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JAN 11 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD	)	IN THE COURT OF GENERAL SESSIONS ELEVENTH JUDICIAL CIRCUIT
State of South Carolina, vs. Barry Jones, Defendant.	)	Indictment Nos.: **2018GS1900418** **ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL**

This matter comes before this Court on Defendant's Motion for New Trial filed on December 20, 2021. Jury selection for this trial was completed on Friday, December 3, 2021. Trial began on Monday December 6, 2021 after completion of remaining pretrial motions. On Monday, December 13, 2021, an Edgefield County jury found Defendant guilty of Murder and not guilty on the charge of Attempted Murder. Following the verdict, victim impact statements, and Defendant's mitigation presentation, Barry Jones was sentenced to thirty-five (35) years in prison for Murder.

On December 20, 2021, Defendant timely filed a substantive Motion for New Trial based on the following: (1) Denial of Defendant's Motion for Immunity pursuant to the Protection of Persons and Property act, (2) Denial of Defendant's Motion to Sever, (3) Denial of Defense Motion to exclude evidence of attempted suicide, (4) the Court's refusal to ask all proposed voir dire questions, (5) Denial of Defense's Batson violation motion, (6) the Court's failure to allow Defense to present a complete defense by disallowing any mention of the State not going forward on an additional Attempted Murder Case, (7) The Court's admission of all Defendant's guns under SCRE403 and 404(B), (8) the Court's Admission of improper victim impact testimony, (9) the Court's decision to limit the testimony of defense witness Tim Cornwell, (10) the Court's lack of a curative instruction regarding the Defendant's right to counsel, (11) the Court's exclusion of a

shooting reconstruction sought to be admitted through a crime scene expert, and (12) the Court's denial of defense requested jury charges.

In light of all the facts and circumstances, and in reviewing the record, this Court finds:

1) As to Defendant's basis #1, the Defendant did not establish a case of self-defense by a preponderance of the evidence necessary to claim statutory immunity under The Act.

2) As to Defendant's basis #2, the events alleged in the indictments (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) that no real right of the defendant has been prejudiced. Thus, as the factual circumstances of the indictments were so inextricably intertwined that severance was not appropriate.

3) As to Defendant's basis #3, the attempted suicide evidence was properly admitted under the factors enumerated in *State v. Cartwright.* [1] During the hearing, the Court heard the testimony of individuals who were in contact with Defendant on the night of the incident. The Defendant admitted to law enforcement that he shot himself in the neck. Additionally, there was testimony that the wound on Defendant's neck was consistent with a self-inflicted wound, satisfying the first element. The Defendant was also aware of the alleged crimes at the time of the suicide attempt. The Defendant admitted he knew law enforcement was pursuing him following the shooting at the Johnston Pool Room. Lastly, there was an unmistakable nexus established that the

[1] In determining whether or not evidence of a suicide attempt are admissible, South Carolina trial courts are to conduct a hearing outside the presence of the jury to determine whether the State has proven that (1) a jury could reasonably find that a suicide attempt occurred; (2) the defendant was aware of the occurrence of the alleged crimes at the time of the suicide attempt; and (3) an unmistakable nexus exists by clear and convincing evidence linking the suicide attempt to a guilty conscience derivative of the offense for which the defendant is on trial. If the trial court concludes that the three factors have been established, the evidence is relevant and may be admitted, subject to a Rule 403, SCRE analysis. *State v. Cartwright*, 425, S.C. 81, 91 (S.C. 2018).

suicide attempt was a guilty conscience derivative of the murder of Milledge Hall and the alleged attempted murder of James Florida. While in law enforcement custody, the Defendant addressed the unsuccessful suicide attempt and told officers "you should have just killed me." The evidence showed that the Defendant had suicidal ideations, acted on those ideations and continued to express his desire to die after the unsuccessful attempt. Unlike Cartwright, the Defendant's suicide attempt occurred before he was detained and confined. He fired the self-inflicted shot after he was no longer able to run from the police. These circumstances, coupled with the statements of the Defendant after he was detained satisfied the elements enumerated in *Cartwright* and survived a Rule 403 analysis.

4) As to Defendant's basis #4, attorney conducted voir dire was not warranted. Additionally, while the Court did not ask the exact questions submitted by the Defense, it asked sufficient questions regarding juror ability to be fair and impartial to suicide. [2]

5) As to Defendant's basis #5, after conducting a hearing on this motion, the State provided race neutral reasons for the excusal of juror 193 and juror 21.

6) As to Defendant's basis #6, the Court found testimony regarding the case called to trial by the Solicitor to be irrelevant and not in accordance with SCRE 403, as it would cause unnecessary confusion of the issues for the jurors on the charges to which what they were responsible for adjudicating.

7) As to Defendant's basis #7, the guns were properly admitted into evidence.

[2] "The manner in which these questions are pursued and the scope of any additional voir dire is within the sound discretion of the trial court. The trial court is not required to ask every question submitted by counsel." Wilson, 315 S.C. at 438, 434 S.E.2d at 291.

8) As to Defendant's basis #8, the testimony of Brenda Hall did not amount to a victim impact statement and the testimony was properly admitted as evidence of a prior dispute and ill feelings between the victim and the Defendant. This was relevant to establish appellant's motive to commit the crime and his identity as the perpetrator. Also, prior to Ms. Hall's testimony, the Court did limit the scope of what the State could elicit from the witness.

9) As to Defendant's basis #9, the testimony the Defense intended to elicit from Tim Cornwell was from 15 years ago, did not involve the Defendant and the victim, and was inadmissible and outside the appropriate scope of time necessary for use under Rule 405(a), SCRE. [3]

10) As to Defendant's basis #10, neither a curative instruction nor a mistrial was warranted in this instance. While the facts surrounding the reconstruction were relevant, the probative value was substantially outweighed by the danger of misleading the jury as the conditions of the reconstruction were not consistent with the conditions involved in the incident. [4]

11) As to Defendant's basis #11, the Court denied Defendant's claim for statutory immunity pursuant to the Protection of Persons and Property act. Thus, the jury instruction was not warranted.[5]

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[3] In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm. *State v. Day*, 341 S.C. 410, 419–20, 535 S.E.2d 431, 436 (2000).

[4] In the Motion for a New Trial, the Defense had two #9 in their grounds for appeal. The numbers in this order have been adjusted accordingly.

[5] *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263(2013).

12) As to Defendant's basis #12, the charge given to the jury adequately addressed the substance of Defense counsel's charge request and addressed all issues properly raised at trial.

Based upon review of the arguments presented, this Court finds there is an insufficient basis for a new trial on the grounds made in Defendant's motion or any other grounds. In addition, this Court finds that Defendant's Motion for New Trial is appropriately adjudicated and without the need for oral argument pursuant to Rule 29(a), SCRCrimP.

THEREFORE, this court DENIES Defendant's Motion for New Trial.

IT IS SO ORDERED.

Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

January 7, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF Edgefield)
STATE)
VS.)
Barry Wayne Jones)
AKA:)
Race: White Sex: M Age: 57)
DOB: SS#:)
Address:)
City, State, Zip:)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018 - GS - 19 - 00418

A/W#: 2018A1910100216
Date of Offense: 5/7/2018
S.C. Code §: 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder / Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☑ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor 72860 SC Bar # Defendant Attorney for Defendant 75391 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 35 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of $____; provided that upon the service of ____ days/months/years/Time Served and or payment

of $____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC
1,317 days/months
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

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STATE VS. Barry Wayne Jones INDICTMENT/CASE#: 2018 - GS - 19 - 00418

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine: Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: Charles Rud

Court Reporter: Steve Lessians

Presiding Judge: [signature]

Judge Code: 2769

Sentence Date: 12-13-2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF EDGEFIELD	)	INDICTMENT NO. 2018-GS-190-0418 INDICTMENT NO. 2018-GS-190-0420
State of South Carolina,	)	
	)	
v.	)	
	)	**VERDICT FORM**
Barry Jones	)	
	)	
Defendant,	)	

FILED 2:57 pm December 13 2021 Charles L. Rud C.C.C.P. EDGEFIELD COUNTY

PLEASE MARK THE APPROPRIATE VERDICT BELOW AND FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

1. AS TO INDICTMENT 2018GS1900418 FOR THE CHARGE OF **MURDER**, UNANIMOUSLY FIND BARRY JONES

_____ NOT GUILTY

_✓___ GUILTY

2. AS TO INDICTMENT 2018GS1900420 FOR THE CHARGE OF **ATTEMPTED MURDER**, UNANIMOUSLY FIND BARRY JONES

_✓___ NOT GUILTY

___ GUILTY

STOP AND END YOUR DELIBERATIONS

Please sign and date.

J. M. Richardson III — Jury Foreperson

12/13/2021 — Date

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WITNESSES

Edgefield County Sheriff's Department

James C Smith

Law Enforcement Case #: 1805115

REM

ARREST WARRANT NUMBER

2018A1910100216

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: OCT 24 2018

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018GS1900418

The State of South Carolina

County of Edgefield

COURT OF GENERAL SESSIONS

OCTOBER TERM 2019

THE STATE
vs.

Barry Wayne Jones

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

S.R. Hubbard III, SOLICITOR

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STATE OF SOUTH CAROLINA	)	INDICTMENT FOR MURDER
	)	
COUNTY OF EDGEFIELD	)	
	)	§ 16-03-0010

At a Court of General Sessions, convened on OCTOBER 2019, the Grand Jurors of Edgefield County present upon their oath:

That **Barry Wayne Jones** did in Edgefield County on or about May 7, 2018, unlawfully kill one Milledge Hall, Jr. with malice aforethought, either express or implied, to wit: did shoot the victim with a firearm, in violation of §16-3-10, Code of Laws of South Carolina, 1976, as amended.

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Barry Jones,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Nos.: 2018A1910100216,** **2018A1910100226-30** **PRETRIAL MOTIONS**

1. Motion for Immunity pursuant to the Protections of Persons and Property Act (pool hall incident only)
2. Motion to sever
3. Motions to preclude evidence of prior bad acts pursuant to 404(b), specifically Georgia pending charges.
4. Motion to renew Rule 5 production
5. Motion to Disclose evidence pursuant to Riddle v Ozmint.
6. Motion pursuant to Jackson v. Denno
7. Motion pursuant to Neil v. Biggers.
8. Motion to suppress suicide evidence
9. Motion for supplemental attorney conducted voir dire
10. Motion to suppress reference to unrelated weapons found in Defendant's car not used during incident pursuant to SCRE 401, 403, 404(B)
11. Motion to preclude portions of Defendant's phone that violate 401, 403, 404(b) as well as "out on two bonds" texts.
12. Motion to preclude any body cam evidence which runs afoul of rules governing hearsay, improper bolstering, improper lay opinion, 401, 403, 404(B).

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Brian R. Shealey
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1507 Richland St.
Columbia, SC 29201
803-929-0008

Columbia, South Carolina
This ____ day of December, 2021

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Barry Jones,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Nos.: 2018A1910100216,** **2018A1910100226-30** **PRETRIAL MOTIONS**

1. Motion for Immunity pursuant to the Protections of Persons and Property Act (pool hall incident only)
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7. Motion pursuant to Neil v. Biggers.

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SC Court of Appeals

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN THE COURT OF GENERAL SESSIONS**
The State of South Carolina,)	Warrant Nos.: 2018A1910100216, 2018A1910100226-30
vs.)	**SUPPLEMENTAL ORDER REGARDING DISCOVERY**
Barry Jones,) Defendant.)	

A hearing was held in Lexington County on July 7, 2021 pursuant to Defendant's Motion to Compel Discovery and Disclosure of Evidence of the State. Contained within the defense motion was a list of enumerated items that it sought from the State; however, due to the diligence of both parties prior to the hearing, many of these items were resolved. At the hearing, the discovery disputes that were resolved were placed on the record.

On July 9, 2021, the Court issued an order granting Defendant's Motion to Compel Discovery and Disclosure of Evidence, as to items in Paragraphs 1 - 6, subject to an agreement between the parties. The Court took the discovery request noted in Paragraph 7 of Defendant's Motion to Compel under advisement.

The discovery request read as follows:

Defense counsel seeks the complete disciplinary and internal affairs files of Officers Kathmann (Edgefield Police Department) and Florida (ECSO), the officers alleged to have been involved in a shooting incident with the Defendant. The State objection to the production of these records. Defense counsel proposes that these records be sealed and produced to the Court to review in camera with a view towards production of anything concerning prior misconduct or excessive use of force allegations. Defense counsel maintains that this request should be granted as part of their duty to uncover any potential evidence that could be used to impeach the reliability and credibility of the prosecution witnesses in this case, and that this production is required according to the fundamental tenants of Due Process guaranteed by the 6th and 14th Amendments of the United States Constitution and applicable case law.

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After reviewing the arguments made and the documents provided to the Court, the remaining discovery request noted in Paragraph 7 of Defendant's Motion to Compel is **GRANTED** to the extent that the court will conduct an in camera review of the subject records with a final decision to follow.

THEREFORE, IT IS HEREBY ORDERED:

That the complete disciplinary and internal affairs files of Officer Kathmann of the Edgefield Police Department and Deputy Florida of the Edgefield County Sheriff's Office be delivered in a sealed envelope to this Court by **Noon, Friday, August 13, 2021.** The Court will review these records *in camera*, with a view towards production of anything relevant concerning prior misconduct or excessive use of force allegations.

IT IS SO ORDERED.

Walton J. McLeod, IV
Chief Administrative Judge
Eleventh Judicial Circuit

August 5, 2021

Lexington, South Carolina

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN THE COURT OF GENERAL SESSIONS**
The State of South Carolina,)	Warrant Nos.: 2018A1910100216, 2018A1910100226-30
vs.)	**SUPPLEMENTAL ORDER DENYING DISCLOSURE OF COMPLETE DISCIPLINARY AND INTERNAL RECORDS**
Barry Jones,) Defendant.)	

A hearing was held in Lexington County on July 7, 2021 pursuant to Defendant's Motion to Compel Discovery and Disclosure of Evidence of the State. Contained within the defense motion was a list of enumerated items that it sought from the State; however, due to the diligence of both parties prior to the hearing, many of these items were resolved. On July 9, 2021, the Court issued an order granting Defendant's Motion to Compel Discovery and Disclosure of Evidence, as to items in Paragraphs 1 - 6, subject to an agreement between the parties. The Court took the discovery request noted in Paragraph 7 of Defendant's Motion to Compel under advisement.

Defense counsel sought to have the "complete disciplinary and internal affairs files of Officers Kathmann (Edgefield Police Department) and Florida (ECSO)" turned over as a part of discovery. Defense counsel proposed that these records be provided to the Court to conduct an *in camera* review with "a view towards production of anything concerning prior misconduct or excessive use of force allegations."

The United States Supreme Court held that a defendant is entitled to have the trial court examine undisclosed evidence to determine whether it contains material information that could change the outcome of the trial. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d

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40 (1987). The defense bears the burden of proving that the undisclosed material contains material evidence. State v. Bryant, 307 S.C. 458, 461, 415 S.E.2d 806, 808 (1992).

