the testimony and evidence, Oates fired upon Victim as Victim walked away from him towards his own vehicle with his gun in his waistband after any dispute between the two had ended and continued to shoot at Victim after he fell to the ground. At the time he was shot, Victim was not facing Oates, was not threatening Oates, was

not holding a weapon, was not ordering Oates out of his tow truck, and was not posing any immediate threat to Oates's life or safety. See State v. Rush, 340 N.C. 174, 186, 456 S.E.2d 819, 826 (N.C. 1995) ("[T]he fact that the victim had been shot in the back of the head, and thus could not have been facing defendant when he was shot, strongly negates any theory of self-defense."). Instead, Victim had communicated his withdrawal from any conflict he had been engaged in with Oates by taking the actions of securing his weapon in his waistband, turning his back to Oates, and walking away, and Victim was simply directing traffic with his back turned to Oates when he was shot and killed. See Bryant, 336 S.C. at 345, 520 S.E.2d at 322 (instructing a person may withdraw from an "initial difficulty with [another person] if that withdrawal is communicated to the [other person] by word or act").

In shooting Victim under those circumstances, Oates was not responding to any threat posed by Victim, was not in actual imminent danger, and could not have reasonably believed his life was in actual immediate danger. Therefore, as a defendant must not have brought on the difficulty and must either have actually reasonably believed he was in imminent danger of losing his life or sustaining serious bodily injury or have actually been in imminent danger in order for a jury to find he was acting in self-defense, the evidence and testimony presented during trial did not support a conclusion Oates was acting in self-defense when he shot Victim numerous times from behind, and the trial judge properly denied Oates's directed verdict motion. Cf. State v. Patterson, 63 So. 3d 140, 149 (La. Ct. App. 2011) ("At trial, defendant testified that, after the victim arm-robbed him of his money and drugs, the victim walked toward his vehicle. Defendant admitted that, after the victim walked away, he retrieved his gun, ran toward the victim's car, opened the passenger-side door, and shot the victim. . . . 'The law does not permit an individual to track down his enemy, shoot him with a pistol, and then claim justification for

the homicide because of prior threats.' Furthermore, the State presented evidence that victim was shot in the back of his head, which indicates that the defendant became the aggressor and his claim of self-defense was not supported by the facts." (footnote and citations omitted)). Moreover, to the extent Oates's own statements could have supported a conclusion he was acting in self-defense, the internal inconsistencies in Oates's statements raised credibility issues that could only appropriately be resolved by the jury and, thus, further justified the denial of Oates's directed verdict motion. See State v. Jenkins, 222 S.C. 359, 360-361, 72 S.E.2d 829, 829 (1952) ("It is not the function of [the appellate] court to pass upon the weight of the evidence, but only to determine its sufficiency to support the verdict[.]"); see also Town of Hartsville v. Munger, 93 S.C. 527, 529, 77 S.E. 219, 219 (1913) ("False and conflicting statements . . . have always been regarded as some evidence of guilty knowledge and intent."); cf. Butler, 407 S.C. at 382, 755 S.E.2d at 460 ("[T]he evidence in the present case created a jury issue on the issue of self-defense. For example, as the trial court recognized when ruling on the directed verdict motion, [Butler]'s various, inconsistent accounts of how the stabbing occurred created credibility issues and questions of fact to be resolved by the jury.").

Thus, based on the evidence and testimony presented during trial, the jury could have rationally and logically concluded the evidence disproved self-defense beyond a reasonable doubt. In light of that fact, Oates was not entitled to a directed verdict, and the case was properly submitted for the jury to decide. See State v. Hall, 259 S.C. 529, 532, 193 S.E.2d 269, 270 (1972) ("[I]f the testimony presented a factual issue as to whether appellant killed her husband in self-defense, the motions for a directed verdict were properly denied."); cf. Dickey, 394 S.C. at 503, 716 S.E.2d at 103 (finding a directed verdict on self-defense was warranted only where the evidence of self-defense was "uncontroverted"); State v. Long, 325 S.C. 59, 63, 480 S.E.2d 62,

