

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 ) FOR THE NINTH JUDICIAL CIRCUIT  
 COUNTY OF BERKELEY ) CASE NO. 2024GS0802457;  
 2024GS0802456

The State of South Carolina )  
 )  
 Plaintiff )  
 v. )  
 James McDaniel )  
 Defendant )

ORDER  
**RECEIVED**  
**Sep 16 2025**  
 SC Court of Appeals

FILED  
 25 AUG 22 PM 2:17  
 LEAH GUERRY DUPREE  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

This matter was before the Court on August 19, 2025, on Defendant’s Motion for Immunity. Attorney Melisa Gay was present on behalf of Defendant James McDaniel. Attorney Kawohi Morris was present on behalf of the State of South Carolina. The Court weighed all of evidence and arguments of Counsel that were presented to the Court. For the reasons stated below, the Court **DENIES** Defendant’s Motion.<sup>1</sup>

Defendant claims his use of deadly force against Victim(s), was lawful under S.C. Code 16-11-410, the Protection of Persons and Property Act (the Act). Although the order of events is disputed between the parties, Defendant and Victim initially had contact inside a bar. Credible evidence shows Defendant displayed a gun to Victim(s) in a menacing manner. When and where that act occurred is less clear to this Court. Defendant admits to illegally possessing the firearm. All parties then moved to the parking lot and Victims admit they went to their cars to retrieve their own firearms, to respond to Defendant’s show of force.

<sup>1</sup> Any findings of fact and any conclusions of law stated herein are solely for the purpose of ruling on this Motion.

As shown by surveillance video, one Victim goes to his car and Defendant follows. A struggle ensued at Victim's car resulting in an exchange of gunfire between Victim(s) and Defendant. Defendant and at least two Victims were stuck by bullets in the exchange. Again, the parties dispute who initiated the gunfire and how the exchange unfolded.

### **LAW**

A defendant's entitlement to immunity from prosecution under the Protection of Persons and Property Act must be decided pretrial using a preponderance of the evidence standard. *State v. Duncan*, 392 S.C. 404, 410-11, 709 S.E.2d 662, 665 (2011). The Legislature adopted the Act based on the premise that "no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." S.C. Code Ann. § 16-11-420(E).

Specifically, the immunity section 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) (2015).

*State v. Glenn*, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019).

The Court has acknowledged that "another applicable provision of law" includes the common law of self-defense. *State v. Scott*, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018). This means a defendant may seek immunity from prosecution under the Act by "demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence." *State v. Curry*, 406 S.C. at 372, 752 S.E.2d at 267 (2013). For immunity claims under this theory, the court stated in *Curry* that, "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." *Id.* at 371, 752 S.E.2d at 266. Accordingly, a trial court should first consider whether the defendant has

proved the elements of self-defense by a preponderance of the evidence. *Glenn*, at 117–18, 838 S.E.2d at 496.

There are four elements a defendant must establish to justify the use of deadly force under the common law of self-defense. *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 must be such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. *Fourth*, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable. *Glenn*, at 117–18, 838 S.E.2d at 496. Section 16-11-440(A) may, under appropriate facts, replace the reasonable fear element of self-defense by providing a presumption that the person's fear was reasonable under certain circumstances. A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person -

“(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.”

S.C. Code Ann. § 16-11-440(A) (2015). *Id.* at 118, 838 S.E.2d at 496.



Further, in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court must then consider whether section 16-11-440(C) is applicable because that provision was enacted to extend the protections of the Castle Doctrine to “ ‘[ ]other place[s] where he has a right to be.’ ” *State v. Scott*, 424 S.C. at 475, 819 S.E.2d at 121 (quoting S.C. Code Ann. § 16-11-440(C)). The section provides:

“A person who is not engaged in an unlawful activity and *who is attacked in another place where he has a right to be*, including, but not limited to, his place of business, has *no duty to retreat* and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.”

S.C. Code Ann. § 16-11-440(C) (2015). *Glenn*, at 118–19, 838 S.E.2d at 496–97.

## **DISCUSSION**

Defendant failed to establish by a preponderance of the evidence the common law elements of self-defense, as required by the Act to justify his use of deadly force.

- 1- Defendant is not without fault based on illegally possessing a firearm in a bar. Fault is additionally established in Defendant following Victim to his car, which the Court finds to be a provocation to one or both of the victims.
- 2- The evidence did not establish Defendant actually believed he was in imminent danger, nor did the evidence establish he had the right to that belief when he set in motion the events detailed above. That chain of events, set off by Defendant, caused the deadly use of force at Victim’s car. The point at which the physical altercation ensued at the victim’s car is not the proper point in time to evaluate imminent danger for purposes of establishing self-defense. Imminent danger would need to be shown earlier to provide Defendant protection.



- 3- A reasonably prudent man of ordinary firmness and courage would not have felt justified at striking the potentially fatal blow on victim(s), at any point earlier than where Defendant caused the escalation at victim's car.
- 4- Defendant had ample means of retreat which would have extinguished any need for deadly force prior to the confrontation at Victim's car, which the Court finds was instigated by Defendant.

While a showing under Section 16-11-440(A) can overcome Defendant's lack of reasonable fear, sufficient facts do not exist in this case to make use of this presumption. The facts do not implicate the application of this section as there are no allegations of forceable or unlawful entry, which are needed to make "A" applicable.

Additionally, Section 16-11-440(C) can replace a duty to retreat, but is not applicable to Defendant because he has not shown by a preponderance of the evidence that his activity was lawful. Among the unlawful acts, Defendant illegally possessed a firearm in a bar, brandished a firearm in a threatening manner, and attacked Victim when Victim approached his car.

### CONCLUSION

For the reasons above, Defendant has failed to show by a preponderance of the evidence that he was entitled by the Act to use deadly force against Victim(s). Based on that finding this Court DENIES Defendant's Motion for Immunity.

**AND IT IS SO ORDERED!**

  
Dale E VanSanten #2781  
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