STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
The Honorable J.C. Nicholson, Circuit Court Judge

Appellate Case No. 2014-002123

THE STATE

APPELLANT,

V.

WHITLEE JONES

RESPONDENT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the lower court erred in granting immunity based upon its finding the presumption afforded under S.C. Code Ann. § 16-11-440(C) applied when the stabbing occurred within the Respondent's residence, which was not "another place" under by the statute?

2. Whether the lower court erred in granting immunity under the Protection of Persons and Property Act when the defendant did not establish that she was acting in self-defense when she stabbed the victim?

STATEMENT OF THE CASE

Respondent Whitlee Jones ("Respondent") was arrested for Murder in the death of her boyfriend, Eric Lee. She was indicted by the Charleston County Grand Jury in February 2013. (R. 129-30).

Respondent moved for immunity under the Protection of Persons and Property Act. Pursuant to that motion, an evidentiary hearing was held before the Honorable J.C. Nicholson, Circuit Court Judge, on August 12, 2014. (R. 1-89). Respondent was present and was represented by Mary Ford and Megan Ehrlich. Id. The State was represented by Assistant Solicitors Culver Kidd and Lauren Mulkey of the Ninth Judicial Circuit. Id. After the hearing, the lower court took the matter under advisement, and both parties provided the lower court with post-hearing briefs. (R. 94-110).

On October 3, 2014, the lower court filed its Order Granting Immunity from Prosecution to Defendant. (R. 111-122). Appellant subsequently filed its Notice of Appeal.

The State now respectfully requests this Court reverse the lower court's Order Granting Immunity from Prosecution to Defendant.

STATEMENT OF FACTS

On November 2, 2012, Respondent Whitlee Jones stabbed her live-in boyfriend, Eric Lee, in the chest. Lee died as a result of the stab wound.

There was a physical confrontation earlier in the evening.

Earlier that night on November 1, Respondent and Lee were involved in a physical altercation both inside and in front of their residence. (R. 22). This initial confrontation was over a cell phone. (R. 22, 34, 91). In her written statement, Respondent indicated that when she attempted to leave the residence, Lee began pushing her and punching her. (R. 91). According to Respondent's statement, while she was outside of the residence, Lee pulled Respondent by the hair and attempted to get her to go back inside. (R. 91). During this confrontation, some of Respondent's hair weave was removed from her head. (See R. 91). Also, Respondent placed a call and left a voice message with Erica Grant to come pick her up from the apartment. (R. 30, 35, Defense Exhibit 8). Eventually, Respondent got away from Lee and she was able to run away from the apartment. (R. 91-92).

Respondent returned to the residence with two friends.

Erica Grant, one of Respondent's friends, testified that she received a voice message from Respondent that evening. (R. 30, 34). In response to the message she received, Grant and Jasmine Taylor, Respondent's cousin, went towards Respondent's residence immediately. (R. 30, 43).

Taylor testified that when they arrived at the apartment, they did not see Respondent. (R. 44). They found her down the street from the apartment. (R. 44, 46-47). The three then returned to Respondent's apartment. (R. 47-48).

In her written statement, Respondent stated that when she cooled down, she returned to the apartment. (R. 92). She opened the door using a key, and when she entered, she observed the victim throwing her things around. (R. 92). She made a second phone call to get someone to pick her up from the apartment. (R. 92).

Taylor testified that Grant stayed outside, and Taylor and Respondent went inside the apartment to retrieve some of Respondent's belongings. (R. 48). Lee was inside the residence at that time. (R. 48). Taylor testified that Lee and Respondent fussed while they were taking Respondent's belongings from the apartment. (R. 49). Taylor noted that while she and Respondent were upstairs gathering her stuff, Lee continued to argue with Respondent. (R. 50). Lee did not get physical with Respondent, but Taylor noted that he did raise his voice at her loudly. (R. 50).

In her statement, Respondent explained that she put some of her belongings in the car. (R. 92). As she was going around the apartment to make sure she was not leaving anything, Lee followed her around the apartment. (R. 92). Respondent stated that while she was upstairs, she grabbed a knife for her protection. (R. 92).

