STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Georgetown County
The Honorable Benjamin H. Culberston, Circuit Court Judge

THE STATE,

Appellant,

v.

M'ANDRE COCHRAN,

Respondent.

Appellate Case No. 2018-001023

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge commit a clear error of law by granting immunity to Respondent Cochran pursuant to the South Carolina Protection of Persons and Property Act, S.C. Code Ann. §§16-11-410, et seq. (Supp. 2018), where he was not entitled to immunity as a matter of law because he could not validly raise a claim of self-defense, since there was no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury at the time he inflicted the mortal wounds; there was no evidence that he actually was in such imminent danger; a reasonably prudent man of ordinary firmness and courage would not have entertained the belief that he was in fear of death or serious bodily injury; and he did not reasonably need to use deadly force when he stabbed the victim?

STATEMENT OF THE CASE

The Horry County Grand Jury indicted Respondent (M'Andre Racquel Cochran) in August 2016, for the June 15, 2016 murder of Emmitt Kelly (2016-GS-22-793, ***R. 123-124*** and possession of a weapon during the commission of a violent crime. 2016-GS-22-794, ***R. 125-126.*** On February 13, 2018, Cochran filed a motion seeking immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. ***R. p. 119***.

The Honorable Benjamin H. Culbertson heard his motion at a May 21, 2018 pretrial hearing. **R.** ***1-117***. Francis A. Humphries, Jr., represented him at this hearing, and Fifteenth Circuit Senior Assistant Solicitor Ricky D. Todd prosecuted the case. Judge Culberson filed an Order Granting Immunity from Prosecution on May 22, 2018. The State, as Appellant, timely served and filed a notice of appeal.

STANDARD OF REVIEW

On appeal from a trial judge's pre-trial determination regarding a claim of statutory immunity, an appellate court reviews the trial 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 also 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"). The appellate court must affirm the trial judge's immunity determination if it is supported by any evidence *and* not controlled by an error of law. *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"). However, the appellate court is not barred from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence and it will reverse when the decision is

controlled by a legal error or lacking in evidentiary support. *See State v. Elders*, 386 S.C. 474, 480, 688 S.E.2d 857, 860 (Ct. App. 2010) ("An abuse of discretion occurs where the conclusions of the trial court either lack evidentiary support or are controlled by an error of law"); *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)); *cf. Narcisco v. State*, 397 S.C. 24, 28, 723 S.E.2d 369, 371 (2012) ("[T]his Court is not barred from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence").

ARGUMENT

The trial judge committed a clear error of law by granting immunity to Respondent Cochran pursuant to the South Carolina Protection of Persons and Property Act, S.C. Code Ann. §§16-11-410, *et seq.* (Supp. 2018), where he was not entitled to immunity as a matter of law because he could not validly raise a claim of self-defense, since there was no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury at the time he inflicted the mortal wounds; there was no evidence that he actually was in such imminent danger; a reasonably prudent man of ordinary firmness and courage would not have entertained the belief that he was in fear of death or serious bodily injury; and he did not reasonably need to use deadly force when he stabbed the victim.

The State submits that the trial judge committed a clear error of law by granting immunity to Respondent Cochran pursuant to the South Carolina Protection of Persons and Property Act, S.C. Code Ann. §§16-11-410, *et seq.* (Supp. 2018). Contrary to the trial judge's ruling, Cochran was not entitled to immunity as a matter of law because he could not validly raise a claim of self-defense, since there was no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury at the time he inflicted the mortal wounds; there was no evidence that he actually was in such imminent danger; a reasonably prudent man of ordinary firmness and courage would not have entertained the belief that he was

in fear of death or serious bodily injury; and he did not reasonably need to use deadly force when he stabbed the victim.

A. Testimony presented at immunity hearing.

The trial judge heard Cochran's motion seeking immunity from prosecution pursuant to the Act ***R. 119*** at a May 21, 2018 pretrial hearing. ***R. 1-117***. Cochran was the only witness who testified in support of his motion.

He testified that he was separated from his wife of six years, Casandra Cochran. **R. *37***. They have three children: a nine year old son and two daughters, ages seven and four. In June of 2016, they lived in a three bedroom mobile home located in Hemingway, South Carolina. The home was in his name and he made the mortgage payments on it. ***R. 8-10; 23***.

