

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO. 2024-CP-26-03798
)	
JENNIFER SPIVEY FOLEY, as)	
Personal Representative of the Estate)	
of SCOTT RYAN SPIVEY,)	
)	DEFENDANT'S BRIEF
Plaintiff,)	IN SUPPORT OF IMMUNITY
)	UNDER THE PROTECTION OF PERSON AND
vs.)	PROPERTY ACT § 16-11-410
)	
CHARLES WELDON BOYD and)	
KENNETH WILLIAMS,)	
)	
Defendants.)	
_____)	

EXECUTIVE SUMMARY

This brief is submitted on behalf of Defendant Kenneth Williams and seeks a pretrial determination that he is immune from this civil action under South Carolina’s Protection of Persons and Property Act (“The Act”), S.C. Code Ann. § 16-11-440. The undisputed and corroborated record establishes the following: The decedent, Scott Ryan Spivey, was intoxicated and driving aggressively on S.C. Highway 9, during which time he repeatedly brandished a black semi-automatic pistol at other motorists, including Defendant Bradley Williams. Mr. Spivey then turned onto Camp Swamp Road, exited his vehicle, brandished the weapon again, and began firing toward the vehicle in which Bradley Williams was a passenger. Throughout this encounter, Bradley Williams remained a passenger in the occupied vehicle, which was being driven by co-defendant Weldon Boyd. The Defendants, who had already called 911, returned fire only to stop an imminent deadly threat.

Under South Carolina law, a defendant is entitled to immunity upon demonstrating by a preponderance of the evidence that he acted in lawful self-defense. The law imposes no duty to retreat upon a person who is not engaged in unlawful activity and is in a place where he has a right to be. Moreover, an occupied vehicle constitutes a protected location under the statute. The evidence satisfies each element of self-defense under the Act and, accordingly, the court should grant immunity and dismiss this action.

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. Providing 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 applicable provision of law. S.C. Code Ann. § 16-11-450(A) (2015). The courts have acknowledged that “another applicable provision of law includes the common law of self-defense,” also known as the Castle Doctrine. *State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019) (citing *State v. Scott* 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018)).

The courts have held that, when seeking immunity, the Petitioner must show four things, as outlined in *State v. Glenn*. “**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.” *State v. Glenn*, *Id.* At 116, 495. **Fourth**, the defendant had no other probable means of avoiding the danger other than to act as he did.” *Id.* If the defendant has failed to satisfy the second or fourth elements, “the court should then determine whether section 16-11-440(A) or (C) [of the Act] is applicable.” *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496.

Section 16-11-440 (A) creates a presumption of reasonable fear that the accused is entitled to, which states in part that, “[a] person is **presumed to have reasonable fear** of imminent peril of death or great bodily injury to himself” ... “when using deadly force that is intended to or likely to cause harm or great bodily injury if that person:

(A)(2) “who uses deadly force **knows or has reason to believe that an unlawful and forcible entry or an unlawful and forcible act is occurring or has occurred.**” (S.C. Code Ann. § 16-11-440(A)(2) (2015)).

Section 16-11-440(C) effectively eliminates the duty to retreat for a person who is lawfully present somewhere and is attacked. Specifically, it provides that a person who is not engaged in unlawful activity and who is attacked in a place he has a right to be has no duty to retreat and may stand his ground and meet force with force. (S.C. Code Ann. § 16-11-440(C) (2015)).

SECTION 16-11-440 (C) & THE DUTY TO RETREAT

The Supreme Court observed that “[t]he Act codified the common law Castle Doctrine and extended its reach.” *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, ‘one 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 (quoting *State v. Jones*, 416 S.C. at 291, 786 S.E.2d at 136).

In codifying the Castle Doctrine, the General Assembly enacted section 16-11-440(C) to dispense with the duty to retreat and extend the Castle Doctrine’s protection to “other places where he has a right to be,” including an occupied vehicle. *Scott*, 424 S.C. at 475, 819 S.E.2d at 121. Accordingly, where the defendant has not established the duty-to-retreat element of self-defense by a preponderance of the evidence, the court should consider whether section 16-11-440(C) is applicable. The section provides:

“A person who is not engaged in 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.”

Section 16-11-440(C) replaces the duty-to-retreat element required to establish self-defense. *State v. Curry*, 406 S.C. at 371, 752 S.E. 2d at 266 (2013). If the defendant fails to establish the fourth element, the court must look to determine whether the defendant was lawfully present in a place where he had a right to be at the time of the incident. If so, the statute excuses the defendant’s failure to retreat, thereby satisfying that element of the self-defense analysis.