Respondent went downstairs first, Lee followed, and Taylor trailed both. (R. 50). Grant was outside. (R. 50-1). After the three went downstairs,

Respondent and Lee went into the living room, and Taylor stood outside the living room. (R. 51). Respondent stated in her written statement that Lee started yelling and pushing her again, telling her to get out. (R. 92). Taylor noted that Respondent and Lee continued arguing. (R. 52, 53). In her statement, Respondent stated that Lee grabbed her as she was leaving and he asked her if she was mad. (R. 92). Respondent also asserted that Lee shook her and she thought he was getting ready to hit her again. (R. 92). Respondent stated that she then grabbed the knife out of her shirt and stabbed him. (R. 92).

Taylor testified that Respondent then ran out. (R. 53, 55). Just prior, Taylor heard an "uh." (R. 54). Taylor noted that she never saw Lee hit Respondent. (R. 54). Taylor also did not see the stabbing.

When Respondent ran out, Taylor also ran outside. (R. 55, 56). Respondent, Taylor, and Grant got into the car and drove away. (R. 56). Respondent also indicated in her statement that after they initially drove away, she got worried that Lee was really hurt, and she instructed her friend to drive back to the house. (R. 92). They turned around after Respondent told the other two that she had stabbed Lee. (R. 56, 92). When they got back to the apartment, Lee was laying on the ground in the doorway of the apartment. (R. 56). Taylor noted he was still conscious, and he was moaning. (R. 57). They put Lee into his car, and Respondent drove Lee to the hospital. (R. 57, 92).

ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING IMMUNITY; RESPONDENT WAS NOT ENTITLED TO THE PRESUMPTION AFFORDED UNDER S.C. CODE ANN. § 16-11-440(C), AND THUS WAS NOT ELIGIBLE TO RECEIVE IMMUNITY UNDER THE ACT.

The lower court erred in finding Respondent was entitled to immunity from prosecution by finding she was entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(C). Since the entire incident that led to the stabbing occurred inside Respondent's residence, Respondent was not "in another place," as is required for the presumption under subsection 440(C) to apply. Thus, Respondent was not entitled to immunity under S.C. Code Ann. § 16-11-450. As a result, the lower court's reliance upon S.C. Code Ann. § 16-11-440(C) as the basis for granting immunity was an error of law and should be reversed.

Argument at hearing

At the beginning of the hearing, the State contended a hearing was not warranted because Respondent only requested immunity under S.C. Code Ann. § 16-11-440(C). (R. 8). The State's argument was consistent with the South Carolina Court of Appeals' original published opinion in State v. Manning, Op. No. 5228 (S.C.Ct. App. filed May 7, 2014)(Shearouse Adv.Sh. No. 18, at 16) ("Manning I"), which was withdrawn by the Court of Appeals by Order filed June 26, 2014.[1] In that opinion, the Court of Appeals held that "another place" would

[1] After rehearing, the Court of Appeals filed an unpublished opinion affirming the conviction in Manning, but remanding the case to the circuit court for an immunity hearing. State v. Manning, No. 2010-176707, 2014 WL 6488708 (S.C.Ct.App. Nov. 19, 2014). Both parties are seeking certiorari in the Manning case.

not include one's dwelling, residence, or occupied vehicle.[2] (R. 8-10). The State contended that all Section 440(C) does is remove the duty to retreat in situations outside of one's dwelling, residence, or occupied vehicle. (R. 13). In essence, it extends the Castle Doctrine to other places in which one might otherwise not have the Castle Doctrine available. (R. 13). Further, the State contended that subsection 440(C) is not applicable because the situation presented in Respondent's case is specifically excluded in subsection 440(B). (R. 14).

Respondent argued that the general intent of the Protection of Persons and Property Act was to allow for law-abiding citizens to protect themselves from intruders and attackers without fear of prosecution or civil action for acting in the defense of themselves or others. (R. 19). Respondent surmised that the legislature excluded "other residence" from 440(A) and 440(B) because it would not be the same if a roommate or spouse was trying to get into the residence as someone else attempting to enter. (R. 19). Respondent submitted that the Legislature used the term "another place" "as a catchall to say includes every place." (R. 20, ll 11-2). Respondent disputed the State's contention that subsection 440(C) provides that a category of people who once had to retreat no longer have a duty to retreat. (R. 20). Further, Respondent contended that under S.C. Code 16-11-450, the language that allows for immunity under the "provisions of this act and other provisions" would allow immunity to be granted based upon the common law principles of self-defense. (R. 20).

