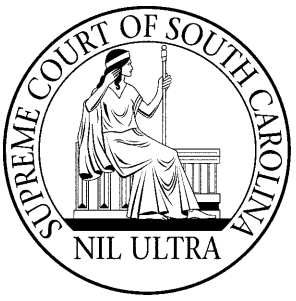

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 34
September 21, 2022
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

EXTENSION TO FILE PETITION - UNITED STATES SUPREME COURT

None

PETITIONS FOR REHEARING

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

None

UNPUBLISHED OPINIONS

2022-UP-351 – SCDSS v. Anna Marie Hayes
(Filed September 7, 2022)

2022-UP-352 – SCDSS v. Carolyn McDaniels
(Filed September 7, 2022)

2022-UP-353 – State v. Gabriel Betancourt, Jr.

2022-UP-354 – Chicora Life Center, LLC v. Fetter Health Care Network, LLC

PETITIONS FOR REHEARING

5906 – Isaac D. Brailey v. Michelin, N.A.	Pending
5911 – Charles S. Blackmon v. SCDHEC	Pending
5912 – State v. Lance Antonio Brewton	Pending
5916 – Amanda Huskins v. Mungo Homes, LLC	Pending
5921 – Cynthia Wright v. SCDOT	Pending
5926 – Theodore Wills, Jr. v. State	Pending
5929 – Ex Parte: Robert Horne In Re: King v. Pierside Boatworks	Pending
5930 – State v. Kyle M. Robinson	Pending
5932 – Basilides Cruz v. City of Columbia	Pending
5933 – State v. Michael Cliff Eubanks	Pending

5935 – The Gulfstream Café v. Palmetto Industrial	Pending
2022-UP-002 – Timothy Causey v. Horry County	Pending
2022-UP-186 – William B. Justice v. State	Pending
2022-UP-203 – Estate of Patricia Royston v. Hunt Valley Holdings	Denied 09/07/2022
2022-UP-230 – James Primus #252315 v. SCDC (2)	Denied 09/07/2022
2022-UP-233 – Richie D. Barnes v. James Reese	Denied 09/07/2022
2022-UP-236 – David J. Mattox v. Lisa Jo Bare Mattox	Denied 09/07/2022
2022-UP-243 – In the Matter of Almeter B. Robinson (2)	Denied 09/07/2022
2022-UP-249 – Thomas Thompson #80681 v. SCDC	Denied 09/07/2022
2022-UP-266 – Rufus Griffin v. Thomas Mosley	Pending
2022-UP-276 – Isiah James v. SCDC (2)	Pending
2022-UP-282 – Roger Herrington, II v. Roger Dale Herrington	Pending
2022-UP-293 – State v. Malette D. Kimbrough	Pending
2022-UP-294 – Bernard Bagley v. SCDPPPPS (2)	Pending
2022-UP-302 – John Harbin v. April Blair	Pending
2022-UP-303 – Daisy Frederick v. Daniel McDowell	Pending
2022-UP-304 – Walt Parker v. John C. Curl	Pending
2022-UP-305 – Terri L. Johnson v. State Farm	Pending
2022-UP-307 – Frieda H. Dortch v. City of Columbia	Pending

2022-UP-308 – Ditech Financial, LLC v. Kevin Synder Pending

2022-UP-312 – Guardian ad Litem, James Seeger v. Richland School District Denied 09/08/2022

2022-UP-313 – Vermell Daniels v. THI of SC Pending

2022-UP-314 – Ronald L. Jones v. Rogers Townsend & Thomas, P.C. Pending

2022-UP-316 – Barry Adickes v. Philips Healthcare (2) Pending

2022-UP-321 – Stephen Franklin, II, v. Kelly Franklin Pending

2022-UP-323 – Justin R. Cone v. State Pending

2022-UP-325 – Samuel Rose v. Chris Thompson Denied 09/08/2022

2022-UP-326 – Wells Fargo Bank N.A. v. Michelle Hodges Pending

2022-UP-329 – Stephen Evans v. Nan-Ya Plastics Corp. Pending

2022-UP-331 – Ex Parte: Donald L. Smith (in re: Battersby v. Kirkman) Pending

2022-UP-333 – Ex Parte: Beaullah and James Belin (Wilmington Savings Fund Society v. Bertha Dunham Pending

2022-UP-334 – Anthony Whitfield v. David Swanson Pending

2022-UP-336 – In the matter of Ronald MJ Gregg Pending

2022-UP-337 – U.S. Bank, N.A. v. Rhonda Lewis Meisner (3) Pending

2022-UP-338 – State v. Derrick J. Miles Pending

2022-UP-340 – State v. Amy N. Taylor Pending

2022-UP-346 – Russell Bauknight v. Adele Pope (3) Pending

2022-UP-347 – Vincent C. Carter v. Eagles Landing Restaurant Pending

PETITIONS – SUPREME COURT OF SOUTH CAROLINA

5769 – Fairfield Waverly v. Dorchester County Assessor Pending

5776 – State v. James Heyward Pending

5794 – Sea Island Food v. Yaschik Development (2) Pending

5816 – State v. John E. Perry, Jr. Pending

5822 – Vickie Rummage v. BGF Industries Granted 09/07/2022

5824 – State v. Robert Lee Miller, III Pending

5826 – Charleston Development v. Younesse Alami Pending

5827 – Francisco Ramirez v. May River Roofing, Inc. Dismissed 09/07/2022

5832 – State v. Adam Rowell Pending

5834 – Vanessa Williams v. Bradford Jeffcoat Pending

5835 – State v. James Caleb Williams Granted 09/07/2022

5838 – Elizabeth Hope Rainey v. SCDSS Denied 09/07/2022

5839 – In the Matter of Thomas Griffin Pending

5840 – Daniel Lee Davis v. ISCO Industries, Inc. Denied 09/07/2022

5843 – Quincy Allen #6019 v. SCDC Pending

5844 – Deutsche Bank v. Patricia Owens Pending

5845 – Daniel O'Shields v. Columbia Automotive	Granted 09/07/2022
5846 – State v. Demontay M. Payne	Pending
5849 – SC Property and Casualty Guaranty Fund v. Second Injury Fund	Pending
5850 – State v. Charles Dent	Granted 09/07/2022
5851 – State v. Robert X. Geter	Granted 09/07/2022
5853 – State v. Shelby Harper Taylor	Pending
5854 – Jeffrey Cruce v. Berkeley Cty. School District	Granted 09/07/2022
5855 – SC Department of Consumer Affairs v. Cash Central	Pending
5856 – Town of Sullivan's Island v. Michael Murray	Pending
5858 – Beverly Jolly v. General Electric Company	Pending
5859 – Mary P. Smith v. Angus M. Lawton	Denied 09/07/2022
5860 – Kelaher, Connell & Conner, PC v. SCWCC	Pending
5861 – State v. Randy Collins	Pending
5863 – State v. Travis L. Lawrence	Granted 09/07/2022
5864 – Treva Flowers v. Bang N. Giep, M.D.	Denied 09/07/2022
5865 – S.C. Public Interest Foundation v. Richland County	Denied 09/07/2022
5866 – Stephanie Underwood v. SSC Seneca Operating Co.	Granted 09/08/2022
5867 – Victor M. Weldon v. State	Denied 09/07/2022
5868 – State v. Tommy Lee Benton	Granted 09/07/2022

