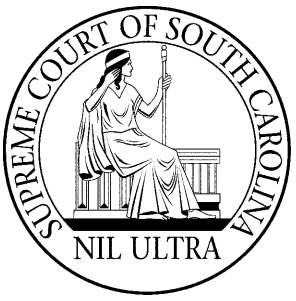

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 18
May 7, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Theodore Manning, Appellant.

Appellate Case No. 2010-176707

Appeal From Richland County
G. Thomas Cooper Jr., Circuit Court Judge

Opinion No. 5228
Heard December 10, 2013 – Filed May 7, 2014

AFFIRMED

Luke A. Shealey, of The Shealey Law Firm, LLC, and Chief Public Defender E. Fielding Pringle, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General William M. Blitch Jr., both of Columbia, for Respondent.

PIEPER, J.: This appeal arises from Theodore Manning's voluntary manslaughter conviction. On appeal, Manning argues the trial court erred by: (1) refusing to exclude a photograph of the victim; (2) refusing to suppress a search warrant; (3) refusing to hold an evidentiary hearing on whether Manning was entitled to

immunity under section 16-11-410 of the South Carolina Code (Supp. 2013), the "Protection of Persons and Property Act" (the Act); and (4) refusing to give a jury charge on the Castle Doctrine. We affirm.

FACTS

Manning was charged with the murder of Nikki McPhatter. Manning admitted to killing McPhatter in his residence on May 6, 2009; however, Manning maintained throughout trial McPhatter pulled a gun on him and tried to attack him. Prior to trial, the trial court heard Manning's motion regarding immunity under the Act. Manning requested an evidentiary hearing and argued he was entitled to immunity from prosecution under the Act. Manning attached his second statement to the police to his written motion. In the statement, Manning explained that he and McPhatter were in a heated argument about their relationship at Manning's residence. According to the statement, McPhatter wanted a serious relationship and Manning did not. Manning reported McPhatter pointed the gun at him; he took the gun from her; and then he pointed the gun at her. The statement provides McPhatter took a step towards Manning and he "pulled the trigger to show her to stop playing." Manning explained that after he shot, he thought McPhatter fainted until he realized she had no pulse. The trial court read Manning's statement and asked both parties questions about the facts of the case and whether the facts triggered immunity under the Act. In support of immunity, Manning argued even though McPhatter was an invited social guest, she "transformed" to a trespasser when she acted unlawfully. The trial court denied Manning's motion for immunity, finding the Act inapplicable to Manning's case. At the close of Manning's case, he renewed his request for an immunity hearing on the basis he was "not given the opportunity to argue the Castle Doctrine."

At trial, Manning testified that on May 6, 2009, McPhatter drove from Charlotte to visit him in Columbia. According to Manning, McPhatter began walking around the house, and when Manning found McPhatter in his daughter's room, they started to argue about their relationship. Manning testified he left his daughter's room to get a shirt, and when he returned, McPhatter was standing in the doorway with her hands behind her back. Manning stated he and McPhatter continued to argue and McPhatter "pulled a gun out from behind her back and pointed it at me." Manning testified he was scared for his life and McPhatter "just pointed the gun at me. I could see the gun . . . going up and down." According to Manning, he grabbed the gun and wrestled it away from McPhatter. Manning explained he pointed the gun

at McPhatter, told her to leave, and "screamed at her to get out." Manning testified that when he pulled the trigger, McPhatter was coming towards him and he thought she was reaching for the gun. After he shot the gun, Manning explained he did not see any blood or where the bullet went. Manning realized McPhatter had no pulse when he tried to wake her up. Kelly Fite testified after Manning as an expert in crime scene reconstruction, firearms, and ballistics and corroborated Manning's testimony.

At the jury instruction conference, Manning requested a Castle Doctrine charge. Manning also submitted written jury instructions requesting a defense of habitation charge. The trial court charged the jury with murder, voluntary manslaughter, self-defense, and the common law Castle Doctrine. The jury found Manning guilty of voluntary manslaughter. Manning was sentenced to thirty years' imprisonment. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "This Court is bound by the trial court's factual findings unless they are clearly erroneous." *Id*.

LAW/ANALYSIS

Manning argues the trial court committed reversible error by refusing to hold an evidentiary hearing on whether he was entitled to immunity under the Act. We find no reversible error.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (internal quotation marks and citation omitted). This court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (internal quotation marks and citation omitted).

