State of South Carolina

THE COURT OF GENERAL SESSIONS
Fifteenth Judicial Circuit

County of Horry

The State,

v.

Anijah Yarnell,
Petitioner

2021-GS-26-02687
and
2021-GS-26-02688

ORDER
GRANTING MOTION FOR
IMMUNITY

This is a Stand Your Ground (SYG) matter.

Anijah Yarnell (Petitioner) is charged with Murder and Possession of a Weapon During the Commission of a Violent Crime. He maintains he acted in self-defense. He filed the present motion seeking immunity from prosecution of the charges pursuant to the South Carolina Protection of Person and Property Act, "the Act" (S.C. Code Section 16-11-410, et seq.). This Act is commonly referred as the "Stand Your Ground" law (SYG).[1]

[1] The South Carolina General Assembly provided through the Act that a person is immune from criminal prosecution and civil action for the use of deadly force in circumstances that are permitted by the Act. S.C. Code Section 16-11-450(A). The Act codified the common law Castle Doctrine and extended its reach. State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019). 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 the defense. Id.

As directed by the General Assembly through the Act, the Castle Doctrine and the right to stand your ground is extended beyond a person's home to include "an occupied vehicle". (S.C. Code Section 16-11-420(A), (B), (D), and (E). *Also see* 16-11-420(C) where the General Assembly directed that the right to stand your ground is extended beyond a person's home or occupied vehicle even further to any place a person has the "right to be."

Thus, the General Assembly expanded the Castle doctrine, and the ability to seek immunity from prosecution, not only to occupied vehicles (sometimes referred to as a "mobile" Castle doctrine, but also to any place a person has a "right to be."

The South Carolina Supreme Court requires that a pretrial evidentiary hearing be conducted to determine whether immunity from criminal prosecution under to the Act exists. State v. Duncan, 392 S.C.404, at 665, 709 S.E.2d 662 (2011). The Supreme Court explained the Act did not simply create a new affirmative defense to defeat a prosecution from being successful during a trial, but rather the General Assembly expressly provided for immunity to prevent a prosecution from occurring. Id.

The pretrial hearing is required to be conducted before a circuit judge. Id. The Supreme Court also mandated that at such a pretrial hearing, the circuit court must utilize a "preponderance of the evidence" (the greater weight of the evidence) standard of proof when considering whether a defendant is entitled to immunity under the Act. Id., 411. The person seeking immunity under the Act bears the burden of proof.

The Supreme Court further instructed the circuit court that when determining if the Act's immunity applies to a particular case, the defendant must show, by a preponderance of the evidence, that he has a valid claim of self-defense. Therefore, all of the elements of self-defense must be considered, except the duty to retreat. State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013).

In State v. McCarty, 437 S.C. 355, 878 S.E.2d 902 (2022), the Supreme Court reiterated the elements of self-defense as:

> 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.[2] 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.[3]

Again, the Supreme Court has repeatedly stated that "[i]t is the fourth element – the duty to retreat—that is excused under the Act and the Castle Doctrine." Id. As previously noted, in determining whether a person's belief or fear of imminent danger is objectively reasonable, the individual has the right to act on appearance, even if that belief is ultimately mistaken. Scott, 424 S.C. at 328.

In the present case, Petitioner claims immunity pursuant to S.C. Code Section 16-11-410(A) (1) and (2). Subsection (A) provides, in part, that:

> A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself...when using deadly force...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 ...occupied vehicle, or if he...is attempting to remove another person against his will from the ...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.

In the present case, the State contends subsection (B) applies which states, in part, that the presumption provided in subsection (A) does not apply if the person:

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[2] The Supreme Court noted that the reference to a reasonable belief of imminent danger echoes language in the Act and 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). The belief must be objectively reasonable. Douglas, 411 S.C. at 328, 768 S.E.2d at 244. This Court finds that Petitioner met his burden of proof that he had an objectively reasonable belief of imminent danger of serious bodily harm or death.

[3] Curry, 406 S.C. at 371, 752 S.E.2d at 266, *quoting* State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

(1) Against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, resident or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

...