TRIAL COURTS ROLE

Our appellate courts' interpretation of the act and its implementation since its adoption have identified and set forth the trial court's role in an immunity hearing as follows:

1. Conduct a pretrial immunity hearing (*State v. Douglas* 411 S.C. 307 Court of Appeals (2014));
2. Consider the law of self-defense under the Act as it applies to the facts of the case (*State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (S.C. 2022) (filed Sept. 21, 2022)).

3. Consider and weigh the evidence, act as a **fact finder**, and make a **specific finding as to whether the petitioner is entitled to immunity. The Court should not abdicate this role to the jury because there is conflicting evidence.** (*State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (S.C. 2019) (filed Mar. 27, 2019; rehearing denied May 30, 2019).
4. **Preponderance of the Evidence** standard to be applied (*State v. Douglas* 411 S.C. 307, 768 S.E.2d 232 (S.C. Ct. App. 2014)

FACTS

On September 9th, 2023, Defendants Weldon Boyd and Bradley Williams were travelling from North Myrtle Beach to a location near Loris, South Carolina, for a family gathering. They were traveling in Boyd's white Dodge truck, towing a trailer loaded with furniture. Boyd was driving, with Williams seated in the front passenger seat. Around 5:35 p.m., the Defendants exited Tractor Supply Company in Little River after loading the trailer and turned onto S.C. Highway 9, heading towards Loris. Unbeknownst to the Defendants, Scott Spivey was also traveling on Highway 9 toward Loris, driving a black Chevrolet truck. Spivey had just left Boardwalk Billy's, a local bar and restaurant, after spending approximately five hours consuming food and numerous alcoholic beverages. It was later determined Spivey's blood alcohol level was a .13 at the time.

As Spivey was driving down Highway 9 in the direction of Boyd and Williams, for reasons known only to himself, he began waving a black semi-automatic pistol out of his window, repeatedly pointing it at other motorists. This was reported by multiple witnesses, who, alarmed by his erratic and dangerous behavior, called 911 to report Spivey's aggressive driving and the repeated pointing of a firearm.

Motorist Blaize Ward called 911 to report that Mr. Spivey was driving a black Chevrolet truck, and was driving recklessly while pointing a firearm, telling dispatchers that "[I]'m on Highway 9 about to come up on Minute Man and Little Caesars right here in Longs. There is a guy who is waving a gun in front of me, trying to shoot at my car and the other one beside us. He's all over the road." [Defendant's Exhibit 1].

Similarly, motorists Terry and Monica Wright also reported to Investigators that while driving on Highway 9, a black Chevrolet truck passed them, driving erratically, aggressively weaving in and out of traffic, and waving a gun out of the window.

As Spivey approached Boyd and Williams on Highway 9, as he had done with other motorists, Spivey leveled his pistol at Boyd's truck. It was at that point that Williams exclaimed to Boyd that the man driving beside them in the outside lane was acting crazy and pointing a gun at his head. When Boyd looked, he witnessed Mr. Spivey in a black truck pointing a semi-automatic pistol directly at Williams.

Upon seeing this, Boyd took evasive action as Mr. Spivey continued to harass Boyd and Williams on the roadway. Spivey engaged in lane blocking and obstructed Boyd's repeated attempts to disengage and avoid Spivey. At one point, Spivey positioned himself to brake check Boyd and Williams, forcing them off the road into the median at highway speed.

Blaize Ward reported this as she recounted in real time to 911 dispatchers that "I don't know if he's under the influence of anything because he's all over the road. He's, he just made one guy run off the road completely." [Defendant's Exhibit 1].

Terry Wright similarly told investigators that the "black truck [was] always being aggressive, even ran [the] white truck and trailer into [the] grass median." While witnessing the "hand of [the] driver of [the] black truck out [of the] window, pointing [a] gun at [the] white truck." [Defendant's Exhibit 49].

Fearing not only for his and William's safety, but the safety of other motorists, Boyd urgently dialed 911 to report that Spivey had run their vehicle off the road and was aggressively threatening them and others with a gun. Boyd informed the dispatcher that Spivey was repeatedly waving a pistol out of the window, and he continued to follow Spivey's vehicle to provide constant location updates and directions of travel to better aid law enforcement in locating Spivey. Boyd implored the dispatcher for immediate police assistance, specifically warning the dispatcher that Spivey was armed and posed a danger. At no point during the entire event did Scott Spivey ever call 911. At no point did the 911 dispatcher instruct Boyd to pull over, turn around, or terminate his surveillance of Spivey.