In June 2016, he was gainfully employed at AGRU America, a company that made plastic for landfills. He operated a machine that made composite net material. He typically worked twelve hour shifts with his partner, Ronnie Smith, but he could work a sixteen hour overtime shift when he needed extra money. The twelve hour shifts were from 7:00 p.m. to 7:00 a.m. He claimed that he could clock out early from an overtime shift. ***R. 11-12; 16***.[1]

He had planned to work an overtime shift from 7:00 p.m. on June 14, 2016, in order to get extra money for his wife's birthday. While this normally would have him working from 7:00 p.m. on June 14, 2016 until 11:00 a.m. on June 15th, he had not definitely decided how many overtime hours he would work. ***R. 13-17***.

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[1] He claimed on cross-examination that "you can [leave] anytime you want in overtime." ***R. 34***. He also made the bizarre claim that he would not typically inform his supervisor, Morgan Brunson, that he was leaving early from an overtime shift and said, "We could leave anytime we wanted." ***R. 49***.

Cochran testified that Casandra was aware of how long his shifts lasted. He also claimed that he had stayed at his house both on June 12 and June 13, 2016. He called Casandra around 12:30 a.m. on June 15 to make sure she was home, and she was there. However, he would not call her if he decided to leave an overtime shift earlier than originally planned. ***R. 13-15***. He was tired and he fell and asleep while working, which angered his co-worker, Mr. Smith, who had to awaken him. As a resullt, he left work around 5:00 a.m. but he did not call Casandra and tell her of his change in plans. ***R. 15-17; 36***.

He had not received any texts or calls from Casandra letting him know that someone was with her that night. So, he only expected to find her and the children at home. To his surprise, there was a strange light brown sedan that he did not recognize parked in the yard when he arrived[2] and the front door was not simply unlocked, it was ajar. This was not normal. He testified that the house was dark and that his initial reaction was "to protect my family because I had three kids and a wife." ***R. 17-22; 30; 40***.[3]

Without turning on any light in the dark house or calling out to any family member, he went into the kitchen and armed himself with a red-handled knife for "[p]rotection because I didn't know who was in my house or whatnot." ***R. 42-43; 45***. He then silently walked down the hallway and entered his son's bedroom, but discovered that it was empty. Even though this was "unusual" because Cochran occasionally slept in there, he did not call out to anyone or turn on a

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[2] Photographs of his yard (Defendant's Ex.s 1-2) reflected that there were three cars in the yard after he drove up in his mother's car: his car, Casandra's car, and the light brown sedan. ***R. 19-20***.

[3] He admitted on cross-examination that he had not spoken to his parents that day and claimed that he had expected to find his children at home. ***R. 36***. He also denied that his parents had often kept them. ***R. 47-48***. He further claimed that he had expected to find his children in bed with his wife when he did not find them in their rooms. ***R. 47***.

light. Instead, he went to his daughters' bedroom and, after opening the door, discovered that it was also empty. Next, he decided to go to the master bedroom. ***R. 22-25; 30; 41-43.***

So, he silently walked back through his living room and kitchen. He finally called out for Casandra as he approached their bedroom, but she did not respond. He then entered their darkened bedroom, again, without turning on a light. All he could see was that there were two people in the bed. When he reached the foot of the bed, he was confronted by the unknown victim. ***R. 25-28; 30-31; 43-44.***

Specifically, he testified that:

> And a dude jump up out the bed and say, "Who the fuck is you?" I like, "Who the fuck is me, who the fuck is you? This is my house," and then that when he swung at me, [that's] when I defended myself.

R. 28, lines 9-12. *See also* ***R. 44-45; 51-52.***

Although he was admittedly unable to determine whether the victim was armed because the bedroom was dark, he testified that the victim was taller than him. Asked how the "altercation" had ended, he replied, "I just remember him jumping out the window, and I dropped the knife on the carpet like." He denied remembering how many times or where he had stabbed the victim. ***R. 28-29; 45.*** He further testified that he was "pretty sure" the victim hit him and that he remained at the house until law enforcement arrived. ***R. 31; 45; 47.***

On cross-examination, he denied that he and Casandra had a troubled relationship or that they fought a lot. Rather, he said, "It was off and on, but what marriage don't (sic) have up and downs, so. It was all right." ***R. 37.*** He also denied that they had spent a significant amount of time apart from one another, even though he had filed for a divorce in 2014. He had listed one year continuous separation in the divorce proceedings, but he claimed on cross-examination that he had sought a divorce because of her "[p]artying too much." ***R. 37-38.*** He later testified that he

would "occasionally stay at his mother's house when he and Casandra had "an altercation." ***R. 50***.