"It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to

include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A) (Supp. 2013). "[I]t is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others." S.C. Code Ann. § 16-11-420(B) (Supp. 2013). The immunity provision of the Act provides: "A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force . . . ." S.C. Code Ann. § 16-11-450(A) (Supp. 2013).

The Act further provides the following:

> (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.
>
> (B) The presumption provided in subsection (A) does not apply if the person:
>
> (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder . . .
>
> . . . .

> (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.

S.C. Code Ann. § 16-11-440(A) to (C) (Supp. 2013). The legislature's use of the words "immune from criminal prosecution" evidences an intent "to create a true immunity, and not simply an affirmative defense." *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). The legislature "intended defendants be shielded from trial if they use deadly force as outlined under the Act." *Id*. "Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial." *Id*. "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).

In *Duncan*, our supreme court reviewed the immunity provision of the Act. 392 S.C. at 408-11, 709 S.E.2d at 663-65. In deciding whether the trial court properly found Duncan was immune, our supreme court found evidence in the record supported the trial court's finding Duncan was entitled to immunity. *Id*. at 411, 709 S.E.2d at 665. Specifically, the *Duncan* court noted testimony and statements showed a third party was between the victim and Duncan trying to remove the victim from the dwelling, but the victim continued to force his way onto the porch. *Id*. Based on this evidence, our supreme court found Duncan "showed by a preponderance of the evidence that the victim was in the process of unlawfully and forcefully entering [Duncan's] home in accordance with [the Act]." *Id*. Thus, our supreme court determined the trial court properly found Duncan was entitled to immunity under the Act. *Id*.

In *Curry*, our supreme court again reviewed whether the Act entitled a defendant to immunity. 406 S.C. at 370-72, 752 S.E.2d at 265-67. Curry and the victim were

socializing at Curry's mother's house when an argument and fight ensued. *Id*. at 369, 752 S.E.2d at 265. Curry shot the victim upon the belief that the victim was lunging towards him. *Id.* At the close of the State's case, Curry moved for a directed verdict pursuant to the Act. *Id.* The trial court denied Curry's motion, finding he failed to establish entitlement to immunity under the Act. *Id.* Our supreme court found evidence supported the trial court's denial of immunity.[1] *Id*. at 370, 752 S.E.2d at 266. Relying on subsection 16-11-440(B), the *Curry* court determined Curry failed to establish he was entitled to immunity pursuant to subsection 16-11-440(A) because the victim was a social guest and rightfully in the apartment. *Id*. Regarding whether Curry established by a preponderance of the evidence he was immune pursuant to subsection 16-11-440(C), our supreme court affirmed the trial court's denial of immunity. *Id*. at 371, 752 S.E.2d at 266-67. Specifically, the court found Curry's "claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution." *Id.* at 372, 752 S.E.2d at 267.

We agree with Manning the trial court erred by refusing to hold an evidentiary hearing. As noted by *Duncan*, "the Act does not explicitly provide a procedure for determining immunity." 392 S.C. at 409, 709 S.E.2d at 664. Nonetheless, the trial court in *Duncan* provided Duncan with a pretrial hearing in which Duncan and the State were provided the opportunity to submit evidence. *Id*. at 406, 709 S.E.2d at 663. Similarly, the trial court in *State v. Isaac* provided Isaac with a full hearing, in which Isaac testified, before deciding the Act did not apply. 405 S.C. 177, 181, 747 S.E.2d 677, 679 (2013). Further, *Curry* cites *Duncan* for the proposition a claim of immunity "requires a pretrial determination using the preponderance of the evidence standard." 406 S.C. at 370, 752 S.E.2d at 266. By holding the trial court must determine immunity by the "preponderance of the evidence," we find a defendant is entitled to an evidentiary hearing to present evidence, not mere

[1] Even though Curry requested an immunity determination at the close of the State's case, rather than prior to trial, our supreme court found "because [Curry] and the trial court did not have the benefit of *Duncan*, we elect to treat the matter as preserved through the directed verdict motion." *Curry*, 406 S.C. at 371 n.3, 752 S.E.2d at 266 n.3.

arguments, in support of immunity.[2] Even though the trial court provided Manning a hearing to present oral arguments in support of immunity, the trial court erred by refusing to provide Manning an evidentiary hearing.