As Spivey turned down Camp Swamp Road, Boyd and Williams remained on the phone with 911. They observed Mr. Spivey had abruptly stopped his vehicle in the middle of the road. Having exited his vehicle, he was brandishing a firearm. Faced with the imminent threat of death or great bodily injury, Boyd attempts to place his truck in reverse before Mr. Spivey aimed and fired his pistol, forcing both Boyd and Williams to return fire in self-defense, and continuing until the threat was mitigated.

Witness Frank McMurrrough, who was passing the scene as the shots were fired, reported to investigators that the black truck [Spivey's truck] was stopped in the roadway when a man in a blue shirt (Spivey) jumped out of the driver's side holding a black pistol and yelling. Mr. McMurrrough further recounted that he observed the driver of the black truck (Spivey) begin to raise his pistol to an upward position before hearing shots fired as he passed. Unable to see who fired first, Mr. McMurrrough shoved his wife down in the passenger seat to protect her as he drove by.

Mr. Spivey was not known to Boyd or Williams and had not communicated or interacted with Boyd or Williams at any point in time prior to the incident that led to his demise.

Petitioner believes the evidence to be presented will show:

1. Spivey initiated the confrontation and brought about the difficulty.
2. Spivey drove erratically and dangerously, running Boyd and Williams off the road.
3. Spivey introduced a firearm, pointing it at multiple motorists, including Boyd and Williams.
4. Scott Spivey had a BAC of .13.
5. Williams and Boyd photographed Spivey brandishing his weapon from his vehicle.
6. Boyd called 911 requesting police assistance.
7. Boyd followed Spivey to assist law enforcement in locating him.
8. Spivey posed an active danger to motorists.
9. Spivey never called 911 or sought assistance of any kind.
10. Spivey abruptly stopped in the roadway, exited his vehicle, and drew his pistol.
11. Spivey pointed his pistol at Boyd's truck and fired at Boyd and Williams while they remained in their vehicle.
12. Boyd attempted to retreat - though he had no duty to do so - but was unable before Spivey opened fire.
13. Boyd and Williams returned fire, killing Spivey.
14. Spivey fired at least nine (9) rounds before he was deceased, and continued to fire from inside his vehicle.

ANALYSIS

The petitioners assert that they were:

1. Without fault in bringing on the difficulty;
2. In a place they had a right to be;
3. Not engaged in unlawful activity;
4. In fear of death or serious bodily injury at the hands of Scott Spivey; and,
5. Reasonable in that fear.

Consistent with the principles established in *State v. Glenn*, which require a defendant to demonstrate they were without fault in bringing on the difficulty, the evidence establishes that neither Williams nor Boyd provoked the confrontation with Spivey. Boyd and Williams had no prior acquaintance or association with Spivey before that day. Rather, it was the deceased, Mr. Spivey, who initiated the perilous chain of

events on Highway 9, deliberately targeting Boyd and Williams. While conspicuously brandishing his firearm, Spivey's conduct escalated rapidly – from reckless driving, brake-checking, and lane blocking to pointing the pistol directly at Bradley Williams' head and ultimately forcing Boyd and Williams off the road at high speed. His actions placed the lives of everyone involved, as well as other motorists on the roadway, in imminent peril. Boyd and Williams did not seek out Mr. Spivey that day; he found them.

Further, the defendants must establish a credible belief that they faced an imminent threat of serious bodily injury or death. In this case, the chain of events, aggressively instigated by Spivey, culminated dramatically when he turned onto Camp Swamp Road, stopped his vehicle, and exited armed with a semi-automatic pistol. With Boyd and Williams still on the phone with emergency dispatchers, Spivey again brandished the weapon in a menacing fashion, aimed it at them, and fired, as Boyd was desperately trying to place his vehicle in reverse to avoid the danger. This final act, following Spivey's previous treacherous and aggressive behavior, left Boyd and Williams with no choice but to perceive and genuinely fear an imminent threat to their lives and physical safety.

Under S.C. Code Ann. § 16-11-440(A)(2), a person attacked while in an **occupied vehicle** may invoke the presumption of reasonable fear if the person who uses deadly force “knows or has reason to believe that an unlawful and forcible entry or an unlawful and forcible act is occurring or has occurred.” The statute explicitly extends the common law Castle Doctrine to include occupied vehicles, recognizing them as protected spaces akin to dwellings, residences, or places of business. This codification reflects the legislative intent to safeguard individuals in their vehicles from attacks without requiring them to retreat. S.C Code 1976 § 16-11-420 (A)(2).