He likewise initially denied that he had left the house and stayed with his mother the month before the fatal stabbing, but soon backtracked and admitted that he had stayed with his mother once or twice. He did not know where his wife was on those occasions. He admitted that this was not a normal relationship, but contended that they had always been faithful to one another. ***R. 39-40***.

The State's first witness was Michael Thacker, who handles crime scenes and evidence for the Horry County Sheriff's Office. ***R. 53-54***. He first went to the detention center, where photographed Cochran. The photographs that he took, State's Ex.s 191-209, were introduced without objection for purposes of the hearing. These photographs showed that Cochran did not have any visible injuries to his head, neck, or hands, but that he did have a "small injury" to one arm. The photographs likewise depicted suspected blood on his hands and on his cheek. Officer Thacker did not interview Cochran. ***R. 54-59***.

Officer Thacker also took photographs of the victim at autopsy. Again, these photographs, State's Ex.s 140-190, were admitted without objection for purposes of the immunity hearing. The photographs depicted suspected blood and a "small injury" on the victim's right inner arm; suspected blood on the inside of his left hand; an injury to the top, back side of his right hand; "a large wound" in the area of his right thumb; an injury to the back of his left hand near his wrist; "some smaller sharp instrument wounds on the outside areas of the pinky finger and on the ring finger" of his left hand; injuries to the inside of his right hand, near where his fingers connect to his palm; an injury to his left rib area; a larger wound to the left chest area;

an injury on the right side of his chest;[4] an injury to his right elbow that appeared to be from a "sharp instrument," and suspected blood in the same area; an injury in the area of his scalp; and suspected blood on his legs. The two most significant injuries were those to the victim's chest and most of his injuries were to his hands. ***R. 59-65***.

Morgan Brunson testified that he had been a production supervisor at AGRU America for "about 16 years" and that he supervised Cochran while Cochran worked there. Mr. Brunson signed a disciplinary warning notice for Cochran on June 15, 2016 (State's Ex. 213), for leaving work at 5:02 a.m., without first notifying him as the shift supervisor. ***R. 67-68***. He explained that when an employee works a shift, the employee is required to give the supervisor notice before he or she leaves. Cochran was scheduled to work a twelve hour "auxiliary overtime" shift on June 14th, beginning at 7:00 p.m. and ending at 7:00 a.m. on the 15th. Mr. Brunson had spoken to Cochran earlier that night and Cochran's demeanor appeared normal. ***R. 68-70***. Also, Cochran had otherwise been a "good hard worker." ***R. 71-72***.

Ronnie Smith testified that he had worked at AGRU America for eight years and was working there at the time of his testimony. He works twelve hour shifts. He and Cochran wee "good friends." They typically worked on the same shift and they worked together on a machine requiring three people to operate. ***R. 73-75***. Mr. Smith described Cochran as a "little tired" when he came into work on June 14, 2016. **R. 75**.

> ... I ... [asked], "Man, [is] something bothering you? You want to talk about it?" He was like, "Nah, ain't nothing bothering me." So I left him alone, and then after a while he came back to [himself], we were laughing, talking, working, and 5:00 o'clock came and we [were] taking a roll off, and I turned around he was going to the clock. I say, "Hey, man, where you going at," and he just left ... [in a] little trot.