Next, we must determine whether we should remand this case for the trial court's refusal to conduct an evidentiary hearing or whether we can determine as a matter of law the record establishes the court's refusal to hold an evidentiary hearing did not prejudice Manning. Manning argues he is entitled to immunity under subsections 16-11-440(A) and (C) because even though McPhatter was a social guest, she was "transformed" to a trespasser when she acted unlawfully and refused to leave at Manning's request. Manning contends that had he been provided an evidentiary hearing, he would have submitted his trial testimony and the testimony of Kelly Fite, a firearms and ballistics expert. Thus, we have before us the evidence Manning would have presented at an evidentiary hearing. Manning argues his trial testimony was more specific than the statement the trial court reviewed, and he draws attention to his testimony that he yelled at McPhatter to "get out." Manning also argues Fite's testimony corroborates Manning's version of events. After a thorough review of Manning and Fite's testimonies at trial, and for the reasons set forth below, we find that had Manning been able to present the recited evidence in support of immunity, he would not have established immunity as a matter of law under either subsection 16-11-440(A) or (C).

Subsection 16-11-440(A) narrowly limits using force against a person who either (1) unlawfully and forcibly *entered* a residence, (2) is unlawfully and forcibly *entering* a residence, or (3) is attempting to remove a person against his will from the residence. § 16-11-440(A)(1). A plain reading of the statute establishes that by using the words "entered" and "entering," the legislature intended for an unlawful and forcible entry to be a requirement of subsection 16-11-440(A), unless a person is being forcibly removed against his will from his dwelling, residence, or occupied vehicle. Even though Manning testified he yelled at McPhatter to "get out" and McPhatter acted unlawfully, these facts do not concern whether McPhatter had unlawfully and forcibly entered or was in the process of unlawfully and forcibly entering Manning's residence. We find absent evidence McPhatter unlawfully and forcibly entered Manning's residence or McPhatter was attempting

[2] We recognize the trial was held before our supreme court's decisions in *Duncan*, *Curry*, and *Isaac*, and thus the parties and the trial court had little guidance in arguing and deciding issues related to the Act.

to remove Manning from his residence, Manning's argument that McPhatter's status was "transformed" from a social guest to a trespasser is without merit for purposes of determining *immunity* under subsection 16-11-440(A). Rather than being a trespasser, McPhatter, like the victim in *Curry*, was a social guest; therefore, subsection 16-11-440(A) is inapplicable. *See* § 16-11-440(B); *Curry*, 406 S.C. at 369-70, 752 S.E.2d at 265-66 (finding the victim, whom Curry invited to his mother's apartment, was a social guest; thus, despite Curry's allegation the victim lunged towards him while Curry was in the possession of a gun, he was not entitled to the presumption of subsection 16-11-440(A)). For the foregoing reasons, even if Manning had the benefit of an evidentiary hearing, he would not have been able to establish immunity under subsection 16-11-440(A).

Further, we also disagree with Manning's argument he is entitled to immunity pursuant to subsection 16-11-440(C) because McPhatter's status "transformed" from a social guest to a trespasser. Subsection 16-11-440(C) provides immunity for a person who is "attacked in *another* place where he has a right to be." § 16-11-440(C) (emphasis added). Based upon a plain reading of the statute, we find the language "in another place" refers to a place other than one's dwelling, residence, or occupied vehicle, as subsection 16-11-440(A) governs unlawful acts in one's dwelling, residence, or occupied vehicle. *See* § 16-11-440(A)(1). Thus, subsection 16-11-440(C) allows a person to stand his ground against attacks that occur at a location other than one's dwelling, residence, or occupied vehicle. Even though the record contains evidence McPhatter attacked Manning, because Manning shot McPhatter in his residence, not "in another place," subsection 16-11-440(C) is inapplicable to Manning's case. Accordingly, even if Manning had the benefit of an evidentiary hearing, he would not be able to establish immunity under subsection 16-11-440(C).

Having failed to present evidence or arguments at trial or on appeal that the trial court *could* have found immunity pursuant to the Act, we find no reversible error in either the trial court's refusal to hold an evidentiary hearing or its ultimate legal conclusion the Act is inapplicable to Manning's case. *See State v. Preslar*, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005) ("In order for an error to warrant reversal, the error must result in prejudice to the appellant."); *State v. Reeves*, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990) ("Whether an error is harmless depends on the particular circumstances of the case. No definite rule of law governs this finding; rather the materiality and prejudicial character of the

error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.").

Finally, Manning argues the trial court erred by refusing to give a Castle Doctrine jury charge, contending the trial court should have charged subsection 16-11-440(A) of the Act.