After conducting an *in camera* review of the subject records, the court finds that the internal records do not contain any relevant prior misconduct or excessive use of force allegations that are material to the case at hand. Thus, the Court denies Defendant's Motion to Compel Discovery and Disclosure of the complete disciplinary and internal affairs files of Officers Kathmann and Officer Florida.

IT IS SO ORDERED.

Walton J. McLeod, IV
Chief Administrative Judge
Eleventh Judicial Circuit

November 12, 2021

Lexington, South Carolina

STATE OF SOUTH CAROLINA **COUNTY OF EDGEFIELD** **The State of South Carolina,** **vs.** **Barry Jones,** **Defendant.**	)))))))))))	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers: 2018A41919199216, 2018A41910100226-30** **ORDER DENYING IMMUNITY**

2021 OCT 14 A10:07

This matter came before the Court at a hearing on September 7, 2021 in Edgefield County regarding Defendant Barry Jones's Motion seeking immunity from prosecution for the charge of Murder based on the provisions of the Protection of Persons and Property Act ("the Act"), S.C. Code Ann. § 16-11-410, *et. seq.* and based on the common law principles of self-defense. The Defendant is currently charged with murder and possession of a weapon during the commission of a violent crime from an incident that occurred at the Johnston Pool Room (Pool Room) on May 7, 2018. The Defendant is also charged with two counts of Attempted Murder, one count of discharging a firearm into a vehicle, and one count of possession of a weapon during the commission of a violent crime from an incident that occurred on Log Creek Road (Log Creek) shortly thereafter on May 7, 2018.

The Court heard arguments on this motion at a hearing held in Edgefield County on September 7th, 2021. This Court heard testimony from witnesses, both video and documentary evidence, and closing arguments from counsel for both parties. Defendant was present at the hearing and represented by Luke Shealy, Esquire and Brian Shealy, Esquire. Solicitor Rick Hubbard and Assistant Solicitor Robert McNair, of the Eleventh Circuit Solicitor's Office, appeared on behalf of the State.

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Both parties were allotted time to prepare and submit proposed orders upon completion of the hearing. After careful consideration of the arguments and exhibits presented by counsel, as well as a review of the documents submitted by counsel, the Court hereby denies the Defendant's motion for immunity.

FACTUAL BACKGROUND

This immunity hearing arises out of a shooting incident that occurred on May 7, 2019, at the Johnston Pool Room ("Pool Room"), located at 158 Lee Street, Johnston, South Carolina. Witnesses testified at the hearing that the Defendant and Milledge Hall had a history of confrontation, which came to a head on the date of the incident.

The Defendant and Milledge Hall first became acquainted with each other back in 2017 when Clayton Hall took ownership of the Pool Room. Evidence was presented at the hearing that Milledge Hall was an investor in the Pool Room, grandfather of Clayton Hall, and second cousin to Angie Smith, Defendant's girlfriend at the time. Defendant testified that he and Milledge Hall did not have much of a relationship; however, approximately one month prior to the shooting incident on May 7, 2018, he learned that Milledge Hall was spreading rumors to people at the Pool Room, indicating that he had been fired from the Savannah River Site. The Defendant worked for the Savannah River Site for 27 years and retired shortly after his wife died, prompting his move to Johnston, South Carolina. The Defendant testified he took offense to this rumor being spread and attempted to speak directly to Mr. Hall to find out if the rumor was true. The Defendant testified that Milledge Hall was unapologetic, combative, and threatening in response. The Defendant testified that he was afraid of Milledge Hall due to his physical stature and his reputation for fighting. At the hearing, the Court heard testimony from Tony Friar indicating that Mr. Friar and the Defendant worked together at the Savannah River Site for several years. Mr. Friar testified that

he was aware of Milledge Hall's reputation for fighting when he was in elementary school. Additionally, Mr. Friar testified that about a month before the shooting incident, Milledge Hall made a threatening gesture to him indicating that he wanted to fight the Defendant and stated that he "had something for him." Mr. Friar testified that he never relayed this threat to the Defendant. Mr. Friar also testified that the Defendant was not afraid of confrontation or to fight.

The State called Milledge Hall's wife who testified to being present during this initial incident at the Pool Room. She testified that the Defendant approached Milledge Hall about "some rumors" and stated that Hall sternly told the Defendant to sit down. She denies Hall making any threats or gestures towards the Defendant.

Following this incident at the Pool Room, the Defendant testified that he reached out to Officer Joseph Mathis, a friend who worked for the Johnston Police Department, in an attempt to speak with him regarding the threat by Milledge Hall. The Defendant indicated that he never ended up speaking with Officer Mathis. This testimony was not confirmed or corroborated by Officer Mathis at the immunity hearing.

The Defendant testified that on May 7, 2018 he went to the Pool Room after running errands earlier in the day. He explained that when he arrived, Angie Smith, his girlfriend at the time, was upset with him for going to the Pool Room without her. The Court was provided copies of messages from Angie Smith to the Defendant stating that the she was "really pissed now" and that she was willing to "come show out" at the Pool Room. The Defendant testified that they had been having somewhat of a tumultuous relationship and that he was ready to end the relationship with her. The Defendant testified that Angie arrived shortly after the series of messages and sat by Milledge Hall across the bar. The Defendant testified that he decided to leave the bar in an attempt

to avoid conflict with Angie. He further explained that this was the final straw in their relationship, and he was going to her house to collect his belongings.

Surveillance footage showed the Defendant leaving the Pool Room and getting into his Silver Mercedes parked outside of the Pool Room. As the Defendant was leaving in his vehicle, Milledge Hall is seen walking outside and tapping the rear of the Defendant's car with his hand in an apparent attempt to get the Defendant to stop. Clayton Hall testified that he had asked his grandfather, Milledge Hall, to tell the Defendant not to come back to the Pool Room. He indicated that his grandfather would not have done this inside the bar and would have initiated a private conversation with the Defendant to avoid causing a scene, on par with what was shown in the surveillance footage. The Defendant did not stop and continued to drive off.

After leaving the bar and collecting his items from Angie's home, the Defendant sent a text to Joe Mims, a close friend of his, asking that he "come calm him down." Jones testified that this message was an attempt to diffuse the complicated situation he was having with Angie and his frustrations with Milledge Hall. Additionally, the Defendant sent another text to Joe Mims at 6:49 p.m., approximately 11 minutes before returning to the Pool Room stating "I'm gonna kill that Be Boy." The Defendant testified that Be Boy was the nickname of Milledge Hall. Joe Mims did not reply to these messages. The Defendant, testified he then reached out to Officer Mathis asking if he was available, explaining that he wanted someone to assist him in avoiding conflict with Hall; however, Officer Mathis did not respond.

Following these messages, the Defendant returns to the Pool Room. He testified that he only returned to break up with Angie Smith and thought a public place would be the best place to do so. When he arrived at the Pool Room, the Defendant parked in front of Pool Room. As evident from surveillance footage presented at the hearing, Mr. Hall exited the Pool Room and approached

the driver side door of the Defendant's car. The Defendant and Mr. Hall begin engaging in what appeared to be a heated conversation. The entire interaction between the two lasted approximately nine minutes. The Defendant testified that he rolled his window down about 6 inches to hear what Milledge Hall was saying. He testified that Milledge Hall was vocalizing his disdain for him. He further explained that Milledge Hall wanted him to get out of the car to fight. The Defendant testified that Milledge Hall pulled the handle of his door and stated that he "had something for him" and "could make him get out to fight." The Defendant alleged that Milledge Hall was armed with a gun and that he brandished a cellphone located in his waistband. It is undisputed that Milledge Hall had a cellphone on the right side of his waistband. The State called several witnesses who testified that they did not know Milledge Hall to carry a gun and that no guns were located on or around him after the shooting. The Defendant testified that after he saw what he believed to be a gun, he retrieved a gun out of a bag he had on the seat which contained several guns collected from Angie Smith's house and put it in his lap.