Finally, the defendant must demonstrate that a reasonably prudent person, confronted with similar circumstances, would have held a similar belief of imminent danger. Given Spivey's consistently aggressive and threatening behavior, culminating in being faced for a second time with Spivey pointing a pistol directly at them, a reasonable individual would unquestionably perceive their life or physical safety to be in grave jeopardy, thereby necessitating action in self-defense.

In *State v. Dickey*, “the court held that the defendant's belief of imminent danger was reasonable due to the victim's aggressive behavior and the appearance that the victim was reaching for a weapon, even though the defendant did not see a weapon.” *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 244 (S.C. 2011) (decided Sept. 26, 2011; rehearing denied Oct. 18, 2011). In *Dickey*, the defendant did not witness the victim produce a weapon; however, the court ruled that this was irrelevant, as the mere act of the victim reaching was enough to justify the defendant's reasonable fear. So long as a defendant's fear is deemed reasonable, they are entitled to act in self-defense without retreating and without waiting for the threat

to materialize fully. The law does not require a defendant to gamble with their life by delaying until the moment a weapon is actually discharged.

Indeed, requiring such certainty would render the right of self-defense illusory. As the Court in *Dickey* recognized, the law permits individuals to “act on appearances,” even if the belief is ultimately mistaken. *Id.* At 501. The facts of this case present an even stronger justification than those in *Dickey*. There, the defendant merely perceived that the deceased appeared to be reaching for a weapon. This case stands on even firmer ground. Scott Spivey had a weapon, brandished it, and fired it. Yet even had Scott Spivey never pulled the trigger, the law would not have required Boyd or Williams to wait until he did before they were entitled to act in self-defense.

Moreover, the totality of the circumstances must be considered from the perspective of a reasonable person standing in the Defendant’s shoes at that moment – not with the benefit of hindsight. In *State v. Scott*, the court held that the defendant’s belief of being attacked with deadly force was reasonable based on the circumstances, even though in that case the victim was not explicitly armed. *State v. Scott* 424 S.C. 463 (2018). In looking at the totality of the circumstances in this case, the Court must consider Scott Spivey’s prior conduct, his possession of a weapon, pointing that weapon at Williams and other motorists, his aggression, reckless and dangerous driving, his intoxication, and any other actions or movements suggesting an intent to escalate to deadly force. When these factors combine, they create a reasonable belief of imminent deadly harm, and the defendants were justified, under the law, in responding with deadly force when threatened at gunpoint.

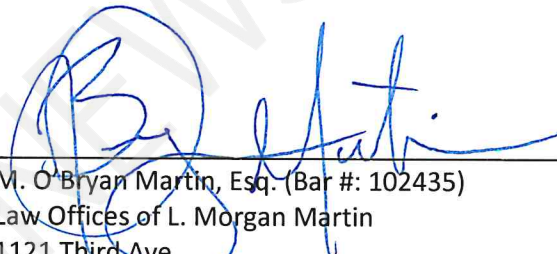
Bradley Williams was a passenger in Boyd’s vehicle and was not in control of it at any point. When Spivey exited his vehicle with his pistol drawn, Williams instructed Boyd to reverse the vehicle. Boyd attempted to do so but was unable before Spivey opened fire. However, even if Boyd had not attempted to retreat, he was under no legal duty to do so. Under S.C. Code § 16-11-440(C), a person who is not engaged in an unlawful activity and is in a place where he has a right to be 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. Both Boyd and Williams were lawfully present on a public roadway, were not engaged in any unlawful activity, and were confronted by an armed, intoxicated aggressor who fired upon them. The statutory protection of § 16-11-440(C) applies squarely to their circumstances.

CONCLUSION

Spivey was operating his vehicle under the influence of alcohol and committing multiple criminal offenses, including reckless driving, pointing and presenting a firearm, and assault and battery. His aggressive actions culminated in running Boyd and Williams off the road, twice pointing a pistol directly at them, and ultimately opening fire. It was this pattern of escalating aggression by Spivey that directly led to his demise. The defendant was without fault in bringing on the difficulty, was in a place where he had a right to be, and was not engaged in unlawful activity. Given the totality of the circumstances, he reasonably believed that the use of deadly force was necessary to prevent death or great bodily injury to himself and others. A preponderance of the evidence, therefore, supports a finding of immunity in this case. Petitioners are entitled to immunity from civil and criminal prosecution.

Respectfully submitting,

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