63-64 (1997) ("While self-defense can be inferred even from the State's version of the evidence, the evidence of self-defense is not conclusive. . . . Accordingly, the trial judge properly refused to direct a verdict in appellant's favor based on self-defense."). Accordingly, the trial judge properly denied Oates's directed verdict motion, and the Court of Appeals correctly affirmed the trial judge's ruling. See State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("[Richburg] contends . . . that the trial judge should have directed a verdict, as a matter of law, of not guilty in favor of the defendant on the plea of self-defense. When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. . . . Among other considerations is the credibility of the witnesses, including that of the appellant himself. When there is reason to discredit a witness because of interest or otherwise the judge is not required to take the case from the jury as a matter of law but may **and should** submit the issues, including credibility of the witnesses, to the jury." (emphasis added)). Oates's petition for a writ of certiorari should be denied.

III.

The Court of Appeals correctly affirmed the trial judge's decision to instruct the jury on the lesser-included offense of voluntary manslaughter because the evidence and testimony presented during trial established Oates's guilt for each and every element of voluntary manslaughter, including that Oates fatally shot the victim while acting in a sudden heat of passion that resulted from sufficient legal provocation.

Oates contends the Court of Appeals erred by affirming the trial judge's decision to instruct the jury on the lesser-included offense of voluntary manslaughter. In support of that contention, Oates maintains there was no evidence establishing he shot Victim while acting under an uncontrollable impulse to do violence. Contrary to Oates's contentions, the evidence and testimony presented during trial, including the evidence that demonstrated Oates suddenly and repeatedly shot Victim in the back in the midst of a heated, back-and-forth argument, established Oates's guilt for each and every element of voluntary manslaughter, including that

Oates unlawfully killed Victim while acting in a sudden heat of passion that resulted from sufficient legal provocation. Under those circumstances, the trial judge properly instructed the jury on voluntary manslaughter, and the Court of Appeals correctly affirmed the trial judge's decision to do so. Oates's petition for a writ of certiorari should be denied.

RELEVANT FACTS

During trial, Oates's recorded statements in regard to the shooting were admitted into evidence and played for the jury. (R. p. 586; p. 698; p. 713; p. 751). In those statements, Oates admitted he was very frightened, fearful, and nervous prior to shooting Victim. (State's Ex. #15; State's Ex. # 16; State's Ex. # 22). He further acknowledged his response to seeing or hearing Victim's gun was to quickly arm himself. (State's Ex. # 16; State's Ex. # 22). Additionally, at various points during his statements, Oates described his actions as composed, controlled, and the product of some unspecified training. (State's Ex. # 16). However, at other points in his statements, Oates described his actions as "panic fire," instinctual, and simply a reaction undertaken in the "heat of the moment." (State's Ex. # 22).

In addition to Oates statements, several witnesses testified about the circumstances surrounding the shooting. (R. pp. 595-598; p. 612; pp. 619-626). In regard to those circumstances, several witnesses indicated Oates behavior was nervous and erratic both before and after the shooting. (R. p. 599; p. 627; p. 639; p. 651; p. 660). Significantly, Nelson also readily acknowledged Victim produced a firearm, audibly chambered a round, and stated no one was going to take his vehicle prior to the shooting. (R. p. 622; pp. 635-637; p. 642). Additionally, Nelson stated Oates began fumbling around for something in his tow truck in response to Victim producing the firearm, and the witnesses indicated Oates shot Victim just a few seconds or minutes later. (R. p. 598; p. 624; p. 626). Furthermore, although some testimony

was presented suggesting no shouting, yelling, arguing, or fighting occurred before the shooting, other testimony was presented suggesting Oates and Victim were engaged in a "very argumentative" dispute that was "going back and forth" just before Oates rapidly exited his running tow truck and fatally shot Victim multiple times in the back as Victim directed traffic in the roadway. (R. p. 595; p. 598; p. 601; p. 624; p. 627; p. 639; p. 650; p. 652; p. 658; pp. 666-667; p. 673; p. 733; pp. 869-875).