In the video, Mr. Hall appears agitated and can be seen walking back and forth. Several times during the conversation, Mr. Hall gestures for the Defendant to leave the premises. At one point, Mr. Hall is seen on video turning his back to the Defendant and walking in the opposite direction of the Defendant. Mr. Hall continued to gesture for the Defendant to leave as he walked away. Despite the numerous requests to leave, the Defendant remained in the parking lot of the Pool Room. Mr. Hall, makes a final gesture for the Defendant to leave and then turned around and began walking in the direction of the Defendant's vehicle. The Defendant testified that he believed he had to act in that moment. As Mr. Hall approached the front of the Defendant's car, Defendant exited his vehicle, stood behind his car door, and fired two shots at Milledge Hall. Milledge Hall is seen on video falling backwards when the Defendant fired the second shot.

The Defendant returns to his vehicle and leaves the parking lot driving away in the opposite direction from which he arrived. The Defendant testified that he was afraid of what the people inside the Pool Room would do if he remained on the scene. Numerous bar patrons and staff exit to come to Milledge Hall's aid. The Defendant did not notify law enforcement and did not stop after seeing a patrol car following him. The Defendant proceeded to drive to a remote location off of Log Creek Road, and shot himself in an apparent suicide attempt.

STANDARD OF REVIEW

A defendant is entitled to immunity from prosecution under the Protection of Persons and Property Act. *State v. Scott*, 424 S.C. 463 (2018) (quoting *State v. Curry*, 406 S.C. 364 (2013)). According to the Supreme Court, "a trial court should first consider whether the defendant has proven the elements of self-defense by a preponderance of the evidence." *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496.

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) 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, or if the defendant was actually 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; and (4) 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 the particular instance. *State v. Hendrix*,

270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); *see also State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force. S.C. Code Ann. § 16-11-450 (2015). The Act codified the common law Castle Doctrine and extended its reach to include an occupied vehicle and a person's place of business. S.C. Code Ann. § 16-11-420(A) (2015). Our Supreme Court has made clear that immunity under the Act "is predicated on an accused 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. 364 (2013). However, under the Castle Doctrine, an individual who is attacked without fault and 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 (citing *State v. Jones*, 416 S.C. 283 (2016)). In cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(A) or (C) of the Act is applicable.

16-11-440(A) provides:

> 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 Section 16-11-440(C) 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.

ANALYSIS

A. Compliance with Statutory Immunity under the Protection of Persons and Property Act, S.C. Code Ann. §16-11-410, et seq.,

Here, the Court must first address the Defendant's self-defense claim, starting with whether the Defendant was at fault in bringing upon the difficulty. It is without dispute that the Defendant left the Pool Room and returned with multiple guns. It is also without dispute that the Defendant sent a message to Joe Mims, minutes before returning to the pool room stating "I'm going to kill that Be Boy," despite the Defendant's contention that these messages were not to be interpreted literally. The evidence in the record indicates that Mr. Hall ordered the Defendant to leave numerous times. The Defendant refused to adhere to this request. This Court finds that Defendant's refusal to leave upon the request of Mr. Hall, with the ability to do so, supports the finding that he was at fault in bringing on the difficulty and his claim for self-defense fails.

Even assuming arguendo, the Defendant was not at fault in bringing on the difficulty, the Court finds Defendant's claim of self-defense fails under the next two elements. There has not been sufficient evidence showing that the Defendant was in actual imminent danger nor that he reasonably believed he was in imminent danger. The Defendant testified that he wanted to leave the Pool Room, however, he felt that using his hands to operate his vehicle and taking his eyes of Hall for an instant would expose him to further harm. Additionally, the Defendant alleged that Mr. Hall brandished and threatened him with a gun that day. However, The State provided testimony

establishing that the defendant armed himself prior to returning to the Pool Room. The State had several witnesses testify that they did not know Mr. Hall to carry a gun. The only apparent item Mr. Hall had on him or in his hand was a cell phone. In addition, no gun was ever seen or recovered around Mr. Hall's body after the shooting.

The defense also argued that the Defendant was not required to retreat "if by doing so he would increase his danger of being killed or suffering serious bodily injury." *See State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989). However, as previously discussed, the Court finds that the defendant was not in actual imminent danger, and that his belief that he was, was not reasonable. Subsequently, the Court finds that the Defendant in the instant case did not establish by a preponderance of the evidence the common law principles of self-defense. The court continued its analysis to determine whether the Defendant established immunity under 16-11-440 (A) or 16-11-440(C).

The defense argued that he is entitled to a presumption of reasonable fear under Section 16-11-440(A) because he was in his vehicle and alleges Mr. Hall tried to forcibly remove him from his vehicle.[1] The defendant testified that while sitting in his car at the Pool Room, he felt threatened by Mr. Hall and felt he had to protect himself. The Defendant and Mr. Hall's interaction lasted for over nine minutes. During that time, Mr. Hall does not do anything that appears overtly threatening.

---

[1] 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.

The defense argued that the Defendant feared for his safety when Mr. Hall pulled on his door handle. Despite Mr. Hall's contact with the door handle of the Defendant's car at some point during the argument, the video showed that when the Defendant exited his vehicle and subsequently fired the first shot, Mr. Hall was at the front of the vehicle not in the process of entering his car. Additionally, evidence provided showed Mr. Hall stopping and taking a step back prior to the defendant firing the first shot. Betty Edwards testified on behalf of the state that she heard the defendant call Mr. Hall's name just prior to hearing gun shots. The video also corroborates that testimony showing something occurred that caused Mr. Hall to abruptly turn around as he was walking back towards the front door of the Pool Room. As a result, the Court finds the Defendant is not entitled to the presumption of reasonable fear.

The Defendant also argued that he was entitled to immunity under Subsection 16-11-440(C). This portion of the Act specifically does away with any common law duty to retreat[2], so long as an individual can prove he 1) was not engaged in an unlawful activity, 2) was attacked, 3) was in a place where he had a right to be, and 4) reasonably believed the use of deadly force was necessary to prevent death or great bodily injury to himself or another person. *Scott*, 424 S.C. 463 (2018). There was no allegation on the record that the Defendant was acting unlawfully at the time of this incident. The defense argued that because the Defendant was in his vehicle when this incident occurred, that he was in a place he lawfully had a right to be. The Court disagrees with this contention.

Although the defendant was lawfully present at the Pool Room initially, when he was asked to leave by Mr. Hall, he was stripped of that right and became a trespasser. *See Wright v. United*

[2] Although as set forth in State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989), one is not required to retreat under the common law when doing so would increase the danger.

Parcel Service, Inc., 315 S.C. 521 (Ct. App. 1994) (Although entry by a person on the premises of another may initially be lawful, a person becomes a trespasser when they fail to depart after being asked by the owner to leave). In addition, S.C. Code Section 16-11-620 provides that "any person who, without legal cause or good excuse . . . fails and refuses . . . to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative" is a trespasser. S.C. Code Section 16-11-620 (1976, as amended).