[4] Officer Thacker described the wounds to the torso as "sharp injury wounds." ***R. 62, lines 2-7.***

R. 75, lines 17-25.

Mr. Smith had expected Cochran to work until 7:00 a.m. All employees had left early before, but Cochran had not mentioned his plan to leave the shift at any time before he left. Also, employees were required to inform their supervisor before leaving a shift early. ***R. 76-77.*** On cross-examination, Mr. Smith admitted that Cochran had fallen asleep during the shift, which caused their machine to stop. However, he did not remember whether they exchanged words about this. ***R. 78.***

Casandra Cochran testified that she was working from 3:00 until 11:00 p.m. at a beach resort, in June 2016. She did not have her three children and did not even see them on June 14th because they were staying with Cochran's mother. It was normal for his parents to keep the children when both she and Cochran worked at night. ***R. 79-80; 82.*** She and her children lived in the three bedroom mobile home that the Cochran's purchased in March or April of 2015. Although their son and daughters had separate rooms, they often slept in the same room or with their parents. ***R. 81.***

Cochran worked twelve hour shifts that "rotated from day shift to night shift." As a result, he often was not home at night. ***R. 81-82.*** Casandra and Cochran generally slept together, but they slept in separate beds at times during their six year marriage, and he would stay at his mother's house when they argued. Also, they had separated when Cochran filed for a divorce in 2014 or 2015. Their separation lasted from May to November in 2015. She stayed in the marital residence and her cousin moved in with her when he moved out of the house. ***R. 82-84.***

She and Cochran reunited after the legal separation. However, she stayed with a female co-worker on June 13 and 14, 2016, because at the time "[w]e were just on and off. It was kind of like a day to day thing." As a result, there was no guarantee that Cochran would come home

every night, and she was not planning on him coming home on June 15th because she had not originally intended to stay there either. ***R. 84-85; 93***. Both she and Cochran were seeing other people at the time and they had discussed this. ***R. 92***. She had been seeing the victim, Emmitt Kelly, for about a month. ***R. 85-86***.

Casandra invited the victim to stay at her residence on June 14, 2016. She told him that she was going to go to sleep but that she would leave the front door unlocked for him. She also spoke with Cochran that night because she had planned to go out and wanted to know if she needed to get their children from his mother's house, instead. ***R. 86-88; 99-100***.[5] As planned, she left the door unlocked for the victim. She was sleeping when he arrived and they never spoke. ***R. 88-89***.

She gave the following account of the fatal attack:

> Emmett tapped me and said, "Somebody's at the door," and I said, "When did you get here," and he said, "Somebody's at the door." By that time he was getting out of bed, and it was pulling me out the bed because we were wrapped in the covers. He stood up. M'Andre came in, and they started fighting. .... I have black, blackout curtains. So it ... was completely dark.

R. 89, lines 5-10.

She added that:

> They started fighting, like they both were swinging. I was trying to break it up. Emmett said, "What the fuck, he stabbed me or shot me." He jumped out the window. I turn[ed] the light on and M'Andre was standing there.

R. 90, lines 21-24. She immediately ran out the front door trying to find the victim. ***R. 91***.

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[5] His mother was primarily responsible for watching the children on nights when both he and Casandra worked. More importantly, her testimony reflects that Cochran was aware that his children were not home when he arrived there on the morning of June 15th. ***R. 87-88***. She clarified on cross-examination that she spoke to him twice on June 14th: once while she was at work and, later, after she got home. ***R. 98-99***.

Cochran was already at the door by the time the victim had awakened her, and she had not heard his footsteps. While she could not see Cochran's face, she knew that he was the man who entered the bedroom. ***R. 89-90***. Also, the victim was standing up when Cochran entered the room, but she could not remember whether the two men had exchanged words. ***R. 91; 102***. Moreover, she did not see the knife until she turned on the light. She unequivocally testified that the men had been "punching each other." ***R. 92***.

Casandra testified that it was unusual for Cochran to leave a shift early and that he only left early if they had planned to do something or he did not feel well. ***R. 92***. She admitted on cross-examination that she could have told an officer that she and Cochran wanted to work out their marital problems, and she admitted that they had planned to spend her birthday together because Father's Day was either the same day or the next day. She also told law enforcement that he was aware that she was "talking to someone at work but he didn't know the extent of the relationship." ***R. 97***.

Inv. Albert Kohut testified that he was the on-call Investigator for the Horry County Sheriff's Office on June 15, 2016 and that he responded to the Cochran residence that morning. Other deputies and a highway patrolman were on the scene, and the victim's body had already been transported by the time he arrived. The other officers present at the scene informed him of the stabbing. ***R. 105-07***. Also, Inv. Kohut did not speak to Cochran before Cochran was transported to the Sheriff's Office. ***R. 107-08***. He first photographed the property and exterior of the residence. Then, he photographed the interior of the residence. ***R. 109***.