"The evidence presented at trial determines the law to be charged, and a trial court commits reversible error in failing to give a requested charge on an issue raised by the evidence." *State v. Gibson*, 390 S.C. 347, 355-56, 701 S.E.2d 766, 770 (Ct. App. 2010). "When reviewing a jury charge for alleged error, the charge must be considered as a whole in light of the evidence and issues presented at trial." *State v. Huckabee*, 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) (internal quotation marks and citation omitted). Absent an abuse of discretion, this court will not reverse a trial court's decision regarding a jury charge. *Id*. at 479, 697 S.E.2d at 584.

The common law Castle Doctrine provides: "'[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense.'" *Curry*, 406 S.C. at 372, 752 S.E.2d at 267 (emphasis omitted) (quoting *State v. Gordon*, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924)). Further, the defense of habitation, which is separate from the common law Castle Doctrine, provides:

> For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger [of] sustaining serious injury or damage. Instead, the defense of habitation provides that [when] one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser.

State v. Rye, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007) (citation omitted).

In *Curry*, the trial court charged the jury with subsection 16-11-440(C) of the Act. 406 S.C. at 372-73, 752 S.E.2d at 267. On appeal, Curry argued the trial court erred by charging the jury on the provisions of the Act and self-defense. *Id*. Our supreme court held that because the trial court denied Curry immunity under the Act, the Act should have not been charged. *Id*. at 373, 752 S.E.2d at 267. The court also determined Curry did not meet the requirements of the common law Castle Doctrine. *Id*. at 373-74, 752 S.E.2d at 267-68. Concerning the use of the Act in jury instructions, Justice Pleicones' partial concurrence in *Curry* is instructive:

> I agree with the majority that [the Act] creates a statutory immunity but leaves intact the common law defenses of habitation, of others, and of self-defense. While a criminal defendant is entitled to have the issue of statutory immunity decided prior to trial by a judge, once the case goes to trial a defendant's right to a jury charge on these defenses is determined under common law principles.

Id. at 375, 752 S.E.2d at 268 (Pleicones, J., concurring in part and dissenting in part). Based upon *Curry*, the trial court did not err by refusing to charge the provisions of the Act cited in Manning's appellate brief. Furthermore, we note that based upon the evidence in the record that Manning was attacked in his home by no fault of his own, Manning was entitled to a common law Castle Doctrine charge, and the trial court properly charged the doctrine.

Regarding the defense of habitation, Manning does not assert in his issues on appeal the trial court also erred by refusing to charge the common law defense of habitation, which is a separate doctrine from the Castle Doctrine. Rather, Manning's sole issue on appeal concerning jury instructions is whether "[t]he trial court erred in failing to give a Castle Doctrine jury charge." Accordingly, we decline to address whether the trial court erred by refusing to charge the common law defense of habitation. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *Johnson v. Lloyd*, Op. No. 27383 (S.C. Sup. Ct. filed Apr. 23, 2014) (Shearouse Adv. Sh. No. 16 at 22) (finding the Court of Appeals erred by addressing the

merits of an issue that was not preserved for review). For the foregoing reasons, we find the trial court did not abuse its discretion in charging the jury.[3]

CONCLUSION

Because we find the trial court's refusal to provide Manning a full evidentiary hearing was harmless error, and because the trial court did not abuse its discretion in charging the jury, the decision of the trial court is hereby

AFFIRMED.

FEW, C.J., and KONDUROS, J., concur.

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[3] Regarding Manning's remaining issues on appeal, we affirm pursuant to Rule 220(b), SCACR. As to whether the trial court abused its discretion by refusing to exclude a photograph of McPhatter's skeletal remains: *State v. Moses*, 390 S.C. 502, 511, 702 S.E.2d 395, 399 (Ct. App. 2010) ("[R]ulings on the admission of evidence are within the trial court's discretion and will not be reversed absent an abuse of discretion."). As to whether the trial court erred by refusing to suppress the search warrant: *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (providing that in South Carolina, "[w]hen reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling"); *State v. Sullivan*, 267 S.C. 610, 614-15, 230 S.E.2d 621, 623-624 (1976) (explaining that "it is not unusual for an affidavit of a law enforcement officer to contain hearsay information" gathered by another officer, and that the magistrate is called to evaluate the information in the affidavit to determine whether the affiant gained it in a reliable way); *State v. Dunbar*, 361 S.C. 240, 246, 603 S.E.2d 615, 618 (Ct. App. 2004) ("The magistrate's task in determining whether to issue a search warrant is to make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in the particular place to be searched." (quotation marks omitted)); *id*. at 246, 603 S.E.2d at 618-19 (noting this court should give great deference to the magistrate's determination of probable cause).