Clayton Hall, owner of the Pool Room, testified that Mr. Hall was tasked with asking the Defendant not to return to the Pool Room. As a business proprietor and agent of the Johnston Pool Room, Mr. Hall had the right to eject the Defendant from the premises. Additionally, the testimony of Laynce Hatcher established that Mr. Hall ordered the Defendant to leave one minute after he arrived at the Pool Room. From the moment the Defendant was asked to leave and failed to do so, he no longer had a right to be there, whether he was in his vehicle or not. Thus, he was not entitled to use deadly force. Accordingly, the Court finds the Defendant failed to meet his burden by a preponderance of the evidence and would not be immune from prosecution under 16-11-440(C).

CONCLUSION

Accordingly, in light of all the facts and circumstances, the Court finds that the Defendant did not have a right to be at the Pool Room at the time of the shooting and that he was not absolved of his duty to retreat; therefore, he did not establish a case of self-defense by a preponderance of the evidence necessary to claim statutory immunity under The Act. Therefore, Defendant's Motion for Statutory Immunity under the Protection of Persons and Property Act, S.C. Code Ann. §16-11-410, et seq., is DENIED.

IT IS SO ORDERED.

Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

October 1, 2021

RECEIVED

JAN 11 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)** **)** **The State of South Carolina,)** **)** **vs.)** **)** **)** **Barry Jones,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **WARRANT NUMBERS: 2018A1910100216, 2018A1910100226-30** **AMENDED** **ORDER DENYING IMMUNITY**

FILED
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This matter came before the Court at a hearing on September 7, 2021 in Edgefield County regarding Defendant Barry Jones's Motion seeking immunity from prosecution for the charge of Murder based on the provisions of the Protection of Persons and Property Act ("the Act"), S.C. Code Ann. § 16-11-410, *et. seq.* and based on the common law principles of self-defense. The Defendant is currently charged with murder and possession of a weapon during the commission of a violent crime from an incident that occurred at the Johnston Pool Room (Pool Room) on May 7, 2018. The Defendant is also charged with two counts of Attempted Murder, one count of discharging a firearm into a vehicle, and one count of possession of a weapon during the commission of a violent crime from an incident that occurred on Log Creek Road (Log Creek) shortly thereafter on May 7, 2018.

The Court heard arguments on this motion at a hearing held in Edgefield County on September 7th, 2021. This Court heard testimony from witnesses, both video and documentary evidence, and closing arguments from counsel for both parties. Defendant was present at the hearing and represented by Luke Shealy, Esquire and Brian Shealy, Esquire. Solicitor Rick Hubbard and Assistant Solicitor Robert McNair, of the Eleventh Circuit Solicitor's Office, appeared on behalf of the State.

Both parties were allotted time to prepare and submit proposed orders upon completion of the hearing. After careful consideration of the arguments and exhibits presented by counsel, as

well as a review of the documents submitted by counsel, the Court hereby denies the Defendant's motion for immunity.

FACTUAL BACKGROUND

This immunity hearing arises out of a shooting incident that occurred on May 7, 2019, at the Johnston Pool Room ("Pool Room"), located at 158 Lee Street, Johnston, South Carolina. Witnesses testified at the hearing that the Defendant and Milledge Hall had a history of confrontation, which came to a head on the date of the incident.

The Defendant and Milledge Hall first became acquainted with each other back in 2017 when Clayton Hall took ownership of the Pool Room. Evidence was presented at the hearing that Milledge Hall was an investor in the Pool Room, grandfather of Clayton Hall, and second cousin to Angie Smith, Defendant's girlfriend at the time. Defendant testified that he and Milledge Hall did not have much of a relationship; however, approximately one month prior to the shooting incident on May 7, 2018, he learned that Milledge Hall was spreading rumors to people at the Pool Room, indicating that he had been fired from the Savannah River Site. The Defendant worked for the Savannah River Site for 27 years and retired shortly after his wife died, prompting his move to Johnston, South Carolina. The Defendant testified he took offense to this rumor being spread and attempted to speak directly to Mr. Hall to find out if the rumor was true. The Defendant testified that Milledge Hall was unapologetic, combative, and threatening in response. The Defendant testified that he was afraid of Milledge Hall due to his physical stature and his reputation for fighting. At the hearing, the Court heard testimony from Tony Friar indicating that Mr. Friar and the Defendant worked together at the Savannah River Site for several years. Mr. Friar testified that he was aware of Milledge Hall's reputation for fighting when he was in elementary school. Additionally, Mr. Friar testified that about a month before the shooting incident, Milledge Hall

made a threatening gesture to him indicating that he wanted to fight the Defendant and stated that he "had something for him." Mr. Friar testified that he never relayed this threat to the Defendant. Mr. Friar also testified that the Defendant was not afraid of confrontation or to fight.

The State called Milledge Hall's wife who testified to being present during this initial incident at the Pool Room. She testified that the Defendant approached Milledge Hall about "some rumors" and stated that Hall sternly told the Defendant to sit down. She denies Hall making any threats or gestures towards the Defendant.

Following this incident at the Pool Room, the Defendant testified that he reached out to Officer Joseph Mathis, a friend who worked for the Johnston Police Department, in an attempt to speak with him regarding the threat by Milledge Hall. The Defendant indicated that he never ended up speaking with Officer Mathis. This testimony was not confirmed or corroborated by Officer Mathis at the immunity hearing.

The Defendant testified that on May 7, 2018 he went to the Pool Room after running errands earlier in the day. He explained that when he arrived, Angie Smith, his girlfriend at the time, was upset with him for going to the Pool Room without her. The Court was provided copies of messages from Angie Smith to the Defendant stating that the she was "really pissed now" and that she was willing to "come show out" at the Pool Room. The Defendant testified that they had been having somewhat of a tumultuous relationship and that he was ready to end the relationship with her. The Defendant testified that Angie arrived shortly after the series of messages and sat by Milledge Hall across the bar. The Defendant testified that he decided to leave the bar in an attempt to avoid conflict with Angie. He further explained that this was the final straw in their relationship, and he was going to her house to collect his belongings.

Surveillance footage showed the Defendant leaving the Pool Room and getting into his Silver Mercedes parked outside of the Pool Room. As the Defendant was leaving in his vehicle, Milledge Hall is seen walking outside and tapping the rear of the Defendant's car with his hand in an apparent attempt to get the Defendant to stop. Clayton Hall testified that he had asked his grandfather, Milledge Hall, to tell the Defendant not to come back to the Pool Room. He indicated that his grandfather would not have done this inside the bar and would have initiated a private conversation with the Defendant to avoid causing a scene, on par with what was shown in the surveillance footage. The Defendant did not stop and continued to drive off.

After leaving the bar and collecting his items from Angie's home, the Defendant sent a text to Joe Mims, a close friend of his, asking that he "come calm him down." Jones testified that this message was an attempt to diffuse the complicated situation he was having with Angie and his frustrations with Milledge Hall. Additionally, the Defendant sent another text to Joe Mims at 6:49 p.m., approximately 11 minutes before returning to the Pool Room stating "I'm gonna kill that Be Boy." The Defendant testified that Be Boy was the nickname of Milledge Hall. Joe Mims did not reply to these messages. The Defendant, testified he then reached out to Officer Mathis asking if he was available, explaining that he wanted someone to assist him in avoiding conflict with Hall; however, Officer Mathis did not respond.