5870 – Modesta Brinkman v. Weston & Sampson Engineers, Inc. Denied 09/08/2022

5871 – Encore Technology Group, LLC v. Keone Trask and Clear Touch Pending

5874 – Elizabeth Campione v. Willie Best Denied 09/08/2022

5875 – State v. Victoria L. Sanchez Denied 09/08/2022

5877 – Travis Hines v. State Pending

5878 – State v. Gregg Pickrell Granted 09/08/2022

5880 – Stephen Wilkinson v. Redd Green Investments Granted 09/08/2022

5882 – Donald Stanley v. Southern State Police Pending

5884 – Frank Rish, Sr. v. Kathy Rish Granted 09/08/2022

5885 – State v. Montrelle Lamont Campbell Granted 09/08/2022

5888 – Covil Corp. v. Pennsylvania National Mut. Ins. Co. Pending

5891 – Dale Brooks v. Benore Logistics System, Inc. Granted 09/08/2022

5892 – State v. Thomas Acker Pending

5898 – Josie Bostick v. Earl Bostick, Sr. Pending

5900 – Donald Simmons v. Benson Hyundai, LLC Pending

5903 – State v. Phillip W. Lowery Pending

5904 – State v. Eric E. English Pending

5905 – State v. Richard K. Galloway Pending

5907 – State v. Sherwin A. Green Pending

5908 – State v. Gabrielle Olivia Lashane Davis Kocsis	Pending	
5914 – State v. Tammy D. Brown	Pending	
5915 – The State v. Sylvester Ferguson, III	Pending	
2021-UP-105 – Orveletta Alston v. Conway Manor, LLC	Dismissed	09/08/2022
2021-UP-171 – Anderson Brothers Bank v. Dazarhea Monique Parson(3)	Denied	09/07/2022
2021-UP-196 – State v. General T. Little	Pending	
2021-UP-230 – John Tomsic v. Angel Tomsic	Pending	
2021-UP-242 – G. Allen Rutter v. City of Columbia	Pending	
2021-UP-252 – Betty Jean Perkins v. SCDOT	Pending	
2021-UP-259 – State v. James Kester	Denied	09/07/2022
2021-UP-272 – Angela Bain v. Denise Lawson	Pending	
2021-UP-273 – SCDHEC v. Davenport	Granted	09/07/2022
2022-UP-274 – SCDSS v. Dominique G. Burns	Pending	
2021-UP-275 – State v. Marion C. Wilkes	Denied	09/08/2022
2021-UP-277 – State v. Dana L. Morton	Pending	
2021-UP-278 – State v. Jason Franklin Carver	Granted	09/07/2022
2021-UP-279 – State v. Therron R. Richardson	Pending	
2021-UP-280 – Carpenter Braselton, LLC v. Ashley Roberts	Pending	
2021-UP-281 – In the Matter of the Estate of Harriet Kathleen Henry Tims	Pending	

2021-UP-283 – State v. Jane Katherine Hughes Pending

2021-UP-288 – Gabriel Barnhill v. J. Floyd Swilley Pending

2021-UP-289 – Hicks Unlimited v. UniFirst Corporation Pending

2021-UP-298 – State v. Jahru Harold Smith Pending

2021-UP-302 – State v. Brandon J. Lee Pending

2021-UP-306 – Kenneth L. Barr v. Darlington Cty. School Dt. Pending

2021-UP-312 – Dorchester Cty. Taxpayers Assoc. v. Dorchester Cty. Denied 09/07/2022

2021-UP-330 – State v. Carmie J. Nelson Granted 09/07/2022

2021-UP-341 – Phillip Francis Luke Hughes v. Bank of America Granted 09/07/2022

2021-UP-351 – State v. Stacardo Grissett Granted 09/08/2022

2021-UP-354 – Phillip Francis Luke Hughes v. Bank of America (2) Granted 09/07/2022

2021-UP-367 – Glenda Couram v. Sherwood Tidwell Pending

2021-UP-368 – Andrew Waldo v. Michael Cousins Granted 09/08/2022

2021-UP-370 – State v. Jody R. Thompson Denied 09/07/2022

2021-UP-372 – Allen Stone v. State Granted 09/08/2022

2021-UP-373 – Glenda Couram v. Nationwide Mutual Pending

2021-UP-384 – State v. Roger D. Grate Denied 09/07/2022

2021-UP-385 – David Martin v. Roxanne Allen Denied 09/07/2022

2021-UP-395 – State v. Byron L. Rivers Granted 09/07/2022

2021-UP-396 – State v. Matthew J. Bryant Pending

2021-UP-400 – Rita Brooks v. Velocity Powersports, LLC Denied 09/08/2022

2021-UP-405 – Christopher E. Russell v. State Denied 09/07/2022

2021-UP-408 – State v. Allen A. Fields Denied 09/07/2022

2021-UP-418 – Jami Powell (Encore) v. Clear Touch Interactive Pending

2021-UP-422 – Timothy Howe v. Air & Liquid Systems (Cleaver-Brooks) Granted 09/08/2022

2021-UP-429 – State v. Jeffery J. Williams Denied 09/08/2022

2021-UP-436 – Winston Shell v. Nathaniel Shell Denied 09/08/2022

2021-UP-437 – State v. Malik J. Singleton Denied 09/08/2022

2021-UP-447 – Jakarta Young #276572 v. SCDC Denied 09/08/2022

2021-UP-454 – K.A. Diehl and Assoc. Inc. v. James Perkins Pending

2022-UP-003 – Kevin Granatino v. Calvin Williams Denied 09/08/2022

2022-UP-021 – State v. Justin Bradley Cameron Denied 09/08/2022

2022-UP-022 – H. Hughes Andrews v. Quentin S. Broom, Jr. Pending

2022-UP-023 – Desa Ballard v. Redding Jones, PLLC Denied 09/08/2022

2022-UP-025 – Nathenia Rossington v. Julio Rossington Pending

2022-UP-028 – Demetrius Mack v. Leon Lott (2) Pending

2022-UP-033 – E.G. and J.J. v. SCDSS Pending

2022-UP-036 – John Burgess v. Katherine Hunter		Pending
2022-UP-051 – Ronald I. Paul v. SCDOT (2)		Pending
2022-UP-063 – Rebecca Rowe v. Family Health Centers, Inc.		Pending
2022-UP-075 – James A. Johnson v. State	Denied	09/08/2022
2022-UP-081 – Gena Davis v. SCDC		Pending
2022-UP-085 – Richard Ciampanella v. City of Myrtle Beach		Pending
2022-UP-089 – Elizabeth Lofton v. Berkeley Electric Coop. Inc.		Pending
2022-UP-095 – Samuel Paulino v. Diversified Coatings, Inc.		Pending
2022-UP-097 – State v. Brandon K. Moore		Pending
2022-UP-113 – Jennifer McFarland v. Thomas Morris		Pending
2022-UP-115 – Morgan Conley v. April Morganson		Pending
2022-UP-118 – State v. Donald R. Richburg		Pending
2022-UP-119 – Merilee Landano v. Norman Landano		Pending
2022-UP-163 – Debi Brookshire v. Community First Bank		Pending
2022-UP-170 – Tony Young v. Greenwood Cty. Sheriff's Office		Pending
2022-UP-175 – Brown Contractors, LLC v. Andrew McMarlin		Pending
2022-UP-180 – Berkley T. Feagin v. Cambria C. Feagin		Pending
2022-UP-183 – Raymond A. Wedlake v. Scott Bashor		Pending
2022-UP-184 – Raymond Wedlake v. Woodington Homeowners Assoc.		Pending
2022-UP-189 – State v. Jordan M. Hodge		Pending

2022-UP-192 – Nivens v. JB&E Heating & Cooling, Inc. Pending

2022-UP-197 – State v. Kenneth W. Carlisle Pending

2022-UP-205 – Katkams Ventures, LLC v. No Limit, LLC Pending

2022-UP-207 – Floyd Hargrove v. Anthony Griffis, Sr. Pending

2022-UP-209 – The State v. Dustin L. Hooper Pending

2022-UP-213 – Dr. Gregory May v. Advanced Cardiology Pending

2022-UP-214 – Alison Meyers v. Shiram Hospitality , LLC Pending

2022-UP-228 – State v. Rickey D. Tate Pending

2022-UP-229 – Adele Pope v. Estate of James Brown (3) Pending

2022-UP-239 – State v. James D. Busby Pending

2022-UP-245 – State v. John Steen d/b/a John Steen Bail Bonding Pending

2022-UP-251 – Lady Beaufort, LLC v. Hird Island Investments Pending

2022-UP-252 – Lady Beaufort, LLC v. Hird Island Investments (2) Pending

2022-UP-253 – Mathes Auto Sales v. Dixon Automotive Pending

2022-UP-269 – Steven M. Bernard v. 3 Chisolm Street Pending

2022-UP-270 – Latarsha Docena-Guerrero v. Government Employees Insurance Pending

2022-UP-274 – SCDSS v. Dominique G. Burns Pending

2022-UP-296 – SCDOR v. Study Hall, LLC Pending

2022-UP-298 – State v. Gregory Sanders Pending

2022-UP-309 – State v. Derrick T. Mills Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Progressive Direct Insurance Co., and USAA General Indemnity Company, Petitioners,

v.