Inv. Kohut testified that most of the blood inside the residence was in the master bedroom, which appeared to be where the stabbing occurred. He had likewise found a large pool of blood on the ground outside of the bedroom window, where the victim apparently had landed

after jumping from the window. ***R. 110-11***. Casandra had "quite a bit of blood on her" and her clothing, but Inv. Kohut did not observe any injuries on her and she did not report any to him. ***R. 111-12***. He later took a statement from her and another officer took her clothing. ***R. 113***.

Later on June 15th, Inv. Kohut had Cochran brought from the jail to the Sherriff's Office.[6] After warning Cochran and obtaining a waiver of Cochran's *Miranda*[7] rights, Cochran gave a video and audiotaped statement. Cochran "was remarkably calm until I notified him of the charges." He then became "a little emotional." ***R. 114***.

B. The Order Granting Immunity from Prosecution.

The trial judge filed an Order Granting Immunity from Prosecution the following day. ***R. 120-122***. First, the trial judge found that Cochran "was not engaged in an unlawful activity and was attacked 'in another place where he has a right to be' (i.e., his residence)." ***R.121***. The trial judge further found that Cochran was "not entitled to entitled to the presumption of 'reasonable fear of imminent peril of death or great bodily injury' granted under [S.C. Code Ann. §16-11-440(A) (Supp. 2018)] since the victim was an invitee and, likewise, lawfully entitled to be in the defendant's residence." ***R. 121 n. 3***. See §16-11-440(B)(1). Nevertheless, the trial judge concluded that he was "entitled to the protections granted under ... §16-11-440(C)." ***Id.***

In light of these findings, the trial judge found that Cochran "had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force if he reasonably believed it was necessary to prevent death or great bodily injury to himself." ***R. 121-122***. The trial judge found the following facts had been presented:

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[6] He had previously obtained arrest warrants for Cochran.

[7] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

> 1) the defendant arrived at his residence at 5:30 a.m.; 2) a car the defendant did not recognize was at the residence; 3) the front door to the residence was open; 4) the defendant's children were not in their bedrooms; and, 4) immediately upon the defendant's entry into his bedroom, he was assaulted by the victim.

Id. In light of these facts, he concluded that Cochran's "fear of death or great bodily injury was reasonable and, as a matter of law, [Cochran] was entitled to 'stand his ground and meet force with force, including deadly force' to protect himself." Therefore, he was entitled to immunity from prosecution. ***Id.***

C. Discussion.

S.C. Code Ann. § 16-11-450(A) (Supp. 2018) provides that:

> A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties ....

In *Curry*, 406 S.C. at 371, 752 S.E.2d at 266, the Court explained that "[s]ection 16-11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." 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) (Supp. 2018). *See also Curry*, 406 S.C. at 371, 752 S.E.2d at 266. In carrying out that intention, the Legislature has instructed that:

> 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,

> 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).

As the Supreme Court recently explained in *State v. Scott*, 424 S.C. 463, 819 S.E.2d 116, 118 (2018), *reh'g denied* (Oct. 17, 2018):

> We focus our analysis on self-defense. As we stated in *Curry*, "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." 406 S.C. at 371, 752 S.E.2d at 266.
>
> There are four elements that must be established to justify the use of deadly force as self-defense. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). Scott bears the burden of proving these elements by the preponderance of the evidence. *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). The elements are,
>
> > (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 (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.

> *Dickey*, 394 S.C. at 499, 716 S.E.2d at 101 (quoting *State v. Wiggins*, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998)).

See also Curry, 406 S.C. at 371, n. 4, 752 S.E.2d at 266 n. 4; *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984).

Therefore, the burden is on a defendant claiming immunity under the Act to establish that he is entitled to immunity by a preponderance of the evidence, which requires him to demonstrate the existence of all the elements of self-defense except for the duty to the retreat. *See State v. Jones*, 416 S.C. 283, 301, 786 S.E.2d 132, 141 (2016) (recognizing "the defendant must demonstrate the elements of self-defense, save the duty to retreat, by a preponderance of the evidence" in order to establish entitlement to a grant of immunity pursuant to Section 16-11-440(C)). *See also Scott*, 819 S.E.2d at 121-22 (concluding that an individual who proves the elements of self-defense could be entitled to immunity pursuant to the Act in light of the "applicable provision of law" language in section 16-11-450(A), even if other portions of the Act—such as sections 16-11-440(A) or (C)—were not necessarily applicable); *State v. Osborne*, 202 S.C. 473, 478, 25 S.E.2d 561, 563 (1943) ("The defense of self-defense is based upon necessity"); *State v. Harvey*, 110 S.C. 274, 277, 96 S.E. 399, 400 (1918) (instructing a person may not employ deadly force in self-defense unless there is a reasonable necessity to kill even if the other elements of self-defense are present). "[T]he proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." *Duncan*, 392 S.C. at 411, 709 S.E.2d at 665.