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[2] See Manning I, (Shearouse Adv.Sh. No. 18, at 23).

The Lower Court Granted Immunity

On October 3, 2014, the lower court filed its Order Granting Immunity from Prosecution to Defendant. (R. 111-122). The lower court found that Respondent "is entitled to immunity under the Act because she was acting lawfully, was in a place where she had a right to be, was being attacked, and was acting in compliance with established common law principles of self-defense, based on facts established by a preponderance of the evidence." (R. 111).

The lower court found that Respondent was entitled to immunity under S.C. Code § 16-11-440(C) despite the fact that she and the victim were co-residents in their shared home. (R. 114-116). The lower court recognized that S.C. Code Ann. § 16-11-440(A) would not apply in Respondent's case because the victim was a lawful resident of the place where the homicide occurred. (R. 115). The lower court disagreed with the State's argument that "another place" did not encompass Respondent's residence. (R. 115). The lower court held that where subsection 440(A) does not apply because of an exception under subsection 440(B), the "another place" language in subsection (C) does not preclude one from using force or deadly force to defend themselves in one's own residence. (R. 115). The lower court noted that the presumption of reasonable fear found in subsection 440(A) would not apply, but immunity could still be afforded under 440(C). (R. 116).

Standard of Review

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial 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). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665. S.C. Code Ann. 16-11-440(C) states:

> 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.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings.").

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Duncan, 392 S.C. 404, at 408, 709 S.E.2d at 664; Mid–State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d

690, 692 (1996). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Id. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Duncan, 392 S.C. at 408-09, 709 S.E.2d at 664; Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "Section 16–11–450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." Id. "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. This includes all elements of self-defense, save the duty to retreat." Id. at 371, 752 S.E.2d at 266.

Respondent was not entitled to immunity under S.C. Code Ann. § 16-11-450 because the Act was inapplicable; Respondent was not entitled to the presumption under the Act under S.C. Code Ann. § 16-11-440(C).

Respondent was not entitled to immunity in this case because she was not entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(C) because her residence does not constitute "another place" that would allow for immunity under the statute. S.C. Code Ann. 16-11-440(C) states:

> 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.

At issue is whether Respondent's residence qualifies as "another place" where he had a right to be in order to be eligible for immunity under this provision of the Act in accordance with S.C. Code Ann. § 16-11-450(A). Appellant submits that it does not. When read in conjunction with the other subsections of S.C. Code Ann. § 16-11-440, it is clear that "another place" in subsection 440(C) refers to places that do not include a defendant's residence, dwelling, or occupied vehicle.

S.C. Code Ann. § 16-11-440(A) states:

> (A) 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 and 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) (emphasis added). In subsections (B), (D), and (E), the statute specifically refers to the application of the presumption in subsection (A), reflecting that it applies to only a dwelling, residence, or occupied vehicle. In light of the specific references to dwelling, residence, or occupied

vehicle in those other subsections, Appellant submits that it clear that "in another place" in subsection (C) refers to a place other than a dwelling, residence, or occupied vehicle. This is further supported by the example of another place provided in subsection (C), one's "place of business," which does not fit within the definition of a dwelling, residence, or occupied vehicle.

Since subsection (C) does not apply to one's residence, the court's finding that Respondent was entitled to the presumption under subsection (C) was in error. As a result, the grant of immunity should be vacated, and the case should be remanded back for trial.[3]

This interpretation is not inconsistent with the intent of the Act as listed in S.C. Code Ann. § 16-11-420. The main intent of the Act, which was to codify the Castle Doctrine and expand it to include occupied vehicles and places of business, are accomplished when S.C. Code Ann. § 16-11-440 is read and the words contained in the statute are given their plain and ordinary meanings. The Castle Doctrine is extended to occupied vehicles under the provisions of S.C. Code Ann. § 16-11-440(A), and the Doctrine is extended to places of business in S.C. Code Ann. § 16-11-440(C).

> "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, we must give the words found in the statute their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Thus if the words are unambiguous, we must apply their literal meaning. Id. at 498, 640 S.E.2d at 459.

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[3] Appellant would note that this argument was rejected by the South Carolina Court of Appeals in State v. Douglas, 768 S.E.2d 232, 244 (Ct. App. 2014), reh'g denied (Feb. 19, 2015). The State is seeking further review in Douglas.