Shanna Groves as the Personal Representative of the Estate of Lynn Harrison, Respondent.

Appellate Case No. 2020-001337

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Dorchester County
Alison Renee Lee, Circuit Court Judge

Opinion No. 28115
Heard November 10, 2021 – Filed September 21, 2022

REVERSED

John Robert Murphy and Wesley Brian Sawyer, both of Murphy & Grantland, PA, of Columbia, for Petitioners Progressive Direct Insurance Co. and USAA General Indemnity Company.

John Phillips Linton, Jr., of Walker Gressette Freeman & Linton, of Charleston, and Ryan Harris Sigal, of Miller,

Dawson, Sigal & Ward, LLC, of North Charleston, both for Respondent Shanna Groves.

JUSTICE HEARN: In this case we determine whether uninsured or underinsured benefits may be recovered when an individual is shot and killed by another motorist as both cars are stopped at a traffic light. In deciding this question, we revisit and attempt to clarify our somewhat conflicting jurisprudence as to whether such injuries arise out of the "ownership, maintenance, or use" of an automobile. We hold that gunshot injuries do not arise out of the use of an automobile. Therefore, we reverse the court of appeals and reinstate the judgment of the circuit court.

FACTS/PROCEDURAL HISTORY

Jimi Redman shot and killed Lynn Harrison with a rifle while both were in their vehicles at a stoplight. Immediately before the shooting, Redman, who was driving a Ford Escape, approached Harrison's GMC in the lane to her right. A witness, who was directly behind Harrison in the left lane, saw Redman make hand gestures and blow kisses toward Harrison. There is no evidence that Harrison attempted to evade Redman or that she even saw his gestures. Instead, as the two vehicles stopped at the red light, Redman pulled out a rifle and fired one shot which traveled through Harrison's passenger side window, killing her. Redman subsequently sped away, while Harrison's vehicle, which was still in drive, crept forward until coming to rest in the median. Redman was arrested a few blocks away.

Harrison was insured through her husband's[1] motorcycle policy issued by Progressive and an automobile insurance policy provided by USAA. The Progressive policy provided,

> If you pay the premium for this coverage, we will pay for damages that an insured person is legally entitled to recover from the owner or operator of:
>
> 1) an uninsured motor vehicle because of bodily injury:

---

[1] Tragically, her husband was murdered a few months later in an unrelated matter. The couple's daughter, Shanna Groves, subsequently became the personal representative named as a defendant in this case.

> a) sustained by an insured person;
> b) caused by an accident; and
> c) arising out of the ownership, maintenance or use of an uninsured motor vehicle[.]

The USAA policy stated,

> We will pay for the following damages which a covered person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of an auto accident:
>
> 1) [bodily injury] sustained by a covered person; and
> 2) injury to or destruction of the property of a covered person.
>
> The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured motor vehicle.

Progressive filed a complaint seeking a declaratory judgment that there was no coverage because Harrison's injuries did not arise out of the use of Redman's motor vehicle. Both parties filed motions for summary judgment, and the circuit court held a hearing. Progressive contended that Harrison's injuries were not causally connected to the use of Redman's vehicle under our causation analysis set forth in *State Farm Fire & Casualty Company v. Aytes*, 332 S.C. 30, 33, 503 S.E.2d 744, 745 (1998). Further, it contended gunshot injuries are not foreseeably identifiable with the normal use of a vehicle. *See State Farm Mut. Auto. Ins. Co. v. Bookert*, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999) (determining injuries suffered from a gunshot involving a vehicle were not foreseeably identifiable with the normal use of a vehicle thereby precluding coverage). Conversely, Groves argued *Aytes* and *Bookert* did not overrule prior case law which is more analogous to the present facts. Accordingly, Groves contended that Redman pursued Harrison before shooting her, thus establishing a causal connection. The circuit court disagreed, concluding Groves failed to demonstrate that Harrison's injuries were causally connected to the use of Redman's vehicle. Additionally, the court determined her injuries were not "foreseeably identifiable with the use of an automobile" and even if they were, firing the rifle constituted an act of independent significance that otherwise broke the causal chain.

Groves appealed, and the court of appeals reversed. *Progressive Direct Ins. Co. v. Groves*, 431 S.C. 203, 206, 847 S.E.2d 114, 116 (Ct. App. 2020). The court concluded *Wausau Underwriters Insurance Company v. Howser*, 309 S.C. 269, 422 S.E.2d 106 (1992) and *Home Insurance Company v. Towe*, 314 S.C. 105, 441 S.E.2d 825 (1994) remained good law, and that both cases were more similar to the instant facts than *Aytes*, *Bookert*, or the federal decisions relied on by Progressive. Thereafter, Progressive filed a petition for a writ of certiorari, which this Court granted.

ISSUES

Whether injuries arising from the intentional firing of a gun are foreseeably identifiable with the normal use of an automobile and whether the act of firing a gun constitutes an act of independent significance breaking the causal chain?

STANDARD OF REVIEW

An appellate court reviews a motion for summary judgment using the same standard employed by the circuit court. *Traynum v. Scavens*, 416 S.C. 197, 201, 786 S.E.2d 115, 117 (2016). Whether coverage exists under an insurance contract is a question of law for the Court. *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 593, 762 S.E.2d 705, 709 (2014). Further, cross-motions for summary judgment are treated as questions of law. *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

DISCUSSION

This case turns on whether Harrison's injuries arose out of the "use" of an uninsured vehicle. Progressive contends the court of appeals erred in finding a causal connection between Harrison's fatal injuries and the use of Redman's motor vehicle. Specifically, it asserts Groves cannot show that Redman's vehicle was an "active accessory" to her injuries or more broadly, that gunshot injuries are "foreseeably identifiable with the normal use of [an] automobile." *Bookert*, 337 S.C. at 293, 523 S.E.2d at 182. Progressive discounts *Howser* and *Towe*, contending because neither decision incorporated the foreseeability component subsequently adopted in *Aytes* and *Bookert*, the court of appeals erred in relying on them. We agree with Progressive.

To recover under an automobile insurance policy, the insured's damages must "arise out of the ownership, maintenance, or use" of the uninsured motor vehicle. S.C. Code Ann. § 38-77-140 (2015). A three-prong test is used to determine whether an insured meets that requirement: (1) the party seeking coverage must establish a causal connection between the injury and the uninsured vehicle, (2) there is no act of independent significance which breaks the chain of causation, and (3) the uninsured vehicle must have been used for transportation at the time. *Aytes*, 332 S.C. at 33, 503 S.E.2d at 745. "No distinction is made as to whether the injury resulted from a negligent, reckless, or intentional act." *Towe*, 314 S.C. at 107, 441 S.E.2d at 827.

Under the first prong, the insured must also show three subparts: "a) the vehicle was an 'active accessory' to the assault; and b) something less than proximate cause but more than mere site of the injury; and c) that the 'injury must be foreseeably identifiable with the normal use of the automobile.'" *Bookert*, 337 S.C. at 293, 523 S.E.2d at 182. The parties agree Redman's vehicle was being used for transportation at the time, so the inquiry focuses on the three subparts under the first element, and whether the act of firing a rifle breaks the chain of causation.