Following these messages, the Defendant returns to the Pool Room. He testified that he only returned to break up with Angie Smith and thought a public place would be the best place to do so. When he arrived at the Pool Room, the Defendant parked in front of Pool Room. As evident from surveillance footage presented at the hearing, Mr. Hall exited the Pool Room and approached the driver side door of the Defendant's car. The Defendant and Mr. Hall begin engaging in what appeared to be a heated conversation. The entire interaction between the two lasted approximately

nine minutes. The Defendant testified that he rolled his window down about 6 inches to hear what Milledge Hall was saying. He testified that Milledge Hall was vocalizing his disdain for him. He further explained that Milledge Hall wanted him to get out of the car to fight. The Defendant testified that Milledge Hall pulled the handle of his door and stated that he "had something for him" and "could make him get out to fight." The Defendant alleged that Milledge Hall was armed with a gun and that he brandished a cellphone located in his waistband. It is undisputed that Milledge Hall had a cellphone on the right side of his waistband. The State called several witnesses who testified that they did not know Milledge Hall to carry a gun and that no guns were located on or around him after the shooting. The Defendant testified that after he saw what he believed to be a gun, he retrieved a gun out of a bag he had on the seat which contained several guns collected from Angie Smith's house and put it in his lap.

In the video, Mr. Hall appears agitated and can be seen walking back and forth. Several times during the conversation, Mr. Hall gestures for the Defendant to leave the premises. At one point, Mr. Hall is seen on video turning his back to the Defendant and walking in the opposite direction of the Defendant. Mr. Hall continued to gesture for the Defendant to leave as he walked away. Despite the numerous requests to leave, the Defendant remained in the parking lot of the Pool Room. Mr. Hall, makes a final gesture for the Defendant to leave and then turned around and began walking in the direction of the Defendant's vehicle. The Defendant testified that he believed he had to act in that moment. As Mr. Hall approached the front of the Defendant's car, Defendant exited his vehicle, stood behind his car door, and fired two shots at Milledge Hall. Milledge Hall is seen on video falling backwards when the Defendant fired the second shot.

The Defendant returns to his vehicle and leaves the parking lot driving away in the opposite direction from which he arrived. The Defendant testified that he was afraid of what the people

inside the Pool Room would do if he remained on the scene. Numerous bar patrons and staff exit to come to Milledge Hall's aid. The Defendant did not notify law enforcement and did not stop after seeing a patrol car following him. The Defendant proceeded to drive to a remote location off of Log Creek Road, and shot himself in an apparent suicide attempt.

STANDARD OF REVIEW

A defendant is entitled to immunity from prosecution under the Protection of Persons and Property Act. *State v. Scott*, 424 S.C. 463 (2018) (quoting *State v. Curry*, 406 S.C. 364 (2013)). According to the Supreme Court, "a trial court should first consider whether the defendant has proven the elements of self-defense by a preponderance of the evidence." *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496.

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) 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, or if the defendant was actually 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; and (4) 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 the particular instance. *State v. Hendrix*, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); *see also State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force. S.C. Code Ann. § 16-11-450 (2015). The Act codified the common law Castle Doctrine and extended its reach to include an occupied vehicle and a person's place of business. S.C. Code Ann. § 16-11-420(A) (2015). Our Supreme Court has made clear that immunity under the Act "is predicated on an accused 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. 364 (2013). However, under the Castle Doctrine, an individual who is attacked without fault and 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 (citing *State v. Jones*, 416 S.C. 283 (2016)). In cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(A) or (C) of the Act is applicable.

16-11-440(A) provides:

> 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 Section 16-11-440(C) 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.

ANALYSIS

A. Compliance with Statutory Immunity under the Protection of Persons and Property Act, S.C. Code Ann. §16-11-410, et seq.,

Here, the Court must first address the Defendant's self-defense claim, starting with whether the Defendant was at fault in bringing upon the difficulty. It is without dispute that the Defendant left the Pool Room and returned with multiple guns. It is also without dispute that the Defendant sent a message to Joe Mims, minutes before returning to the pool room stating "I'm going to kill that Be Boy," despite the Defendant's contention that these messages were not to be interpreted literally. The evidence in the record indicates that Mr. Hall ordered the Defendant to leave numerous times. The Defendant refused to adhere to this request. This Court finds that Defendant's refusal to leave upon the request of Mr. Hall, with the ability to do so, supports the finding that he was at fault in bringing on the difficulty and his claim for self-defense fails.

Even assuming arguendo, the Defendant was not at fault in bringing on the difficulty, the Court finds Defendant's claim of self-defense fails under the next two elements. There has not been sufficient evidence showing that the Defendant was in actual imminent danger nor that he reasonably believed he was in imminent danger. The Defendant testified that he wanted to leave the Pool Room, however, he felt that using his hands to operate his vehicle and taking his eyes of Hall for an instant would expose him to further harm. Additionally, the Defendant alleged that Mr. Hall brandished and threatened him with a gun that day. However, The State provided testimony establishing that the defendant armed himself prior to returning to the Pool Room. The State had

several witnesses testify that they did not know Mr. Hall to carry a gun. The only apparent item Mr. Hall had on him or in his hand was a cell phone. In addition, no gun was ever seen or recovered around Mr. Hall's body after the shooting.

The defense also argued that the Defendant was not required to retreat "if by doing so he would increase his danger of being killed or suffering serious bodily injury." *See State v. Fuller,* 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989). However, as previously discussed, the Court finds that the defendant was not in actual imminent danger, and that his belief that he was, was not reasonable. Subsequently, the Court finds that the Defendant in the instant case did not establish by a preponderance of the evidence the common law principles of self-defense. The court continued its analysis to determine whether the Defendant established immunity under 16-11-440 (A) or 16-11-440(C).

The defense argued that he is entitled to a presumption of reasonable fear under Section 16-11-440(A) because he was in his vehicle and alleges Mr. Hall tried to forcibly remove him from his vehicle.[1] The defendant testified that while sitting in his car at the Pool Room, he felt threatened by Mr. Hall and felt he had to protect himself. The Defendant and Mr. Hall's interaction lasted for over nine minutes. During that time, Mr. Hall does not do anything that appears overtly threatening.

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[1] 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.

The defense argued that the Defendant feared for his safety when Mr. Hall pulled on his door handle. Despite Mr. Hall's contact with the door handle of the Defendant's car at some point during the argument, the video showed that when the Defendant exited his vehicle and subsequently fired the first shot, Mr. Hall was at the front of the vehicle not in the process of entering his car. Additionally, evidence provided showed Mr. Hall stopping and taking a step back prior to the defendant firing the first shot. Betty Edwards testified on behalf of the state that she heard the defendant call Mr. Hall's name just prior to hearing gun shots. The video also corroborates that testimony showing something occurred that caused Mr. Hall to abruptly turn around as he was walking back towards the front door of the Pool Room. As a result, the Court finds the Defendant is not entitled to the presumption of reasonable fear.

The Defendant also argued that he was entitled to immunity under Subsection 16-11-440(C). This portion of the Act specifically does away with any common law duty to retreat[2], so long as an individual can prove he 1) was not engaged in an unlawful activity, 2) was attacked, 3) was in a place where he had a right to be, and 4) reasonably believed the use of deadly force was necessary to prevent death or great bodily injury to himself or another person. *Scott*, 424 S.C. 463 (2018). There was no allegation on the record that the Defendant was acting unlawfully at the time of this incident. The defense argued that because the Defendant was in his vehicle when this incident occurred, that he was in a place he lawfully had a right to be. The Court disagrees with this contention.

Although the defendant was lawfully present at the Pool Room initially, when he was asked to leave by Mr. Hall, he was stripped of that right and became a trespasser. *See Wright v. United*

[2] Although as set forth in State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989), one is not required to retreat under the common law when doing so would increase the danger.

Parcel Service, Inc., 315 S.C. 521 (Ct. App. 1994) (Although entry by a person on the premises of another may initially be lawful, a person becomes a trespasser when they fail to depart after being asked by the owner to leave). In addition, S.C. Code Section 16-11-620 provides that "any person who, without legal cause or good excuse . . . fails and refuses . . . to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative" is a trespasser. S.C. Code Section 16-11-620 (1976, as amended).