> However, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). We therefore should not concentrate on isolated phrases within the statute. Id. Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose. State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct.App.2008), aff'd, 386 S.C. 339, 688 S.E.2d 569 (2010). In that vein, we must read the statute so "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous," id. at 377, 665 S.E.2d at 651, for "[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law" id. at 382, 665 S.E.2d at 654.

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

The lower court's interpretation of "another place" does not take into consideration the General Assembly's intent as reflected in S.C. Code Ann. § 16-11-440. Clearly, the General Assembly in drafting S.C. Code Ann. § 16-11-440 made a distinction between "dwelling, residence, or occupied vehicle" and another place. Otherwise, the legislature would have included those specific terms in S.C. Code Ann. § 16-11-440(C) as was done in each of the other subsections in S.C. Code Ann. § 16-11-440. Furthermore, the General Assembly would have included dwelling, residence, and occupied vehicle with place of business in S.C. Code Ann. § 16-11-440(C). Appellant respectfully submits that the lower court's interpretation of "another place" renders the term meaningless. Specifically, under this interpretation, "another" is rendered surplusage.

Appellant further submits that the interpretation of "another place" made by the lower court ignores the distinction between the presumptions afforded by

S.C. Code Ann. § 16-11-440(A) and S.C. Code Ann. § 16-11-440(C). In S.C. Code Ann. § 16-11-440(A), the defendant "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 facts of the case fit within the scenarios outlined in paragraphs (1) and (2) of S.C. Code Ann. § 16-11-440(A). In essence, a defendant proves the third prong of self-defense when subsection 440(A) applies. The presumption afforded under S.C. Code Ann. § 16-11-440(C) is different. It sets forth that a defendant does not have a duty to retreat when he is attacked in another place where he has a right to be.

Appellant respectfully submits the lower court's finding that the intent outlined in S.C. Code Ann. § 16-11-420 was to provide the protections of the Act even when those involved are co-tenants is contradicted by S.C. Code Ann. § 16-11-440(B). If the General Assembly truly intended the Act to cover scenarios similar to the one presented in Respondent's case, then 440(B) would not limit the application of 440(A) when the person against whom deadly force has the right to be in the residence, dwelling or occupied vehicle. See, e.g., State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013)(noting that victim was a social guest at dwelling where shooting occurred and was therefore rightfully there; thus, S.C. Code Ann. § 16-11-440(B) applied and the defendant was not entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(A)). Further, Appellant would note it would be logical for the Legislature to not intend to extend the presumption to situations similar to the one presented in this case

and leave certain categories of cases involving self-defense to the purview of jury resolution.

In all, Appellant submits the lower court erred in finding Respondent was entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(C). The grant of immunity should be reversed, and this case should be remanded for further proceedings.

II. THE LOWER COURT ERRED IN GRANTING IMMUNITY UNDER S.C. CODE ANN. § 16-11-440(C); RESPONDENT FAILED TO ESTABLISH THAT SHE WAS ACTING IN SELF-DEFENSE.

At issue is whether there was evidence to support the lower court's finding that Respondent was acting in self-defense in killing her boyfriend. Appellant submits the lower court erred in finding that she was.

Argument at hearing

After testimony, Respondent contended she was entitled to immunity because she established she was acting in self-defense when she killed Lee. (R. 69). Respondent maintained that the court had to consider the prior physical altercation between Respondent and the victim into consideration when considering her actions in stabbing the victim. Respondent argued that she was not at fault in bringing on the difficulty because she was merely attempting to leave and take her belongings with her. (R. 69). Respondent further argued that she was essentially the victim of two crimes prior to the final confrontation: first, she was the victim of a kidnapping because the victim would not her leave the residence initially; and second, she was the victim of a CDVHAN that was evidenced by the fact the victim had violently pulled out some of Respondent's hair earlier in the evening. (R. 69-70).

Respondent noted that while she was attempting to retrieve her belongings, the victim would not leave her be. (R. 71). Respondent asserted that she had every reason to believe the victim was coming at her and was trying to prevent her from leaving. (R. 72, 73). Respondent also asserted that she had no intention of hurting the victim that evening. (R. 73). Respondent alleged that

she had good reason to believe that she was going to be subjected to another kidnapping and CDVHAN, which are both violent crimes. (R. 76). She made statements that she was fearful that he would kill her based on what happened earlier that evening. (R. 76). A reasonable person would have thought the same. Thus, she was entitled to immunity. (R. 76-77).