Although in early cases this Court seemed to favor coverage when injuries were caused by an armed motorist, it later retreated from this position. In *Howser*, we answered a certified question asking whether an insured's injuries arose out of the operation of a motor vehicle where an unknown assailant pulled up next to the victim's car and fired a gunshot as she attempted to flee. 309 S.C. at 271, 422 S.E.2d at 107. The Court explained that the assailant was only able to carry out the shooting by using his vehicle to "closely pursue" Howser. The Court also characterized the shooting as part of an "ongoing assault, in which the vehicle played an essential and integral part." *Id.* at 273, 422 S.E.2d at 108.

Approximately two years later, this Court decided *Towe*, holding a tractor driver's injuries were causally connected to the perpetrator's vehicle where a passenger attempted to throw a bottle at a street sign, instead striking the tractor's vehicle and severely injuring him. 314 S.C. at 107-08, 441 S.E.2d at 827. The Court concluded, "The use of the automobile placed Alexander in the position to throw the bottle at the sign and the vehicle's speed contributed to the velocity of the bottle increasing the seriousness of McClaskey's injuries." *Id.* at 107, 441 S.E.2d at 827. Further, the Court noted the act of throwing the bottle did not break the chain of

causation because it was "inextricably linked" to the use of the automobile. *Id.* at 108, 441 S.E.2d at 827.

While the insureds in *Howser* and *Towe* were able to establish that their injuries arose out of the use of the tortfeasor's vehicle, those decisions appear to be an aberration in our jurisprudence. In *Aytes*, the Court answered a certified question asking whether injuries suffered from a gunshot were causally connected to the use of an automobile. 332 S.C. at 32, 503 S.E.2d at 745. The shooting occurred after a couple became involved in an altercation leading to Aytes forcing Dawson into her car. *Id.* Aytes then drove to his property intending to kill Dawson. *Id.* Upon arriving there, Dawson attempted to retrieve a gun from the glovebox while Aytes exited the vehicle. *Id.* at 33, 503 S.E.2d at 746. However, Aytes wrestled the gun away from Dawson and shot her in the foot. *Id.* The Court concluded Dawson failed to prove a causal connection between the use of the vehicle and her injuries because the car was not being used as an "active accessory." *Id.* at 35, 503 S.E.2d at 746. Further, the Court determined even if Dawson could prove a causal link, it was broken when Aytes exited the vehicle. *Id.* While the Court in *Aytes* did not specifically overrule *Howser* and *Towe*, in retrospect we believe it was a game-changer.

Following *Aytes*, this Court in *Bookert* again held injuries arising from a shooting did not trigger automobile insurance coverage. 337 S.C. at 292, 523 S.E.2d at 181. There, approximately fifteen soldiers followed a group of individuals from a Hardees to a McDonalds after the two groups became involved in an altercation. *Id.* While outside the McDonalds, two soldiers yelled at the other individuals from inside their vehicle and discharged a shotgun and a pistol as the vehicle "jerked forward," striking the victim in each leg. *Id.* at 292-93, 523 S.E.2d at 181-82. The Court reversed the court of appeals, which had found a causal connection, holding the victim's injuries were not "foreseeably identifiable with the normal use of an automobile." *Id.* at 293, 523 S.E.2d at 182.

This Court has also concluded that automobile insurance coverage is not triggered when an individual suffers injuries in a vehicle resulting from an accidental shooting. *Peagler v. USAA Ins. Co.*, 368 S.C. 153, 156, 628 S.E.2d 475, 476 (2006). There, a husband, who was retrieving the shotgun he had left in the backseat of the vehicle the day before, accidentally shot and killed his wife as she sat in the driver's seat, preparing to drive their children to school. In *Peagler*, the Court surveyed other appellate decisions addressing both accidental and intentional gunshot injuries,

noting generally that courts have held no causal connection exists between gunshot injuries and the use of a motor vehicle.[2] *Id.* at 162-63, 628 S.E.2d at 479-80.

Thus, whether coverage exists in a shooting involving a vehicle has evolved in our jurisprudence. Supporting our view that *Aytes* changed the legal landscape is the fact that there has been no appellate decision allowing coverage where injuries arose from a gunshot wound since *Towe* in 1994; that is, until the court of appeals' decision in this case. In reversing the circuit court and finding coverage here, the court of appeals relied on cases nearly thirty years old which, though not explicitly overruled, were sharply limited by *Aytes* and the new framework it established.

Insurance policies are creatures of contract and are analyzed according to general principles of contract interpretation. *Butler v. Travelers Home & Marine Ins. Co.*, 433 S.C. 360, 366, 858 S.E.2d 407, 410 (2021) ("An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts."). The overarching principle in determining whether coverage exists is to determine whether the parties intended such an event to be covered. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) ("The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language."). We agree with other courts that have held it is not reasonable to conclude that the parties to an insurance contract intended gunshot injuries to be covered by an automobile insurance policy. *See State Farm Mut. Auto. Ins. Co. v.*

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[2] *Travelers Indemnity Co. v. Auto World of Orangeburg, Inc.*, 334 S.C. 137, 511 S.E.2d 692 (Ct. App. 1999) (no causal connection between vehicle and injury where deaths occurred from gunshots fired by assailant standing outside of parked car; vehicles were not active accessories in the assault); *Carraway v. Smith*, 321 S.C. 23, 467 S.E.2d 120 (Ct. App. 1995) (no causal connection between vehicle and injury where driver of car was injured when bullet fired by bystander on sidewalk shattered his windshield; any causal link was broken by assailant exiting vehicle in front of motorist and conversing on sidewalk with another person for several minutes before shooting occurred); *Hite v. Hartford Accident Indem. Co.*, 288 S.C. 616, 344 S.E.2d 173 (Ct. App. 1986) (no causal connection between vehicle and injury where insured, an automobile dealership employee, left his idling vehicle and walked fifty feet to instruct another motorist to remain at the dealership because the motorist had backed into a new truck, and motorist's car struck plaintiff as it left the scene; insured's vehicle played no role in the incident).

DeHaan, 900 A.2d 208, 226 (Md. Ct. App. 2006) ("Shooting people is likewise not the manner in which vehicles are normally used, or for which they are designed, i.e., vehicles are not normally necessary for shooting people."); *Farm & City Ins. v. Est. of Davis*, 629 N.W.2d 586, 589 (S.D. 2001) ("A majority of courts refuse to find that the insurer and insured contemplated that the conduct involved in a drive-by shooting would be covered under the policy."); *Scales v. State Farm Mut. Auto. Ins. Co.*, 460 S.E.2d 201, 203 (N.C. Ct. App. 1995) ("Clearly, an automobile chase with guns blazing is not a regular and normal use of a vehicle.").

Moreover, even if Groves could satisfy the first *Aytes* factor, she fails on the second one because the act of firing a weapon into another vehicle constitutes an act of independent significance. "Driving a vehicle and discharging a firearm at persons in another vehicle are acts of independent significance." *Olson v. Slattery*, 942 N.W.2d 263, 269 (S.D. 2020). Further, "The shooter's use of a vehicle to position himself to harm another 'ignores his deliberate act of pointing a loaded shotgun out his window and firing it into the passenger window[.]'" *Id.* (internal citation omitted). Overall, "Shooting from a vehicle at other persons is not an act inextricably linked to the use of a vehicle." *Id.*; *see also Wright v. N. Area Taxi, Inc.*, 337 S.C. 419, 427, 523 S.E.2d 472, 476 (Ct. App. 1999) ("[T]he assault of the gunmen broke any causal connection between the vehicle and Rogers' injury because it arose from an act of independent significance."). Consequently, under either of the first two factors, Groves cannot establish that Harrison's injuries arose out of the use of Redman's motor vehicle—a position consistent with courts across the country. *See* 7 Am. Jur. 2d Automobile Ins. § 171 ("[C]ircumstances in which one intentionally shoots another from a vehicle have generally not been deemed to have arisen from the ownership, maintenance, or use of the vehicle for purposes of automobile liability insurance coverage . . . .").