Clayton Hall, owner of the Pool Room, testified that Mr. Hall was tasked with asking the Defendant not to return to the Pool Room. As a business proprietor and agent of the Johnston Pool Room, Mr. Hall had the right to eject the Defendant from the premises. Additionally, the testimony of Laynce Hatcher established that Mr. Hall ordered the Defendant to leave one minute after he arrived at the Pool Room. From the moment the Defendant was asked to leave and failed to do so, he no longer had a right to be there, whether he was in his vehicle or not. Thus, he was not entitled to use deadly force. Accordingly, the Court finds the Defendant failed to meet his burden by a preponderance of the evidence and would not be immune from prosecution under 16-11-440(C).

CONCLUSION

Accordingly, in light of all the facts and circumstances, the Court finds that the Defendant did not have a right to be at the Pool Room at the time of the shooting and that he was not absolved of his duty to retreat; therefore, he did not establish a case of self-defense by a preponderance of the evidence necessary to claim statutory immunity under The Act. Therefore, Defendant's Motion for Statutory Immunity under the Protection of Persons and Property Act, S.C. Code Ann. §16-11-410, et seq., is DENIED.

IT IS SO ORDERED.

Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

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JAN 11 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN THE COURT OF GENERAL SESSIONS** **WARRANT NUMBERS: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**AMENDED ORDER DENYING MOTION TO SEVER**
BARRY JONES,) **Defendant.)**	

FILED
2021 OCT 15 P 4:18

This matter came before the Court at a hearing in Edgefield County concerning Barry Jones' (Defendant) Motion to Sever Indictments for Trial. The Defendant is charged with murder and possession of a weapon during the commission of a violent crime from an incident that occurred at the Johnston Pool Room (Pool Room) on May 7, 2018. The Defendant is also charged with two counts of Attempted Murder, one count of discharging a firearm into a vehicle, and one count of possession of a weapon during the commission of a violent crime from an incident that occurred on Log Creek Road (Log Creek) shortly thereafter on the same day.

The court heard arguments on this motion at a hearing held in Edgefield County on September 7th, 2021. This court heard two days of testimony from witnesses, observed and considered both video and documentary evidence, and closing arguments from counsel for both parties. Defendant was present at the hearing and represented by Luke Shealy, Esquire and Brian Shealy, Esquire. Solicitor Rick Hubbard and Assistant Solicitor Robert McNair, of the Eleventh Circuit Solicitor's Office, appeared on behalf of the State.

Both parties were allotted time to prepare and submit proposed orders upon completion of the hearing. After careful consideration of the arguments presented by counsel and a review of the

documents submitted by counsel, the Court hereby denies Defendant's Motion to Sever Indictments for Trial.

FACTUAL BACKGROUND

On May 7, 2018, the Defendant and Milledge Hall, were present at the Johnston Sports Club Pool Room ("Pool Room"), located at 158 Lee Street, Johnston, South Carolina. According to the testimony of witnesses at the hearing, the Defendant and Mr. Hall were both regulars at the Pool Room. Mr. Hall's nephew, Clayton Hall, was the owner of the Pool Room and on occasion, Mr. Hall would help with the operation of the business. Witnesses testified at the hearing that the Defendant and Mr. Hall had a pugnacious relationship, which came to a head on the date of the incident.

The Defendant testified that he began frequenting the Pool Room back in 2017. He testified that in 2018, Clayton Hall took ownership of the Pool Room. As a regular, the Defendant testified that noticed a decline in service after Clayton Hall began running the business, he further testified that he would often voice his concern and grievances with the owners of the Pool Room. Clayton Hall testified that on May 5th, 2018, there was a dispute involving the Defendant and his tab at the Pool Room. Clayton Hall stated that during the dispute, the Defendant became angry and aggressive, to the point that Clayton no longer wanted the Defendant to return to the Pool Room. According to Clayton Hall, on May 6th, he asked his grandfather, Milledge Hall, to instruct the Defendant not to return to the Pool Room. The Defendant was never placed on formal trespass notice.

On May 7th at approximately 4:00 pm, the Defendant arrived at the Pool Room. According to testimony, Angie Smith, the Defendant's then-girlfriend, arrived at the bar upset with the Defendant. When Ms. Smith arrived, she sat by Mr. Hall in the bar. Shortly after Ms. Smith's

arrival at around 5:00 pm, the Defendant can be seen exiting the Pool Room and getting into his vehicle. Moments after the Defendant got into his car, Mr. Hall is captured on surveillance footage exiting the Pool Room and hitting the trunk of the defendant's car with his hand. The Defendant remained in his vehicle, drove away and Mr. Hall went back inside the pool room. The Defendant stated that upon leaving the Pool Room, he went back to Ms. Smith's home to pack his belongings. The Defendant testified that he retrieved his toiletry bag, medicine, guns, ammunition, money, and his safe from Ms. Smith's home and placed the belongings in his car.

Later that evening, sometime after 6:00 pm, the Defendant returned to the parking lot of the Pool Room with the intention of breaking up with Ms. Smith. When the Defendant returned to the Pool Hall, he parked his silver vehicle in front of the Pool Room. Shortly before arriving at the Pool Room, at 6:49 p.m., the defendant sent a text message to Joe Mims stating, "I'm gonna kill that Be Boy" and "Can you calm me down." The testimony established that Be Boy was the nickname of the victim, Milledge Hall.

According to surveillance footage presented at the hearing, Mr. Hall exited the Pool Room and approached the driver-side door of the Defendant's car. The Defendant and Mr. Hall begin engaging in what appeared to be a heated conversation. In the video, Mr. Hall appears agitated and can be seen walking back and forth. Several times during the conversation, Mr. Hall gestures for the Defendant to leave the premises. At one point, Mr. Hall is seen on video, turning his back to the Defendant and walking in the opposite direction of the Defendant towards the Pool Room. Mr. Hall continued to gesture for the Defendant to leave as he walked away. Despite the numerous requests to leave, the Defendant remained in the parking lot of the Pool Room. Mr. Hall, then turned around and began walking in the direction of the Defendant's vehicle. As Mr. Hall

approached the front of the Defendant's car he again signaled for him to leave. At that point, the Defendant, exited his vehicle, stood behind his car door, and shot Mr. Hall twice using a handgun.

After shots were fired, the Defendant returned to his vehicle and drove away from the scene. Shortly after leaving the scene, less than thirty minutes later, Officer Florida of the Edgefield County Sheriff's Department (ECSD), saw the defendant's vehicle. Officer Florida then proceeded to follow the defendant at a distance until they came to the intersection of Pleasant Lane and Log Creek Road. The defendant turned down Log Creek Road and Officer Florida followed. Officer Kathmann with the Edgefield Police Department followed behind Officer Florida. As the officers approached the Defendant, the Defendant allegedly began firing shots at the officers and the officers returned fire. The shooting ultimately ended and the defendant was taken into custody with an apparent self-inflicted gunshot wound to his neck.

The defendant had a pistol that was located in his pocket when he was taken into custody and several firearms were found inside his vehicle. In addition, numerous boxes of ammunition, a safe with about $10,000 in cash, a wire garrote, a toiletry kit, the defendant's medications, and the defendant's cell phone were also recovered from the defendant's vehicle at Log Creek. On August 18, 2021, Defendant's counsel filed a Motion to Sever Charges for Trial.

STANDARD OF REVIEW

A motion for severance is addressed to the trial court and should not be disturbed unless an abuse of discretion is shown. *State v. Anderson*, 318 S.C. 395, 458 S.E.2d 56 (Ct.App.1995). The Court's ruling will not be disturbed on appeal absent an abuse of that discretion. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996) (citing *State v. Anderson*, 318 S.C. 395, 398, 458 S.E.2d 56, 57–58 (Ct.App.1995)).