The State submits that the trial judge erred by finding that Cochran had met his burden of establishing that he was entitled to act in self-defense. Assuming but not conceding that he

satisfied was not at fault in bringing on the difficulty,[8] there is no evidence in the record to support the second, third or fourth elements of self-defense. First, the trial judge correctly found that Cochran could not avail himself of the presumption of 'reasonable fear of imminent peril of death or great bodily injury' under §16-11-440(A) (Supp. 2018) because the victim was an invitee. As such, he was "lawfully entitled to be in the defendant's residence." Therefore, it was incumbent upon Cochran to present evidence that he "actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger." See *Dickey*, 394 S.C. at 499, 716 S.E.2d at 101.

There was no such evidence presented. Cochran testified that when he entered the marital bedroom, the victim immediately jumped up out of the marital bed, where he had been sleeping or resting. Cochran then inflicted a fatal knife wound after he and the victim exchanged

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[8] At least arguably, Cochran was not without fault in bringing on the difficulty. *See Jones*, 416 S.C. at 291, 786 S.E.2d at 136 ("Under the Castle Doctrine, '[o]ne attacked, *without fault* on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense'") (citation omitted and emphasis added). The State does not assert that Cochran was at fault for entering his residence or perhaps in arming himself, after he discovered an unknown vehicle parked in his yard in the early morning hours and the front door of the residence slightly ajar. However, he thereafter stealthily crept through his house, without uttering a sound, until seconds before he entered the marital bedroom. He was thus aware that neither his three children nor anyone else was in any other room in the house. He was further aware that he had not heard any sounds of a disturbance in the bedroom and that, he should expect to find the children and Casandra in that bedroom, if he truly believed that they were at home.

Even though he knew that the bedroom would be dark, he entered without turning on any light and went up to the foot of the bed, where *he initiated a confrontation with the victim*, who jumped up out of bed where he had been sleeping or resting. He then inflicted a fatal knife wound after he and the victim exchanged vulgarities and the victim swung at him. Therefore, it is not clear that he was without fault, as found by the trial judge. *See State v. Jackson*, 384 S.C. 29, 36, 681 S.E.2d 17, 20-21 (Ct. App. 2009) ("An accused who provokes or initiates an assault cannot claim self-defense unless he both withdraws from the conflict and communicates his withdrawal by word or act to his adversary").

vulgarities and the victim swung at him. Although he testified that this was when he defended himself, he did not claim that he thought that he was in "imminent danger of losing his life or sustaining serious bodily injury." Nor does the record support a reasonable conclusion that "he actually was in such imminent danger." *Id.*

To the contrary, the victim had previously been in bed until Cochran initiated a confrontation. *See Jackson*, 384 S.C. at 36, 681 S.E.2d at 20-21. Also, there is no evidence, whatsoever, that the victim was armed or did anything other than swing at him. Importantly, there is no evidence that the victim even struck Cochran. *See, e.g., State v. Washington*, 424 S.C. 374, 413, 818 S.E.2d 459, 480 (Ct. App. 2018), *reh'g denied* (Sept. 20, 2018); *State v. Bruno*, 322 S.C. 534, 537, 473 S.E.2d 450, 452 (1996) ("Bruno was not entitled to a self-defense charge, because he presented no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury. On direct examination, his only testimony was that he felt Victim was coming at him with something. He testified, 'It happened so quick, you know. I didn't mean to kill him. I just wanted him to keep away from me'"); *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (finding defendant was not entitled to self-defense charge when he presented no evidence showing actual or perceived imminent danger). Likewise, a "reasonable prudent man of ordinary firmness and courage would not have entertained" the belief that Cochran was in danger of death or serious bodily injury, even under Cochran's version of the encounter, since the victim was unarmed. *See Dickey*, 394 S.C. at 499, 716 S.E.2d at 101 ("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 ...[.]") (quoting *Wiggins*, 330 S.C. at 545, 500 S.E.2d at 493). Nor was it necessary for Cochran to stab the unarmed victim, in order to avoid the danger of losing his life or sustaining