CONCLUSION

Accordingly, we hold gunshot injuries do not arise out of the use of an automobile. We reverse the court of appeals' decision and reinstate the circuit court's order granting Progressive's motion for summary judgment.[3]

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[3] In light of our decision, we decline to address Progressive's remaining issue on appeal contending that the court of appeals made factual findings not supported by the record. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

REVERSED.

KITTREDGE and JAMES, JJ., and Acting Justice DeAndrea Gist Benjamin, concur. BEATTY, C.J., concurring in result only.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

John W. McCarty, Petitioner.

Appellate Case No. 2021-000062

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Pickens County
Letitia H. Verdin, Circuit Court Judge

Opinion No. 28116
Heard June 8, 2022 – Filed September 21, 2022

REVERSED AND REMANDED

Appellate Defender Susan Barber Hackett, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, Assistant Attorney General Michael G. Ross, and Assistant Attorney General Julianna E. Battenfield, all of Columbia; and Solicitor William Walter Wilkins III, of Greenville, for Respondent.

CHIEF JUSTICE BEATTY: John W. McCarty ("Petitioner") was charged with murder and possession of a weapon during the commission of a violent crime. Petitioner maintained he acted in defense of another and filed a motion seeking immunity from criminal prosecution pursuant to the South Carolina Protection of Persons and Property Act ("Act").[1] After a pretrial hearing, the circuit court denied the motion, and Petitioner was subsequently tried and convicted as charged. On appeal, Petitioner challenged the circuit court's ruling as to immunity, and the court of appeals affirmed in *State v. McCarty*, 2020-UP-269 (S.C. Ct. App. filed Sept. 23, 2020). This Court has granted a petition for a writ of certiorari to consider Petitioner's arguments that (1) the court of appeals erred in failing to hold the circuit court abdicated its role as the fact-finder by ruling a jury, not the court, must decide whether the individual Petitioner was defending was without fault in bringing on the difficulty; and (2) this Court should conclude Petitioner is entitled to immunity. We agree with Petitioner as to the first issue, but hold the issue of immunity should be decided in the first instance by the circuit court. As a result, we reverse the decision of the court of appeals and remand the matter to the circuit court to make the necessary findings.

I. FACTS

The charges against Petitioner arose from the July 15, 2015 shooting death of Mitchell Bradley. Petitioner moved for immunity under the Act on the basis he acted in defense of Randy Wilson, his partner of nearly thirty years. The circuit court held a pretrial hearing on the motion on February 23, 2017, at which Petitioner, Wilson, Jacob Kirk, and two deputies from the Pickens County Sheriff's Office testified. As the circuit court ultimately noted in its ruling on the motion, many of the core facts were not in dispute.

Petitioner and Wilson shared a mobile home owned by Wilson in Liberty, South Carolina. Less than two years before the 2015 altercation, they allowed Bradley's brother, Jacob Kirk, to begin living with them rent-free in exchange for Kirk helping Wilson with household chores and errands. Wilson had recently stopped working due to increasing pain and physical impairment from injuries suffered as a teenager in 1980, including a broken neck, and Petitioner still worked

[1] *See* S.C. Code Ann. §§ 16-11-410 to -450 (2015).

full-time, so Wilson wanted assistance with activities around the home. Wilson knew Kirk and his family because he had worked for Kirk's grandfather until his physical condition deteriorated.

On the evening of July 15, 2015, Bradley, who was in his twenties, was at the home visiting his brother. Petitioner testified Kirk appeared to come home from work in a bad mood, and Kirk acknowledged that he began drinking as soon as he got home from work, sometime between 5:00 p.m. and 5:30 p.m. Later in the evening, Bradley and Kirk were drinking together on the porch, and Kirk came inside to get something to eat. By that time, Wilson and Petitioner had already eaten and Petitioner had gone to bed, so Wilson placed several plates of leftovers for Bradley and Kirk in the microwave. Wilson was on the phone talking to his niece when Kirk came in.

An argument began between Kirk and Wilson when Kirk interrupted Wilson several times to ask about the leftovers while Wilson was on the phone. Kirk, who was admittedly intoxicated (Kirk conceded that he and his brother, Bradley, had consumed "at least" ten or more beers each and were "drunk"), began talking loudly to Wilson, asking him questions about how to "divvy up" the plates of food.

According to Wilson, he told Kirk, "[C]an't you see I'm on the phone[?]" Kirk then got angry and hit or bumped Wilson on the shoulder. Kirk began yelling at Wilson and allegedly stated during their argument that he "was going to slice [Wilson] up." Kirk began packing his belongings, but Bradley also "started getting mouthy," so Wilson told Bradley that he needed to leave the home, as he did not live there, and Bradley refused. Wilson called 9-1-1 for assistance. While waiting on law enforcement, Wilson went outside to repair Kirk's truck so Kirk would have a way to carry all of his belongings.[2]

Kirk's recollection also was that his statements to Wilson over the food are "what sparked everything." Kirk acknowledged that he "was furious" with Wilson and that he could be heard screaming in the background during the recording of Wilson's 9-1-1 call. Kirk testified he was screaming at Wilson because he "was

[2] Kirk testified that, although his truck was not running, his brother had a car they could have used, but one of the reasons they did not leave immediately was because they were both too drunk to drive. Kirk also testified that, in hindsight, he and his brother should have left the premises, adding, "The whole argument started over nothing."

trying to do more of an intimidating type of thing showing him [Wilson] that I'm not afraid of him . . . ."

One of the deputies who responded to the 9-1-1 call testified that he noticed all three men involved in the dispute, Wilson, Kirk, and Bradley, appeared to be grossly intoxicated. Petitioner, however, was asleep in his bedroom. The deputy concluded the men had been involved in an argument over food and that Wilson wanted Bradley to leave, but Kirk wanted him to stay. The deputy informed Wilson that, because Kirk was a resident, he did not believe he could make his invited guest (Bradley) leave.[3] Although the deputy testified everyone appeared to be "chill" during their conversation, he recalled that as he left, he heard Wilson shout out to him that he was going to have to come back to the home.

The evidence at the hearing indicates the argument resumed within minutes after the deputies left and turned into a physical altercation between Wilson and Bradley. Kirk acknowledged that after the officers left, he went over to Wilson while Wilson was working on his (Kirk's) truck and told him, "[S]ee, just because it's your property doesn't mean that you get to control everything that goes on here." Kirk testified that this upset Wilson, who then threw down the tool that he was using and began "shuffling" through Bradley's cigarettes and cigarette tubes. According to Kirk, Bradley became upset and grabbed Wilson and told Wilson to "stop f'ing with my S, Randy," and Wilson allegedly grabbed Bradley at the same time. However, Bradley then shoved Wilson down the outside stairs leading to the porch and the back door of the home. The force broke several of the steps and Wilson's foot.

Kirk testified he noticed Wilson held onto the hand railing and appeared to struggle to go back up the stairs to the home after he was pushed down, but at that time he did not realize Wilson had sustained any broken bones and thought his gout was hurting him. Kirk contended Wilson "smacked" a beer off of the hand railing as he made his way up the steps and that this angered Bradley, who began "popping [Wilson] in the face" with his hand as Wilson screamed for help from Petitioner. Kirk stated he did not believe Bradley struck Wilson with "serious force," and opined

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[3] Although we need not address this point for our decision today, we note that, while Kirk resided at the home, the home was owned by Wilson. *Cf. State v. Douglas*, 411 S.C. 307, 322, 768 S.E.2d 232, 240–41 (Ct. App. 2014) ("A man who attempts to force himself into another's dwelling, or who, *being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser . . . .*" (quoting *State v. Bradley,* 126 S.C. 528, 533, 120 S.E. 240, 242 (1923))).

that his brother "was slapping [Wilson], trying to . . . incite him to throw the first punch." Kirk recalled Bradley "kept on popping" Wilson and said to Wilson, "What you hollering for [Petitioner] for?" At that point, he saw Petitioner come to the door, and he (Kirk) yelled to his brother that Petitioner had a gun. Kirk stated Petitioner fired a shot at the floor once and pushed on the door but did not come outside. Petitioner then shot at Bradley twice, striking him.