(3) Who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity.[4]

The State contends subsection (B) disqualifies Petitioner from immunity because he was using his occupied vehicle to further an unlawful activity or he was engaged in an unlawful activity. The State also contends he cannot satisfy the provision of subsection (C).[5] Subsection (C) involves situations where deadly force has been used that does not include a dwelling, resident or occupied vehicle, but rather is a place where the person who used deadly force claims he has the "right to be." Recently, the Supreme Court instructed the circuit court to perform a proximate cause analysis when considering the requirements in subsection (C) of 16-11-440 that the person attacked (here Petitioner) must be someone who was not engaged in an unlawful activity and was in a place where he had a right to be. State v. McCarty, 437 S.C. 555, 878 S.E.2d 902 (2022), citing State v. Glenn, 429 S.C. 108, 124, 838 S.E.2d 491, 499 (2019)[6]

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[4] This Court also notes subsection (D) of 16-11-440 which provides, in part, that:

> A person who unlawfully and by force enters or attempts to enter a person's...occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

Subsection (D) is not inconsistent with the instruction from State v. Scott, that an individual has the right to act on appearance, even if that belief is ultimately mistaken. 424 S.C. 463, 472, 819 S.E.2d 116, 120 (2018).

[5] *See* State's, Reply to Petitioner Brief on Motion For Immunity under Protection of Person and Property Act 16-11-440.

[6] The Supreme Court now requires circuit courts during the pretrial hearings to conduct a proximate cause analysis before determining whether a person seeking immunity under the Act satisfies subsection (C) of 16-11-440, if applicable." The Supreme Court noted that the circuit court in McCarty properly applied a proximate cause analysis to examine whether Glenn (the shooter claiming immunity) was engaged in unlawful activity at the time of the incident. In its oral ruling, the circuit 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." Id.

The Court also 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 the Court opined that it did not believe was the intent of the Legislature." Id. at 119-20, 838 S.E.2d at 497. Further, the Court found "a proximate cause analysis must also be applied to the unlawful activity element of subsection (C). Id. As noted below, the proximate cause analysis articulated in McCarty for subsection (C) cases, has not been extended to subsections (A) and (B),[7] and

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[7] As the Supreme Court noted in State v. McCarty, the Court has revisited the Act numerous times to establish the judicial procedures and requirements that were not included in the Act by the legislature. In the course of this development of the practical application of the Act in court, the Supreme Court has concluded that "the circuit court should perform a proximate cause analysis when considering the requirements in § 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.'" State v. McCarty, 437 S.C. 355, 370, 878 S.E.2d 902, 910, (2022). *Citing* State v. Glenn, 429 S.C. 108, 124, 838 S.E.2d 491, 499 (2019). This proximate cause analysis is performed because "analyzing a defendant's 'right to be' in a place where he is attacked under § 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 (Supreme Court) do not believe was the intent of the legislature." Id. at 119-20, 838 S.E.2d at 497.

Thus, proximate cause analysis is required not because the legislature encoded such a requirement into the text of the Act but rather because the Supreme Court concluded that, absent the application of this analysis, the purpose of the Act would be impaired and haphazardly functional when an individual sought protection under subsection (C). This analysis, however, is presently narrowly tailored to subsection (C), as the text indicates that this inclusion of proximate cause is necessitated by the broader scope of (C) to areas where the claimant "had a right to be," rather than the more specific locations detailed in subsections (A) and (B).

Furthermore, in State v. Glenn, the Supreme Court provides an instructional walkthrough of the mechanical action of the statute and its components. It begins with subsection (A), explaining how it operates to replace the reasonable fear element of self-defense if the person claiming self-defense falls within its prescribed categories. The Court then moves on to explain how "generally, a defendant will be defaulted into satisfying subsection (C) when the castle doctrine does not apply or he otherwise cannot show he was excused from the duty to retreat" under subsection (A). Finally, the Court addresses the operation of subsection (C), noting as above that proximate cause analysis is needed to ensure that "the place where he is attacked... [does not leave] an innocent person's ability to seek the Act's protection up to happenstance." Id. at 120, 838 S.E.2d at 497. It is only in this discussion that the issue of proximate cause is raised in the application of the Act, and the Court concludes that "we find a proximate cause analysis must be applied to the unlawful activity element of subsection (C)," but no mention of (A) or (B) is made.