At the conclusion of the evidentiary phase of trial, the solicitor asked the trial judge to instruct the jury on the lesser-included offense of voluntary manslaughter. (R. pp. 903-904). In support of that request, the solicitor argued Victim's act of displaying the pistol during the incident could be construed as evidence of sufficient legal provocation. (R. p. 913). Likewise, the solicitor asserted Oates's statements regarding his fear and nervousness, Oates's characterization of the shooting as reactionary panic fire conducted in the heat of the moment, and the testimony regarding Oates's nervous, fearful behavior during the incident could be construed as evidence of heat of passion. (R. p. 915). In rebuttal, defense counsel objected to the giving of a voluntary manslaughter charge, argued Oates's statements were indicative of a conscious decision to act, and contended the evidence only supported a finding of murder or self-defense. (R. pp. 916-917; p. 921). After considering those arguments, the trial judge found a jury instruction on voluntary manslaughter was warranted. (R. p. 924).

Thereafter, during his jury instructions, the trial judge instructed the jury on murder, voluntary manslaughter, possession of a weapon during the commission of a violent crime, and self-defense. (R. pp. 999-1014). Following the trial judge's jury instructions, defense counsel renewed his early objection, and the trial judge once again overruled that objection. (R. p. 1014).

Subsequently, the jury convicted Oates of voluntary manslaughter and possession of a weapon during the commission of a violent crime. (R. p. 1024).

ANALYSIS

During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). Significantly, if **any** evidence warrants the giving of a charge on a lesser-included offense and the charge is requested, the trial judge **must** instruct the jury on the lesser-included offense and should only refuse to give the instruction when there is **no evidence whatsoever** from which the jury could conclude the defendant committed the lesser rather than the greater offense. State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009).

In reviewing a trial judge's jury instructions on appeal, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). So long as the trial judge properly instructed the jury on the applicable law, a trial judge's decision to give or refuse an instruction on a lesser-included offense will not be reversed on appeal. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007); see State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) ("A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence. If any evidence exists to support a charge, it should be given.").

In Oates's case, the trial judge properly instructed the jury on voluntary manslaughter because evidence and testimony was presented during trial from which the jury could have

concluded Oates was guilty of that lesser-included offense. Looking to the elements of the offense, voluntary manslaughter is "the unlawful killing of a human being in sudden heat of passion upon a sufficient legal provocation." State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951). In order for a killing to constitute voluntary manslaughter, both heat of passion and sufficient legal provocation must exist at the time of the killing, and the heat of passion must result from the legal provocation. State v. Starnes, 388 S.C. 590, 596-597, 698 S.E.2d 604, 608 (2010). Significantly, sudden heat of passion resulting from sufficient legal provocation "need not dethrone reason entirely, or shut out knowledge and volition[.]" State v. Smith, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011). However, it "must be such as would naturally disturb the sway of reason, render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." Id. "In determining whether the act which caused death was impelled by heat of passion . . . , all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969).

During trial, testimony and evidence was presented establishing Victim displayed a firearm to Oates during a dispute between the two, chambered a round, and made a comment that could have been construed as a threat directed at Oates. Based on that evidence and testimony, the jury could have found there was evidence of a sufficient legal provocation. See State v. Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (recognizing "an overt, threatening act or physical encounter may constitute sufficient legal provocation"); cf. State v. Locklair, 341 S.C. 352, 362, 535 S.E.2d 420, 425 (2000) ("[S]ince [the victim] **did not** take any overt physical

actions against Locklair, even the most liberal construction of her words do not reduce the crime to manslaughter." (emphasis added)).

Likewise, although some evidence and testimony presented during trial could have supported a conclusion Oates killed Victim with malice while Oates's statements, if accepted as true, could have supported a conclusion Oates killed Victim in self-defense, testimony and evidence was presented from which the jury could have found Oates killed Victim while acting in a sudden heat of passion. See State v. Cottrell, 376 S.C. 260, 265, 657 S.E.2d 451, 454 (2008) (holding the trial judge erred by refusing to instruct the jury on voluntary manslaughter where the evidence was susceptible to more than one inference regarding what occurred). Specifically, testimony and evidence was presented suggesting Oates shot and killed Victim just moments after Victim committed his provocative act in the midst of a "very argumentative," heated, "back[-]and[-]forth" dispute between the two. See Locklair, 341 S.C. at 360, 535 S.E.2d at 424 ("[I]t is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the [killing]."); Wiggins, 330 S.C. at 549, 500 S.E.2d at 495 (finding sufficient evidence existed to support a voluntary manslaughter conviction where the evidence established Wiggins was engaged in a heated argument with the victim and the victim's sister prior to the killing); State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (holding the trial judge committed reversible error by **not** instructing the jury on voluntary manslaughter where the testimony tended to show Lowry was engaged in a heated argument with the decedent and the decedent was about to initiate a physical encounter when the fatal shooting occurred). Additionally, the testimony and evidence suggested Oates's immediate response to Victim's provocative act was to become fearful and arm himself with a pistol, and Oates then suddenly and **repeatedly** shot Victim **in the back** in the "heat of the moment" in a manner he personally