In response, the State argued Respondent was not entitled to the presumption that she was in reasonable fear of imminent peril or death because that presumption only applies to 16-11-440(A) and 440(B). (R. 79-80). The State noted that one is only entitled to use the level of force a reasonable person would think is necessary to dispel the threat faced. (R. 80). Here, Respondent was involved in a heated argument with the victim with two of Respondent's friends in close proximity. The State also argued Respondent's reliance on the prior physical altercation was misplaced. First, the threat from the initial physical confrontation had dispelled and could not be considered in light of the fact Respondent returned to the residence. (R. 81). The State noted the threat

> wasn't so great that she wouldn't come back to the house alone, knock on the door, enter the residence, talk to the victim. He then gave her a cell phone to call her friends to help get her stuff. Even according to her statement, what he kept saying was, get the F out. He was taking her key off the key ring, moving her stuff out the door: Get out. I want you gone. That's not kidnapping. That's throwing somebody out.

(R. 81, ll 5-12).

Further, the State disputed Respondent's contention that she was in fear of being kidnapped. The testimony at the hearing reflected the victim was throwing her out of the residence and that he wanted her gone. (R. 81). Also,

Taylor had testified that she saw no physical contact, no hitting, no grabbing, or shaking. (R. 81-2). Respondent had reason to protect herself in her statement, but Taylor did not as Taylor did not even know the victim was dead when she gave her statement. (R. 82). The State submitted it was not reasonable for Respondent to believe in fear for her life, and she used an unnecessarily high level of violence in attacking the victim. (R. 82). The State again contended that the level of violence used in response to the supposed threat was unnecessarily high. (R. 82-3). In conclusion, the State argued that

In reply, Respondent contended that the recordings reflected how controlling the victim was. (R. 84). Further, Respondent asserted that Taylor was not a credible witness because she did not remember certain details. (R. 85). Respondent also argued that her return to the apartment after the prior fight did not mean she was not afraid of the victim, and that her fear was reflected by the fact that she was planning to leave after she returned to the apartment. (R. 86).

The Lower Court Granted Immunity

In its Order, the lower court also found Respondent's actions were in accordance with the Act and common law principles of self-defense. (R. 116-120). First, the court found that Respondent was not at fault in bringing on the difficulty as her actions demonstrated that she wanted to get away from the victim and she wanted to keep her phone. (R. 117). Further, the lower court found Respondent's belief that she was in danger was reasonable. Specifically, the court noted that on the night of the homicide, and less than forty-five minutes

before the stabbing, the victim had perpetrated at least two violent crimes against Respondent in the form of Kidnapping and Criminal Domestic Violence of a High and Aggravated Nature. (R. 117). The court also stated that the Act allows for people to act "to prevent the commission of a violent crime as defined in Section 16-1-60." (R. 117). The lower court found the victim was attacking Respondent and trying to prevent her from leaving when she stabbed him. (R. 118). The lower court noted that it was relying, in part, on the prior conduct by the victim to support its finding. However, the lower court also stated that Respondent was not merely following up on the prior attack; a new threat existed as the victim was "yelling, pushing, grabbing, shaking, and about to hit Defendant again." (R. 118).

The lower court also found that even though Respondent did not have a duty to retreat, she had no other means of avoiding the danger. (R. 119). The lower court found that the two friends that were with Respondent would not have been of assistance because they were outside of the home when the final altercation occurred. (R. 119). Also, earlier in the evening, Respondent had been unsuccessful in obtaining assistance during the first physical confrontation that evening. (R. 119). The lower court found the victim was in close contact with her, had his hands on her, and was about to hit her again. (R. 119).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829 (citing Cutter, 261 S.C. 140, 199 S.E.2d 61). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829.

Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts, 303 S.C. at 356, 400 S.E.2d at 782 ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings.").

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. Duncan, 392 S.C. at 410, 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." Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(C) states,

> 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).

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." Curry, 406 S.C. at 370, 752 S.E.2d at 266. "Section 16–11–450 provides immunity from prosecution if a person is

found to be justified in using deadly force under the Act." Id. "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. This includes all elements of self-defense, save the duty to retreat." Id. at 371, 752 S.E.2d at 266.