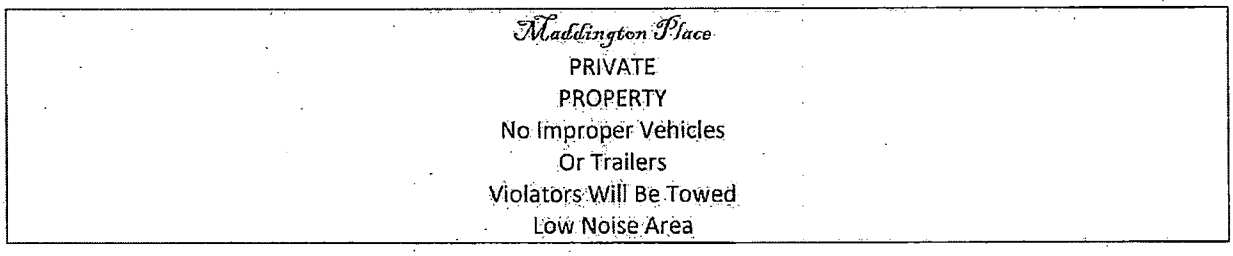
Petitioner does not assert subsection (C) as his statutory basis for immunity. Nevertheless, as will be explained herein, when applying McCarty's proximate cause test while examining subsections (A) and (B) to the present facts, the proximate cause test does not alter the present decision that Petitioner has met his burden of proof of establishing self-defense and is entitled to immunity under the Act.[8]

The Court concludes State v. Glenn by reiterating that circuit courts are required to conduct a proximate cause analysis during pretrial hearings when determining whether a person seeking immunity under the act satisfies subsection (C), if applicable. Id. at 124, 838 S.E.2d at 499.

[8] As noted, the State contends subsection (C) applies, and thus, a proximate cause analysis is required. In the present case, the facts are uncontested that Petitioner had a right to be in his vehicle. Thus, the occupied vehicle of subsection (A) is met. The State desires the Court to focus on the parking lot in a proximate cause analysis. The State asserts because the parking lot was private property and because Petitioner was not invited by Remi's family to be present (the facts establish Remi had consented to Petitioner bringing her belongings to her at Maddington Place), the causal connection to the incident is the Petitioner's alleged unlawful act of trespassing (he had no right to be in the parking lot). This Court disagrees with the State's factual position.

The condominium complex, Maddington Place, had a common area parking lot. Property owners were to have a parking sticker on their vehicles and guest were to have a hanging tag in order to park their vehicles. The parking lot was monitored by maintenance and management. If a vehicle did not have a permit or tag, it was subject to being towed. Even though the sign at the entrance of the property does not say no trespassing, the property manager stated the word "private" on the sign means no trespassing.

Maddington Place is private property as opposed to public property. The property has no gate, there is no fencing, there is no police or security gate. The following sign is located at the entrance of Maddington Place.



Even though the property manager testified the property is not open to the general public, she also stated it was permissible for a person, like defense counsel, to ride through the parking lot several times to look around. She also stated it is also permissible for deliveries to be made by FedEx and mail carriers as they are technically invited.

Petitioner was not aware the area was private property.