described as instinctual or reactionary, which supported a conclusion his actions were the product of a heat of passion and an uncontrollable impulse to do violence as opposed to the product of cool, deliberative thought. See State v. Knoten, 347 S.C. 296, 305, 555 S.E.2d 391, 396 (2001) (finding the trial judge reversibly erred in refusing to instruct the jury on voluntary manslaughter where the evidence and testimony presented during trial established Knoten retrieved a weapon and killed the victim after she twice cut him with a knife, which constituted evidence of sufficient legal provocation and heat of passion such that a voluntary manslaughter jury instruction was warranted under the circumstances); see also Starnes, 388 S.C. at 599, 698 S.E.2d at 609 ("Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter – it will not justify it."); Wiggins, 330 S.C. at 549, 500 S.E.2d at 495 ("[F]ear can constitute a basis for voluntary manslaughter."); see generally State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) ("The question of criminal intent with which an act is done is one of fact and is ordinarily for jury determination except in extreme cases where there is no evidence thereon. . . . Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred." (citation omitted)).

In light of that testimony and evidence, sufficient evidence existed from which the jury could rationally and logically conclude Victim was fatally shot by Oates while Oates was acting in a sudden heat of passion that resulted from sufficient legal provocation. See State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983) ("Here, a witness testified that appellant and the victim had been 'fighting.' From this circumstance of 'provocation' and 'heat of passion,' guilt of voluntary manslaughter could be fairly and logically deduced and was thus a proper matter for jury determination."); see also Knoten, 347 S.C. at 307, 555 S.E.2d at 397 (holding there was

"simply no evidence that, **as a matter of law**, [Knoten] had sufficient time to cool" even though the evidence and testimony demonstrated Knoten went to retrieve a weapon in response to an attack before he returned and killed his victim). Accordingly, under those circumstances, the trial judge properly instructed the jury on voluntary manslaughter, and the Court of Appeals correctly affirmed the trial judge's jury charging decision. See Gardner, 219 S.C. at 104, 64 S.E.2d at 134 ("[T]o warrant the Court in eliminating the offense of manslaughter, it should **very clearly appear that there is no evidence whatsoever** tending to reduce the crime from murder to manslaughter." (emphasis added)). Oates's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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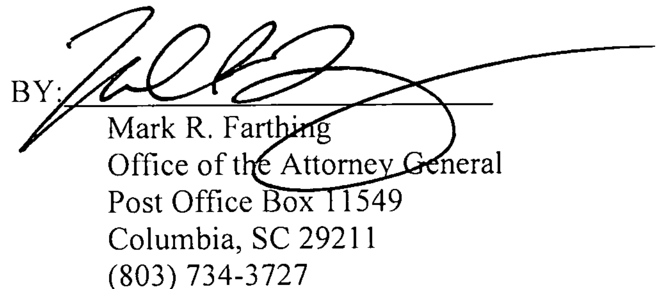

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November 1, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
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S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Beaufort County
Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case No. 2017-002012

THE STATE,

Respondent,

vs.

PRESTON RYAN OATES,

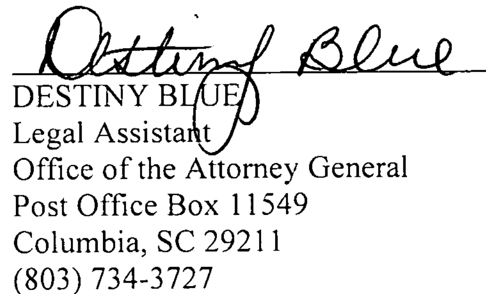
Petitioner.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by sending two copies of the same to:

Kathrine H. Hudgins, 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 1st day of November, 2017.



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