Wilson testified he was working on Kirk's truck after the officers left and at one point he accidentally knocked over Bradley's beer that was sitting near the engine.[4] Wilson stated Bradley grabbed him by the arm but then went and got another beer, so he thought the interaction was over. When Wilson finished working on the truck, he proceeded to go up the steps to the home's porch, but Bradley shoved him down the stairs, breaking two of the steps and bones in his foot. Wilson testified he tried to get back up the stairs by gripping the hand railing and, in doing so, he knocked over a beer left sitting on the hand railing. Wilson stated he was trying to get back inside the home, but Bradley pushed him down and he could not get inside the home, so he started screaming for help from Petitioner. Wilson testified Kirk did not try to stop the altercation and instead was inciting his brother with his comments, which intensified Bradley's anger. Wilson acknowledged that he had some liquor that evening, but he stated he was not drinking heavily like the two younger men.

Wilson testified that he was concerned for his life and safety as his neck was fragile due to both his prior surgery for a broken neck and his osteoporosis condition, and his neck was being twisted roughly by Bradley during the altercation. Wilson recalled Petitioner ran to the kitchen and fired a warning shot at the floor, but Bradley did not stop, so Petitioner fired again, striking Bradley. Wilson then administered CPR to Bradley. Wilson stated he believed Petitioner prevented him from sustaining serious bodily injury or death. Wilson's testimony was supplemented with photographs taken at the scene showing him with blood running down both of his legs and one leg that was badly swollen from the break he sustained from being pushed down the stairs.

As outlined above, Kirk's testimony substantially tracked Wilson's, but he indicated Wilson intentionally tossed around Bradley's beers and cigarettes. Kirk stated he did not view Wilson as fragile and would have stepped in if he thought the fight was getting serious. Kirk stated he thought Wilson and Bradley "needed to

[4] Kirk testified the interaction at the truck either did not happen or he missed it.

fight" and that Bradley did not get physical until Wilson allegedly "started messing with his [Bradley's] belongings," which he described as his "cigarettes, tobacco, beer." Kirk stated: "I know those all aren't things to get upset about. But to some people, it's an attack to their character." When he was asked if he wanted to see Wilson to get hurt that evening, Kirk stated: "Not like serious injury. I wanted to see him fight it out." At another point when he was asked why he did not try to break up the fight between his brother and Wilson, Kirk admitted, "I was okay with it happening." Importantly, Kirk ultimately agreed that Wilson "was trying to get away, trying to get back in the house and [Bradley] wasn't letting him do that."

Petitioner testified that he was in bed when the first 9-1-1 call occurred that evening, and an officer came to his room and stated the situation was under control and there was no reason to get up. Petitioner stated he later woke up upon hearing Wilson screaming his name and pleading for help in an unusually high-pitched, piercing tone of voice that he had never heard before, so he "knew there was something seriously wrong." Petitioner stated he grabbed his handgun and went towards the door and saw Bradley holding Wilson, so he fired a warning shot towards the floor, but Bradley did not stop "swinging" at Wilson. Petitioner tried to kick open the door, but the door was blocked by Bradley and Wilson on the other side, so he shot through the window, striking Bradley. Petitioner stated his intent was only to wound Bradley, not kill him. Petitioner stated he believed he had no choice but to act immediately to defend Wilson to prevent him from being seriously hurt or killed by Bradley.

A deputy with the forensics unit of the Pickens County Sheriff's Office confirmed Bradley died from two gunshot wounds that entered the right side of his chest. The deputy testified the wounds were consistent with the bullets being fired through a window before hitting Bradley. He also confirmed that a shot was fired into the floor of the kitchen area, inside the rear door to the home.

The circuit court took the matter under advisement and thereafter issued a written order denying Petitioner's motion for immunity. Petitioner proceeded to trial and was convicted as charged. The court of appeals affirmed without oral argument in an unpublished opinion issued pursuant to Rule 220(b), SCACR. Petitioner asserts error to this Court in the denial of his motion for immunity.

II. STANDARD OF REVIEW

"Circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard." *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019). This Court, in turn, reviews an immunity determination for an abuse of discretion. *Id.* "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016).

III. DISCUSSION

A. Circuit Court's Role as Fact-Finder

Petitioner's first point asserts the court of appeals erred in upholding the denial of his motion for immunity because the circuit court abdicated its role as the fact-finder when it ruled a jury, not the court, must decide whether the individual Petitioner was defending was without fault in bringing on the difficulty. To address this point, we shall consider (1) the Act and developing case law regarding its application, and (2) the role the circuit court played in Petitioner's case.

(1) The Act and its Application

The "Stand Your Ground Law," as the Act is informally known, was enacted by the South Carolina General Assembly in 2006 and provides a person "is immune from criminal prosecution and civil action for the use of deadly force" in circumstances that are permitted by the Act or by another provision of law. S.C. Code Ann. § 16-11-450(A) (2015). By its terms, the Act does not apply to the use of deadly force against law enforcement officers. *Id.*

We have observed that "[t]he Act codified the common law Castle Doctrine and extended its reach." *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 495 (2019) (citing S.C. Code Ann. § 16-11-420(A)). "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.'" *Id.* at 117, 838 S.E.2d at 495–96 (alteration in original) (quoting *Jones*, 416 S.C. at 291, 786 S.E.2d at 136).

The General Assembly has stated it is "its intent to provide the protections of the Act to persons within their own home facing not only unwelcome intruders but

also 'attackers,' including those who are initially invited into the home and later place the homeowner in reasonable fear of death or great bodily injury." *State v. Douglas*, 411 S.C. 307, 331, 768 S.E.2d 232, 245 (Ct. App. 2014) (citing S.C. Code Ann. § 16-11-420, "Intent and findings of General Assembly"). The Act defines "great bodily injury" as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. § 16-11-430(2).

In section 16-11-440, the General Assembly has set forth the circumstances justifying the use of deadly force. S.C. Code Ann. § 16-11-440. While some parts of this statute, such as subsection (A), address forcible intrusions at residences, Bradley was initially an invited guest before he reportedly attacked Wilson. Consequently, Petitioner sought immunity under subsection (C), which generally provides that one who is not engaged in unlawful conduct and who is "attacked in another place where he has a right to be"[5] has no duty to retreat and may use deadly force if he reasonably believes it is needed to (1) **prevent** death or great bodily injury to himself or another, or (2) **prevent** the commission of a violent crime. We emphasize the General Assembly's use of the word "prevent" because it underscores the Act's protective focus; its terms do not require the undesirable harms to occur before defensive action is justified. Subsection (C) provides in full as follows:

> (C) 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.[6]

[5] The phrase "another place where he has a right to be" may also include a residence. *Jones*, 416 S.C. at 295, 786 S.E.2d at 138.

[6] Section 16-1-60's definition of a "violent crime" includes such offenses as assault and battery of a high and aggravated nature ("ABHAN") and an attempt to commit ABHAN or another violent offense. *See* S.C. Code Ann. § 16-1-60 (Supp. 2021);

Id. § 16-11-440(C) (emphasis added).