When Petitioner drove his vehicle into the common area of the parking lot to drop off Remi's belongings, he was not trespassing. Remi had consented to Petitioner bringing her belongings to the complex. Even though he did not have a hanging tag, he was not in violation of Maddington Place's rules. A vehicle on the property for the purpose of making a delivery of goods does not violate its posted rules. This Court cannot conclude that Petitioner

Recent declarations by the Supreme Court and the Court of Appeals have made it clear that it is impermissible for the circuit court to abdicate its role as a fact-finder to determine a defendant's entitlement to immunity under the Act. State v. Gray, 438 S.C. 130, 882 S.E. 2d 469 (2023). The relevant inquiry is ... whether the accused has met his entitlement to immunity by a preponderance of the evidence. A circuit court can no longer rest its decision to deny immunity just because conflicting evidence was presented during the hearing. The circuit court must sit as the fact-finder at the hearing, weigh the evidence presented and reach a conclusion under the Act. Id., *citing* Cervantes-Pavon, 426 S.C. at 451, 827 S.E.2d at 569. The failure of circuit court to perform the proper analysis, even after a defendant is convicted of a serious crime of murder, can have far reaching effects to achieving finality to such serious and tragic events. *See*, McCarty.

The required pretrial hearing was conducted from November 14, 2022 to November 16, 2022. The State and the Defense were represented by competent and well-prepared attorneys. Prior to the hearing, both the State and Defense submitted prehearing briefs. During the hearing, the testimony of sixteen (16) witnesses were presented, along with a large volume of documents, reports and photographs. The gun and demonstrative aids were also presented.

After having heard the testimony of the witnesses and viewed their demeanor while testifying, having considered the substance of their testimony, considered the exhibits,

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was engaged in an unlawful act at the time of the altercation or attempting to commit an unlawful act. Thus, 16-11-440 (B)(1) (Pennington had no right to be in Petitioner's vehicle) and (B)(3) (Petitioner was not using his vehicle for an unlawful purpose) do not disqualify Petitioner from immunity. Nevertheless, based on the facts presented to this Court, much like the McCarty case, even if Petitioner were to be considered trespassing when in the common area of the parking lot, his being in his vehicle was not the proximate cause of the attack against him.

and considered the arguments of counsels, the following facts are determined by the preponderance of the evidence.[9]

On May 14, 2020, at approximately 9:45 p.m., or sometime shortly afterwards, an altercation occurred between Petitioner and Pennington.[10] The altercation ended when Petitioner fired a single gunshot at Pennington. Pennington passed away from the gun shot.

Petitioner was seated in his vehicle at all times during the altercation and when the shot was fired. The driver's side window was partially down during the altercation.[11] The bullet's path traveled through the window before it struck Pennington in his upper chest. Forensic evidence indicates that Pennington was in very close proximity (10 to 12 inches) to the gun when it was fired.[12]

Prior to the shot being fired, Pennington reached into the vehicle to strike the Petitioner and to attempt to grab the gun. Finger print, palm print analysis and eyewitness testimony established that Pennington grabbed the door handle during the altercation. The greater weight of the evidence establish that Pennington was attempting to open the vehicle's door in order to reach Petitioner. The preponderance of the evidence establishes that Petitioner did not present the gun into the altercation until after Pennington had approached the vehicle, threatening words such as "get out of the car

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[9] The factual statement in Footnote 8 are also determined by a preponderance of the evidence.

[10] According to records presented, Michael Pennington was a 33 year old male at the time of the altercation who weighed 175 pounds and was approximately 5 feet, 9 inches.

[11] While the exact measurement of how far down the window was located at the time of the altercation cannot be determined, eye witness testimony established the window was down sufficient enough for Pennington to reach into the vehicle to attempt to punch Petitioner and attempt to grab the gun. The window was not up as asserted in the State's pretrial brief.

[12] Information from the autopsy indicates, from the bullet's projection of travel into the torso, that Pennington was bent in a downward position when the bullet was fired. The entry wound, GSR, and glass fragments establish that he was bent towards the window at the time the gun was fired.

and I will fuck you up" or "get out of the car so I can fuck you up" were made by Pennington, before and after he was reaching into the vehicle.[13] After the gun was presented, Pennington stated if you pull a gun then you better pull the trigger.[14]

Again, at all times during the altercation, Petitioner remained in his vehicle. There was no dispute that Pennington had no ownership interest in the Petitioner's vehicle.[15]

During the altercation, Petitioner was on the telephone with Melissa Cannon (a friend of the Petitioner and Remi). Melissa Cannon testified as a witness during the hearing. Cannon testified the incident sounded like someone was trying to open a car door. It was very loud. It sounded like several people screaming. She heard Petitioner say "Is that supposed to scare me." She also heard another voice say several times "Get the fuck out of the car and I will fuck you up." Even though she told police it sounded as if the window was up, the greater weight of the evidence established the window was partially down. She said the phone then sounded muffled and she thought he had dropped it so she hung up.