> Self-defense is a complete defense. If established, you must find the defendant not guilty. There are four elements required by law to establish self-defense in this case. First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense. These are the elements of self-defense.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

The lower court erred in finding Respondent actually believed she was in imminent danger of losing her life or sustaining serious bodily injury and that her belief was reasonable.

Appellant submits the lower court's determination that Respondent believed she was in imminent danger of losing her life or sustaining bodily injury and that such fear was reasonable is not supported by the record. At the hearing, Respondent presented the testimony of two witnesses. Neither Taylor nor Grant saw the victim touch Respondent. Taylor, who was walking through the apartment with the couple as Respondent was gathering her belongings,

noted that while the victim was yelling at Respondent and calling her names, he never touched her in Taylor's presence. (R. 49-50).

Respondent failed to show that she was in fear of imminent danger of losing her life or sustaining great bodily injury. As noted, the witnesses presented did not indicate that they saw the victim hit or attack Respondent while they were at the apartment just prior to the stabbing.

Further, there was no evidence to not sufficient evidence to support a finding that any such fear was reasonable. In its findings, the trial court relies heavily upon the physical confrontation between the victim and Respondent that occurred approximately forty-five minutes earlier. However, the trial court did not take into account that Respondent, in light of that confrontation, still returned to the residence with the plan and expectation of retrieving her belongings and leaving. Respondent noted in both her written statement and interview that she believed that both she and the victim cooled down in that time period. Further, outside of the prior physical confrontation, there was no evidence presented that there was prior physical abuse by the victim that would have warranted a belief that he would either kill or inflict gross bodily injury. Neither of the two witnesses who testified at the evidentiary hearing indicated that they witnessed any prior physical violence by the victim upon Respondent. While Grant did allege that she once saw a burn mark on Respondent from the victim, she noted that she did not know what really happened and that Respondent never explained to her how she received the burn mark. (R. 37). Also, Taylor noted that she never saw the victim act aggressively, though she had some suspicions that he may have been

abusive by the way he talked to Respondent. (R. 43). In her written statement, Respondent noted that the victim had hit her before. (R. 92). When asked if she thought the victim was going to kill her, Respondent indicated that she was scared of him. (See R. 93). Respondent also noted that she had planned to just scare the victim with the knife, and at most stab him in the arm or leg. (R. 93). Altogether, Appellant submits there was not sufficient evidence to support a finding that Respondent believed she was in imminent danger of losing her life or sustaining great bodily injury, or that any such fear was reasonable based upon the evidence presented at the immunity hearing. Thus, the lower court erred in granting immunity.

Appellant would also note that to the extent the Order found Respondent was reasonable in believing that she was about to become the victim of a kidnapping or CDVHAN, the finding is not supported by the record. As to an alleged kidnapping, the testimony of the witnesses at the hearing reflected that the victim was telling Respondent to get out of the apartment, and further indicated he was following her around the apartment to ensure that she did not take any of his belongings. Respondent also indicated that the victim was yelling at her to leave. In light of the fact that Respondent was present with two friends in assistance, and in light of the consistent evidence indicating the victim was telling Respondent to leave the apartment, it was not reasonable for Respondent to believe that the victim was going to kidnap her by preventing her ability to leave the apartment. Appellant would further submit there was not sufficient evidence to support a finding Respondent had reason to believe she may be

subjected to an assault that would have constituted criminal domestic violence of a high and aggravated nature.

Since the lower court's findings regarding Respondent's fear of imminent danger and the reasonableness of those fears are not supported by the record, the lower court's determination that Respondent established she acted in self-defense was improper. As a result, the grant of immunity was improper, and it should be reversed and remanded.

CONCLUSION

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

Respectfully submitted,

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October 12, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
The Honorable J.C. Nicholson, Circuit Court Judge

Appellate Case No. 2014-002123

THE STATE

APPELLANT,

v.

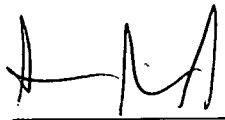
WHITLEE JONES,

RESPONDENT.

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).

This 12th day of October, 2015.



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STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Final Brief of Appellant and Certificate of Compliance on Respondent by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

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

This 12th day of October, 2015.

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