This Court has previously recognized that, while the Act clearly affords immunity from prosecution, it contains no procedures or standards for its implementation. As a result, the Court has found it necessary, in a series of decisions, to fill such gaps judicially, where the General Assembly has not specified the procedures legislatively. *See State v. Duncan*, 392 S.C. 404, 409, 709 S.E.2d 662, 664 (2011) ("Whether immunity under the Act should be determined prior to trial is an issue of first impression in this state. Further, the Act does not explicitly provide a procedure for determining immunity."); *State v. Manning*, 418 S.C. 38, 43, 791 S.E.2d 148, 150 (2016) ("Neither the Act, nor *Duncan*, sets forth a specific type of hearing or procedure to be followed when a criminal defendant claims immunity under the Act."); *State v. Cervantes-Pavon*, 426 S.C. 442, 452 n.4, 827 S.E.2d 564, 569 n.4 (2019) ("While the Act does not require a written order upon an immunity determination, specific findings of fact and conclusions of law are critical to reviewing courts, particularly given the gravity of the circumstances these cases necessarily involve.").

In *Duncan*, one of our earlier decisions, we made several fundamental determinations as matters of first impression. We found the Act requires a pretrial ruling by the circuit court—and did not simply create a new affirmative defense—because the General Assembly has expressly provided an individual will be "immune from criminal prosecution." *Duncan*, 392 S.C. at 410, 709 S.E.2d at 665. We further determined in *Duncan* that the circuit court should utilize a preponderance of the evidence standard of proof when considering whether a defendant is entitled to immunity under the Act, and an appellate court should review the circuit court's ruling to determine if it is supported by the evidence. *Id.* at 411, 709 S.E.2d at 665.

Thereafter, in the 2013 case of *Curry*, we found it necessary to "interpret what we believe[d] to be the legislative intent regarding a trial court's authority to weigh the underlying claim of self-defense in determining an accused's entitlement to immunity." *Curry*, 406 S.C. at 371, 752 S.E.2d at 266. We concluded a defendant must show, by a preponderance of the evidence, that he has a valid claim of self-

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see also id. § 16-1-80 (2015) ("A person who commits the common law offense of attempt, upon conviction, must be punished as for the principal offense.").

defense and reasoned the circuit court must, therefore, consider all of the elements of self-defense—except the duty to retreat:

> 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. (emphasis added); *accord Jones*, 416 S.C. at 300–01, 786 S.E.2d at 141. We noted there are four elements to establishing a claim of self-defense, as outlined below:

> 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.[7] 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.

Curry, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4 (quoting *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)). We reiterated, however, that "[i]t is the fourth

[7] The reference to a reasonable belief of imminent danger echoes language in the Act. We have observed that an individual has the right to act on appearances, even if that belief is ultimately mistaken. *State v. Scott*, 424 S.C. 463, 472, 819 S.E.2d 116, 120 (2018). However, the belief must be objectively reasonable. *Douglas*, 411 S.C. at 328, 768 S.E.2d at 244.

element—the duty to retreat—that is excused under the Act and the Castle Doctrine." *Id.*

The same year *Curry* was published, the Court addressed what it characterized as "dicta" appearing in the *Duncan* decision regarding the procedure for appeal in immunity cases. *See State v. Isaac*, 405 S.C. 177, 185, 747 S.E.2d 677, 681 (2013). Specifically, we clarified that, while the grant of a motion for immunity is immediately appealable because it is a final order that ends the case, the denial of a motion is distinguishable because it is not a final order ending the case and, consequently, the denial of a motion for immunity is not immediately appealable. *Id.* at 182–85, 747 S.E.2d at 679–81. In addition, we determined there was no evidence of legislative intent that the Act apply retroactively, so we found the protections of the Act did not extend to a case where the underlying incident occurred prior to the Act's effective date. *Id.* at 186–87, 747 S.E.2d at 681–82.

More recently, the Court revisited the Act and concluded the circuit court should perform a proximate cause analysis when considering the requirements in subsection 16-11-440(C) that the person attacked must be someone who was "not engaged in an unlawful activity" and was in a "place where he ha[d] a right to be." *See State v. Glenn*, 429 S.C. 108, 124, 838 S.E.2d 491, 499 (2019) ("We [] hereafter require circuit courts during pretrial *Duncan* hearings to conduct a proximate cause analysis before determining whether a person seeking immunity under the Act satisfies subsection 16-11-440(C), if applicable.").

We explained that "analyzing a defendant's 'right to be' in a place where he is attacked under [sub]section 16-11-440(C) without considering proximate cause or a causal connection to the incident leaves an innocent person's ability to seek the Act's protection up to happenstance, which we [] do not believe was the intent of the Legislature." *Id.* at 119–20, 838 S.E.2d at 497. Further, we found "a proximate cause analysis must also be applied to the unlawful activity element of subsection (C)." *Id.* at 120, 838 S.E.2d at 497; *see also id.* at 120 n.4, 838 S.E.2d at 497 n.4 ("Here, the circuit court properly applied a proximate cause analysis to examine whether Glenn was engaged in unlawful activity at the time of the incident. In its oral ruling, the court found Glenn was not engaged in any unlawful activity—despite the fact he was carrying an illegal weapon at the time of the shooting—because his possession was not the proximate cause of the incident.").

(2) Circuit Court's Role in Petitioner's Case

Turning to Petitioner's case, we note the circuit court conducted a pretrial *Duncan* hearing on Petitioner's motion for immunity and later issued a written order denying the motion. In its order, the circuit court correctly cited *Duncan* for Petitioner's burden of proof—a preponderance of the evidence—and acknowledged both the law of self-defense and the legal principle that a person has the right to act in defense of another person if the person being protected would have had the right to kill the assailant in self-defense.

The circuit court summarized the evidence presented at the hearing and observed that "the core facts are largely uncontested." However, the circuit court stated, "Despite the general consensus regarding the basic facts, there was some dispute as to the cause and nature of the argument between Wilson, Kirk, and Bradley." The circuit court concluded Petitioner failed to meet his burden of showing that he had the right to act in defense of another "because he did not prove that Wilson was without fault in bringing about the difficulty."[8]

The circuit court explained the evidence was conflicting on this particular element, so it presented "a quintessential jury question" that must be decided by a jury, citing this Court's decision in *Curry*:

> **Whether or not a defendant is without fault in bringing on the difficulty presents 'a quintessential jury question' which is 'not a situation warranting immunity from prosecution.' Curry, [406 S.C. at 372,] 752 S.E.2d at 267.** Since the Defendant, claiming to have acted in defense of Wilson, is only entitled to immunity if Wilson was entitled to act in self-defense, it becomes a material question as to whether Wilson was at fault in bringing about the difficulty. As a matter of law, one is not entitled to act in defense of others if the other person provoked the encounter and therefore would not be entitled to act in self-defense. *See* State v. Jackson, [384 S.C. 29,] 681 S.E.2d 17 (S.C. Ct. App. 2009). **The evidence presented conflicting views as to Randy**

[8] The circuit court found it need not consider the remaining elements of self-defense because the first element was dispositive.

> **Wilson's involvement in the argument that led to the fatal encounter, and that presents a factual question that must be answered by a jury.**

(Emphasis added.) The circuit court's ruling was issued in early 2017 and, as noted above, it relied on a 2013 decision from this Court, *Curry*.

Subsequent decisions from this Court, however, have distinguished *Curry* on the basis the immunity motion in *Curry* was made at the directed verdict stage of trial because the parties did not have the benefit of the Court's decision in *Duncan* calling for a pretrial hearing and ruling. The Court has since clarified that a conflict in the evidence does not automatically warrant the denial of immunity. Rather, the circuit court must weigh the evidence and make its own credibility and factual findings before reaching a decision as to immunity. *See, e.g.*, *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019). In *Andrews*, the Court acknowledged that the reference to a "quintessential jury question" in *Curry* "has been the source of much confusion for the bench and bar":

> In *Curry*, we explained the accused's 'claim of self-defense presented a quintessential jury question,' which did not warrant immunity from prosecution, and therefore, we held the claim was properly submitted to the jury, with the claim of self-defense having been fully presented at that stage of trial. 406 S.C. at 372, 752 S.E.2d at 267. **This excerpt from *Curry* has been the source of much confusion for the bench and bar. We take this opportunity to emphasize that aspect of *Curry* was related to its specific and unique procedural posture at trial—a motion for directed verdict—and was not intended to allow circuit courts to automatically deny immunity in cases with conflicting evidence.**

Id. (emphasis added). In *Andrews*, we also referenced the guidance provided in another decision that distinguished *Curry*, *State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019).