Darrin Card, the boyfriend of Remi's Aunt Jennifer,[16] was in the parking lot the night of the altercation. Card testified he was standing with Emily when the Petitioner drove his car back into the parking lot. Petitioner did not pull into a parking space. (Petitioner's vehicle was in the common area of the parking lot). Card testified he was too far away to hear the Petitioner, but he could hear Pennington. The fact Card testified he could not hear Petitioner does not distract from the other witnesses' statement as to

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[13] While the State desires a circumstantial inference that Petitioner had the gun in the car to do harm to his girlfriend, Remi, the record before this Court does not support such an inference or a factual conclusion.
[14] Thus, the burden of proof establishes that 16-11-440(A) (1) and (2) are met.
[15] Thus, 16-11-440(B)(1) does not disqualify Petitioner from immunity.
[16] Jennifer was in another car in the parking lot on the phone. Jennifer was not called as a witness.

the words spoken. He testified that Pennington approached Petitioner's car and told Petitioner to go home, no one wants you here.[17] To the police, Pennington's words were described by Card as "What's your problem." He testified the driver's window was 2/3 to ½ of the way down and the door was closed.[18] He testified Pennington tried to hit Petitioner through the window and tried to open the door. He testified that after punching Petitioner, Pennington took a step back and said "You have a gun" and then a shot was fired.

Emily Cerio, Remi's cousin and Pennington's girlfriend, testified that Pennington told Petitioner to leave. She saw the car window was down and that Petitioner had a gun. She testified, at the hearing seeing the gun cocked. She told Pennington to "let it go." She testified Pennington told Petitioner, that he is from Virginia and if you pull a gun then you better pull the trigger. Her testimony was also that Pennington stepped to the side and reached into punch Petitioner. She also testified that Pennington tried to open the door and that he reached into the car to try to get the gun. She testified that Petitioner started backing up the car. When Pennington let go of the door handle, she heard the gun shot.

In her statement to the police, Emily's version of the facts was that she could see the window was down and see the gun. Her statement indicated Pennington telling Petitioner that he was from Virginia and if you pull a gun you better pull the trigger. After these statements, Pennington reached into the car's window and punched Petitioner.

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[17] Petitioner testified no one ever told him to leave.

[18] Some of the witnesses indicated the window was higher. The higher the window was raised infers a higher degree of difficulty and determination to punch at Petitioner.

After the punch, her statement indicates Petitioner started backing up, her telling Pennington to let it go, the car door opening, and a shot being fired.

Petitioner[19] testified the altercation started after he pulled his vehicle into the parking lot in the proximity to where Card, Emily and Pennington were standing. After asking a general question "if Remi was going to come get her stuff," Pennington put his beer down and screamed "Get the fuck out of the car so I can fuck you up." He testified Pennington was belligerent and aggressive.[20] He testified Pennington's eyes were wide

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[19] Petitioner was 23 years old (Detention records DOB is July 7, 1999) at the time of the hearing. (Detention Center Records indicate Petitioner was 20 years old, 5 feet tall and weighed 180 pounds at the time of his arrest). His demeanor while testifying was respectful to both attorneys while being questioned. He was not argumentative or belligerent. He appeared nervous, but also genuine with his attempts to give answers to the questions presented to him. His demeanor remained the same even when pressed by the State. He was a credible witness.

Moreover, his description of his relationship with Remi is accepted. Remi was not called as a witness. Petitioner and other witnesses stated he and Remi often argued with each other. Petitioner and other witnesses also established that he and Remi were both young, were living together at the time of the altercation, she was seven (7) months pregnant, and had an argument the day of the altercation. The argument resulted in Petitioner wanting to end the relationship and bring Remi her belongings. The messages also read as Petitioner expressing his affection for Remi. The messages indicate he was not hiding his whereabouts from Remi. He sent text messages to her letting her know of his presence, that he wanted to give her her belongings, give her a kiss before he went home and referring to her as baby.