serious bodily injury. Instead, Cochran's response was unreasonably disproporionate.[9] *See Harvey*, 110 S.C. at 277, 96 S.E. at 400 ("Tillman Harvey might have been without fault in provoking the difficulty, and still there might have been no necessity to kill. .... While a man may take life in defense of himself or another, yet the slayer, or the person in whose behalf the slayer strikes, must not only be without fault in provoking the difficulty, but there must be a necessity to kill"). *See also Douglas*, 411 S.C. at 320 n. 7, 768 S.E.2d at 239 n. 7 ("[T]he standard for evaluating whether an accused had a reasonable belief that deadly force was necessary to prevent great bodily harm to himself is objective, rather than subjective."); *United States v.*

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[9] As the Court's discussion of self-fdefense in *State v. Wise*, 33 S.C. 582, 12 S.E. 556, 559 (1891), makes clear, because self-dense provides a limited justification for a homicide, the defendant's actions must be ojectively reasonable. Specically, the Court in *United* explained that:

> The plea of self–defense rests upon the idea of necessity,—a legal necessity; that is, such a necessity as in the eye of the law will excuse one for so grave an act as the taking of human life. Hence it must be a necessity which is not brought about by the fault of the accused; for the law will not allow one to avail himself of such a defense when, by his own unlawful act, he has placed himself under circumstances which render it necessary to take life in order to preserve his own life, or to protect himself from serious bodily harm. Whether such necessity existed in a given case must be judged of by the jury, and not by the person accused. The jury should not ask themselves the question what they would have done under the circumstances surrounding the accused at the time, as is contended for in the twelfth ground of appeal, nor should they "place themselves in the shoes of the defendant at the time," as is insisted on by the thirteenth ground of appeal, for jurors are but men, subject to all the passions and frailties incident to human nature, which it is one of the functions of law to restrain and correct; but they should, as sworn officers of the law, look carefully at all the circumstances surrounding the accused, as they appeared at the time the fatal wound was inflicted, and ask themselves two questions: First. Did the accused, at the time, believe that he was in such immediate danger of losing his life, or sustaining serious bodily harm, that it was necessary, for his own protection, to take the life of his assailant? Second. Were these circumstances such as would justify such a belief in the mind of a person of ordinary firmness and reason? .... It seems to us that the charge of the circuit judge, as set out in the "case," substantially conformed to these principles, and is therefore free from objection.
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> *Id.* (Citations omitted).

Black, 692 F.2d 314, 318 (4th Cir. 1982) ("[T]he quantum of force which one may use in self-defense is proportional to the threat which he reasonably apprehends"); *cf. State v. Norris*, 253 S.C. 31, 38, 168 S.E.2d 564, 567 (1969) (holding "[t]he right of the father to defend his daughter is coextensive with the right of the daughter to defend herself"); *State v. Jackson*, 227 S.C. 271, 277, 87 S.E.2d 681, 684 (1955) ("Appellant in defending his person from an unlawful arrest had the right to use so much force as was apparently necessary to accomplish his deliverance and no more").

In summary, even Cochran's version of the stabbing does not support a finding that he acted in self-defense. Accordingly, the trial judge erred as a matter of law by granting immunity under the South Carolina Protection of Persons and Property Act.

CONCLUSION

Therefore, the State respectfully submits that this Court should reverse the judgment and Order Granting Immunity from Prosecution, and that the case should be remanded for trial.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Georgetown County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

Appellant,

v.

M'ANDRE COCHRAN,

Respondent.

Appellate Case No. 2018-001023

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

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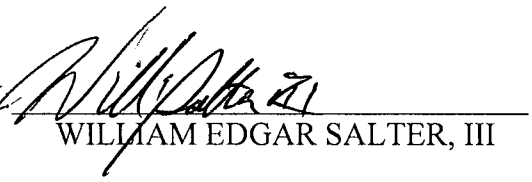
BY: 
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