In *Cervantes-Pavon*, this Court reversed the circuit court's denial of a motion for immunity and remanded for a new immunity hearing based on multiple errors of law, including the circuit court's misapplication of *Curry*. 426 S.C. at 451–52, 827

S.E.2d at 569. We noted that, in *Curry*, the testimony of the witnesses "varied substantially," as the defendant testified that he pulled a gun because he believed the victim was lunging at him, but the evidence showed the victim was shot six times in the back and the defendant had told investigators that he "blacked out" during the incident. *Id.* at 451, 827 S.E.2d at 569.

We reiterated, however, that conflicts in the evidence do not automatically result in the denial of immunity because the role of the circuit court in immunity proceedings is to sit as the fact-finder in the first instance and to weigh the evidence:

> But just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court must sit as the fact-finder at this hearing, weigh the evidence presented, and reach a conclusion under the Act. Of course, at the conclusion of any given hearing, if the circuit court determines the movant has not met his burden of proof as to immunity, the case will go to trial, and the issue of self-defense may—depending upon the evidence presented at trial—be presented to the trial jury.

Id. "Thus, the relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence." *Andrews*, 427 S.C. at 181, 830 S.E.2d at 13.

Moreover, in examining the issue of self-defense, we note that, even if a circuit court finds an individual was initially at fault in bringing on the difficulty, there are circumstances in which the right to self-defense may be restored. *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("One's right to self-defense is restored after a withdrawal from the initial difficulty with the victim if that withdrawal is communicated to the victim by word **or act**." (emphasis added)). In the current case, Petitioner has argued, *inter alia*, that even if Wilson were somehow considered the initial aggressor for disturbing Bradley's belongings, which he vigorously contests, it was undisputed that Wilson tried to retreat to his home during the altercation, but was physically prevented from doing so by Bradley, a point Petitioner asserted was confirmed by Kirk's own testimony at the hearing. As a result, Petitioner maintains that, because Wilson had communicated his withdrawal from the altercation by his actions, Wilson's ability to claim self-defense would have

been reinstated, and Petitioner would not have been precluded from asserting a claim of defense of another.

Although the circuit court summarized the evidence that was presented at the pretrial hearing and observed that the "core facts" were undisputed, it never engaged in a weighing of the evidence, and it did not make any specific credibility or factual findings as to any aspect of the testimony, including the arguments concerning Wilson's alleged withdrawal from the altercation. Instead, the circuit court appeared to conclude Petitioner failed to meet his burden of showing Wilson was not at fault in bringing on the difficulty because the evidence in this regard was conflicting and, therefore, presented a "quintessential jury question," relying on the precedent of *Curry*. Our review of the record indicates the State also focused on *Curry* at the immunity hearing and extensively asserted the evidence was conflicting and required submission of the matter to a jury. For all the foregoing reasons, we hold Petitioner correctly argues in his first point to this Court that the circuit court committed an error of law in ruling on the motion for immunity because it abdicated its role as the fact-finder by ruling a jury, not the court, must decide whether the individual Petitioner was defending was without fault in bringing on the difficulty.

We emphasize that a circuit court, as the designated fact-finder in this matter, must provide adequate findings to support its decision so an appellate court can perform its role of reviewing the ruling under an abuse of discretion standard. *See Cervantes-Pavon*, 426 S.C. at 452 n.4, 827 S.E.2d at 569 n.4 (stating "specific findings of fact and conclusions of law are critical to reviewing courts, particularly given the gravity of the circumstances these cases necessarily involve"). Further, the ruling must be based solely on the evidence presented at the pretrial hearing. *Id.* at 452–53, 827 S.E.2d at 569 ("[W]e agree with our sister state of Georgia that, 'while the trial court's pretrial immunity ruling and the jury's verdict on a claim of self-defense may apply the same statutory justification standard, the court's ruling must be based solely on the evidence presented at a pretrial hearing, while the jury's verdict must be based solely on the evidence presented at trial, which may be considerably different.'" (citation omitted)). In the current appeal, there are no specific findings by the circuit court to enable this Court to adequately undertake its appellate review.

Further, although the court of appeals cited several recent cases from this Court distinguishing *Curry* and clarifying the appropriate procedure for deciding an immunity motion, the court of appeals did not adequately apply them to Petitioner's appeal before issuing an unpublished opinion under Rule 220(b), SCACR, which

affirmed the circuit court's ruling. In contrast, in an unrelated appeal, the court of appeals was able to properly analyze the circuit court's denial of immunity, where the circuit court weighed the evidence and made findings on the salient points, and the court of appeals considered whether the evidence supported those findings. *Cf. State v. Marshall*, 428 S.C. 11, 20, 832 S.E.2d 618, 623 (Ct. App. 2019) ("In the instant case, the circuit court found numerous inconsistencies called Marshall's credibility into question and resulted in Marshall failing to establish entitlement to immunity by the preponderance of the evidence."); *id.* at 21, 832 S.E.2d at 623 ("Based upon our review of the record, we find the circuit court properly weighed the evidence presented and did not abuse its discretion in denying immunity under the Act."). As a result, we hold the court of appeals erred in upholding the circuit court's denial of Petitioner's motion for immunity.

B. Decision Regarding Immunity

Although Petitioner's second point asks the Court to hold that he is entitled to immunity based on the current record, we conclude a remand to the circuit court is necessary because the circuit court is in the best position to assess witness credibility and make the necessary findings of fact. *See generally State v. Glenn*, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019) ("The circuit court is the fact-finder in immunity hearings, and we are reluctant to infer findings of fact which do not appear in the record."); *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014) ("[T]he abuse of discretion standard of review does not allow [an appellate] court to reweigh the evidence or second-guess the trial court's assessment of witness credibility.").

In this particular case, although we find a remand to the circuit court is needed, we leave it to the circuit court's discretion to determine whether to issue a new order based on the record of the hearing it has already conducted, or whether to conduct a new immunity hearing before issuing a ruling. In either case, the circuit court shall make specific findings supporting its determination after considering all of the procedures outlined herein regarding the proper application of the Act.

IV. CONCLUSION

The decision of the court of appeals is reversed, and we remand the matter to the circuit court for further proceedings in accordance with this decision.

REVERSED AND REMANDED.

KITTREDGE, HEARN, and FEW, JJ., and Acting Justice Blake A. Hewitt, concur.

The Supreme Court of South Carolina

Re: Amendment to Rule 402(l) of the South Carolina Appellate Court Rules

Appellate Case No. 2022-001255

ORDER

Pursuant to Article V, Section 4 of the South Carolina Constitution, we amend Rule 402(l) of the South Carolina Appellate Court Rules to increase the number of members on the Committee on Character and Fitness set forth in Rule 402(l)(1) and to update the number of members that constitute a quorum for a meeting of the full Committee set forth in Rule 402(l)(4). The amendments are set forth in the attachment and are effective immediately.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
September 21, 2022

Rule 402
Admission to Practice Law

(l) Committee on Character and Fitness.

(1) Members. The Committee on Character and Fitness shall consist of eighteen (18) members of the South Carolina Bar who shall be appointed by the Supreme Court for five (5) year terms. Members of the bar who are inactive members, judicial members, military members, administrative law judge or workers' compensation commission members, retired members, or limited members shall not be appointed to the Committee. In case of a vacancy on the Committee, the Supreme Court shall appoint a member of the South Carolina Bar to serve the remainder of the unexpired term.

. . .

(4) Quorum. A quorum for a meeting of the full Committee shall be ten (10) members, and a quorum for a panel shall be three (3) members.