As previously noted, evidence was presented that Remi and Petitioner spoke by phone wherein Remi told him to leave her belongings.

The text messages and phone calls were substantial in number and extraordinary. Petitioner acknowledged his regret in sending them. Nevertheless, these messages, even as numerous as they maybe, do not indicate an intent to do physical harm to Remi.

Petitioner's testimony and these messages support the conclusion that Petitioner went to Maddington Place to deliver her belongings and supports the decision that he was not engaged in an unlawful activity or attempting to do so. 16-11-440(B)(3) or 16-11-440(C) do not disqualify Petitioner from immunity.

[20] The State objected to the information gained from the autopsy and toxicology report which Petitioner sought to use to explain Pennington's aggressive behavior. Courtney Johnson, Horry County Police Forensic Chemist, testified that cocaine was found on Pennington. Dr. Robert Bennett testified that ethanol, caffeine, Benzylagalyn, (cocaine metabolite), Xanax and marijuana were located in the blood specimen taken at the time of autopsy. Dr. Bennett also provided his opinion as to the behavior consequences in a person with these substances in them. The State objected to toxicology information and argued during closing that marijuana, alcohol and antidepressants do not make someone more aggressive. The State asserted, Pennington did not ingest anything with the intent of starting a fight with Petitioner.

open and bulging. He testified the gun was in the center console and he got the gun out when Pennington started attacking him and trying to enter his vehicle. He testified, Pennington told him if you pull the gun you better use it. He testified Pennington tried to open the door. His testimony was that Pennington was punching with his right arm through the window and that Pennington reached for the gun. At the time the shot was fired, he knew Pennington was trying to hit him and take the gun. He testified he had tried to back up, he did not know Pennington's intentions, he was in fear for his life, and just fired the gun in Pennington's general direction to get him off of him.

He also testified that Card did not involve himself in the altercation. He testified that Emily was at first laughing at Pennington, but recalls her later telling Pennington to stop.[21]

As previously noted, the altercation took place in the parking lot common area of a condominium complex called Maddington Place. Darla Benoit testified at the hearing.

Based on the facts presented in this pretrial hearing, the intoxication, if any, of Pennington has not been considered. The first interaction between Petitioner and Pennington on the night of the altercation was when Petitioner drove into the parking lot area. There is no evidence in the record (other than Petitioner seeing Pennington place his beer on the ground prior to the attack) to suggest Petitioner had a concern or that Petitioner's fear was based on any substance consumed by Pennington prior to the attack. According to Petitioner, he had met Pennington at other times before the altercation, but had no problems with him.

[21] Petitioner also testified he was injured in the altercation. Photographs were presented that reflect, at best, a minor injury to Petitioner's mouth area. The photographs show a visible injury to the inside of Petitioner's mouth. Elizabeth Lawson, the Health Administrator for Horry County Detention Center, testified that Petitioner reported his teeth hurt on the left side from being hit in the jaw. According to records from the detention center, Petitioner received Ibuprofen twice a day for five days. She testified that during the almost a month time he was in the detention center, Petitioner took Ibuprofen, but received no medical care or orthodontic care.

Pamela Collins, an employee of Petitioner's dentist, testified her office's notes do not indicate any of Petitioner's brackets or braces needed to be fixed.

Also, Petitioner testified that he saw Pennington lift his shirt and it looked like Pennington started wrapping something around his hand. He also testified it was dark and he could not see anything. Cannon testified that after Petitioner got out of jail, Petitioner told her he thought Pennington had taken off his belt and wrapped it around his hand. The evidence established that Pennington did not remove his belt and that Pennington was not armed with a weapon during the altercation.

She was the property manager and homeowner association manager for Maddington Place. Maddington Place is owned by Deerfield Plantation. The complex is private property. Property (condominium) owners are supposed to have a sticker to park on the property and guests are supposed to have a hanging tag. If either do not exist, the vehicle is subject to being towed. The parking lot is monitored by the property's maintenance and management. The property is not open to the general public. The sign on the property indicates it is private property but it does not read no trespassing. There is no gate, no security guard, and no fencing on the property. Significantly, Ms. Benoit explained that a person who rides through the parking lot several times to look around the property is permissible, as well as emergency vehicles, and FedEx and mail carrier personnel making deliveries. When asked, what does private mean, she stated, no trespassing. Based on the testimony of Ms. Benoit and the facts surrounding the altercation, this Court concludes the Petitioner's vehicle being in the common area of the parking lot did not violate Maddington's rules and common practices. Petitioner was in the common area of the parking lot to deliver Remi her belongings. Petitioner's vehicle being in Maddington's parking lot common area was not an unlawful act. He had been to the complex before and Remi had provided her consent for Petitioner to be there.[22]

[22] The State argued that Petitioner should not be entitled to immunity for his use of deadly force against Pennington because Petitioner intended to harm Remi. The argument was that Pennington was defending Remi. The undisputed facts were that Remi, assuming she needed to be defended, was upstairs in a condominium at the time of the altercation. It was argued Petitioner "laid in wait" for 40 minutes to spring on Remi when she returned. Based on the totality of information presented during the hearing, this Court cannot conclude that Petitioner had a premeditated motive to do serious bodily injury or death to Remi. The messages do not make any threat of bodily harm. He does threaten to tear up pictures of her deceased father and dispose of her belongings. Notwithstanding making these threats of property damage, he does not carry through with the threats. This Court is not aware of other criminal charges or criminal complaints being made against Petitioner. Moreover, as previously stated, Remi was not called as a witness. The measure of Remi's concern could only be measured by her responses to the messages and through third persons; Emily and Petitioner. Additionally, the only information provided as to Pennington's motive for attacking Petitioner comes from Emily. As previously mentioned in Footnote 2, the reference to a reasonable belief of imminent danger echoes language in the Act. The Supreme

Based on the above, this Court's finding and conclusion are, the Petitioner has met his burden of proof of establishing by a preponderance of the evidence the defense of self-defense. Petitioner had done nothing to Pennington to provoke Pennington's attack on him while Petitioner was in his vehicle. Petitioner was not at fault in bringing on the attack. The facts are such that this Court is convinced that Petitioner believed he was in imminent danger of losing his life or sustaining serious bodily injury and that he was actually in such imminent danger during the physical attack on him by Pennington. Petitioner's fear and belief of imminent danger was real and a reasonable prudent man of ordinary firmness and courage would have come to the same belief. Also, circumstance of the attack placed the Petitioner in actual imminent danger and these circumstances were such that 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.

Additionally, for purposes of Section 16-11-440(A), the Petitioner is entitled to be presumed to have a reasonable fear of imminent peril of death or great bodily injury when he used deadly force because the person against whom he used deadly force was in the process of unlawfully and forcefully entering Petitioner's occupied vehicle and, the person had attempted to remove Petitioner from his occupied vehicle. The requirements of 16-11-440(A)(1) have been established. Also, Petitioner has established by a preponderance of evidence that he was aware that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred at the time deadly force was used. Thus, the requirements of 16-11-440(A)(2) have been proven.

Court observed that an individual has the right to act on appearances, even if that belief is mistaken. Petitioner had no idea why he was being attacked by his assailant.

Also, this Court finds by a preponderance of the evidence that Section 16-11-440(B)(1) does not disqualify Petitioner from immunity because Pennington had no right to be in or to lawfully occupy Petitioner's vehicle. This Court also finds the Petitioner was not engaging in an unlawful activity nor was he using the occupied vehicle to further an unlawful activity. *See*, 16-11-440(B)(3).

Therefore, having established his entitlement to immunity by a preponderance of the evidence, this Court finds the Petitioner is immune from prosecution of the present charges in accordance with S.C. Code Section 16-11-450.

IT IS SO ORDERED.

April 4, 2023

Judge J. Mark Hayes, II