ANALYSIS

Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. *State v. Tate,* 286 S.C. 462, 334 S.E.2d 289 (Ct.App.1985). *See also State v. Middleton,* 288 S.C. 21, 339 S.E.2d 692 (1986). When offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial judge has authority, in his discretion, to order indictments to be tried together over the objection of the defendant absent a showing that the defendant's substantive rights were violated. *McCrary v. State,* 249 S.C.14, 152 S.E.2d 235 (1967).

In the present case, the charges arise out of a single chain of circumstances and are closely related in kind, place, and character. Our courts have held that a single chain of circumstances exists when there is "in substance a single ... course of conduct' or 'connected transactions'" involved. *State v. Tate,* 286 S.C. 462, 464, 334 S.E.2d 289, 290 (Ct.App.1985). The Defendant fired shots and killed a man outside of the Johnston Pool Room, giving rise to the murder charge. After the defendant shot Mr. Hall, he got back into his car and fled the scene. The State argued that the shooting at the Pool Room was inextricably intertwined with law enforcement's pursuit of the Defendant in which shots were fired by the Defendant. The incidents are close in time and provable by the same evidence. They happened within an hour of each other, on the same day, and in the same county. The vehicle the defendant was driving when found at Log Creek matched the description of the vehicle given by witnesses at the Pool Room. Evidence recovered from Log Creek is relevant to show the circumstances surrounding the shooting at the Pool Room and provide for a full presentation of the case for the jury to consider.

For example, the alleged murder weapon was recovered on the ground beside the defendant at Log Creek when he was taken into custody. Multiple other firearms, numerous boxes of ammunition, a safe with approximately $10,000 in cash, a toiletry kit, the defendant's medications, and a wire garotte were recovered from inside the defendant's vehicle at Log Creek.

In South Carolina, Courts have recognized that evidence of flight is proper to show that the defendant sought to avoid apprehension. *State v. Grant*, S.C., 272 S.E.2d 169 at 171 (1980). The relevancy and ultimate admissibility of such evidence is based on the direct connection between the two crimes. *State v. Byers*, 277 S.C. 176, 177–78, 284 S.E.2d 360, 361 (1981) The subsequent incident on Log Creek Road was committed solely to avoid capture by the officers pursuing the defendant for the shooting at the Pool Hall. For those reasons, the Court finds that these charges arise out of a single chain of circumstances that are inextricably intertwined.

Next, both charges in the present case can be proven by the same evidence. In *State v. Caldwell*, the Court found that although the charges involved separate victims, joinder was permissible because "much of the evidence produced at trial pertained to all of the separate charges." Here, while the incidents that occurred at the Pool Room and on Log Creek Road, involve different victims and witnesses, a substantial portion of the underlying facts and the evidence produced will likely be applicable to all charges. The shooting that took place at the Pool Room and on Log Creek Road occurred over the span of two hours. The Defendant was apprehended in the same vehicle he was driving before, during, and after the incident at the Pool Room. When the Defendant was apprehended, a Taurus .38 revolver was found outside the vehicle with three fired casings in the cylinder. The Defendant testified that the .38 revolver is the gun that he used to shoot Milledge Hall twice at the Pool Room. It is also the gun that is believed to

be the one the defendant used to shoot himself. Additionally, An AR-15 rifle with multiple .223 shell casings was found on the ground beside the defendant's vehicle.

While there is additional evidence that is specific to each crime, our courts have held that additional evidence for each charge is not fatal to the joinder of charges. Lastly, it is important to note, that the officers pursuing the Defendant on Log Creek road, were responding to information provided by dispatch regarding the Defendant, the vehicle he was driving, and the direction he was traveling following the shooting at the Pool Room. Based on these reasons, this Court finds that this element is satisfied as the charges are proven by the same evidence.

The charges here are also of the same general nature. In *State v. Simmons*, the Court of Appeals held that offenses are considered to be of the same general nature where they are interconnected. 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002). "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." *Simmons*, 352 S.C. at 350, 573 S.E.2d at 860. Here, the Defendant fired shots at the Pool Room. While he was fleeing the original scene, he allegedly fired shots at officers in an attempt to avoid apprehension. It is this Court's contention that these charges involve the same underlying facts, the same evidence, and stems from a singular chain of circumstances, thus the charges are of the same general nature.

Lastly, no right of the defendant will be prejudiced by the joinder of these indictments. Without evidence of both charges, the jury would be deprived of an accurate portrayal of the events and circumstances that occurred on the date in question. The State argued that there is a logical relevance between the shooting at the Pool Room and the shooting that occurred on Log Creek

Road under the theory of res gestae. The res gestae theory recognizes that evidence of other crimes may be necessary and admissible where the evidence furnishes part of the context of the crime. *State v. Adams*, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996). Additionally, the State argued that the temporal proximity of the shooting at the pool room and the incident on Log Creek road is so close that one cannot deny that each incident was a part of the environment of the crime.

This Court agrees. When evidence is admissible to provide a "full presentation" of the offense, there is "no reason to fragmentize the event under inquiry by suppressing parts of the res gestae." *Id.* Upon review of the facts, the testimony, and the evidence presented at the hearing, this Court finds that the evidence is relevant, and the probative value of presenting a full presentation of the case to the jury is substantially outweighed by any danger of unfair prejudice.

CONCLUSION

The Court finds that events alleged in the indictments (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) that no real right of the defendant has been prejudiced. Therefore, Defendant's Motion to Sever Indictments is DENIED.

IT IS SO ORDERED.

Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

October 15, 2021

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF EDGEFIELD	)	**Warrant Numbers: 2018A41919199216, 2018A41910100226-30**
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Both parties were allotted time to prepare and submit proposed orders upon completion of the hearing. After careful consideration of the arguments presented by counsel and a review of the

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The Defendant testified that he began frequenting the Pool Room back in 2017. He testified that in 2018, Clayton Hall took ownership of the Pool Room. As a regular, the Defendant testified that noticed a decline in service after Clayton Hall began running the business, he further testified that he would often voice his concern and grievances with the owners of the Pool Room. Clayton Hall testified that on May 5th, 2018, there was a dispute involving the Defendant and his tab at the Pool Room. Clayton Hall stated that during the dispute, the Defendant became angry and aggressive, to the point that Clayton no longer wanted the Defendant to return to the Pool Room. According to Clayton Hall, on May 6th, he asked his grandfather, Milledge Hall, to instruct the Defendant not to return to the Pool Room. The Defendant was never placed on formal trespass notice.

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ANALYSIS

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be the one the defendant used to shoot himself. Additionally, An AR-15 rifle with multiple .223 shell casings was found on the ground beside the defendant's vehicle.

While there is additional evidence that is specific to each crime, our courts have held that additional evidence for each charge is not fatal to the joinder of charges. Lastly, it is important to note, that the officers pursuing the Defendant on Log Creek road, were responding to information provided by dispatch regarding the Defendant, the vehicle he was driving, and the direction he was traveling following the shooting at the Pool Room. Based on these reasons, this Court finds that this element is satisfied as the charges are proven by the same evidence.

The charges here are also of the same general nature. In *State v. Simmons*, the Court of Appeals held that offenses are considered to be of the same general nature where they are interconnected. 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002). "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." *Simmons,* 352 S.C. at 350, 573 S.E.2d at 860. Here, the Defendant fired shots at the Pool Room. While he was fleeing the original scene, he allegedly fired shots at officers in an attempt to avoid apprehension. It is this Court's contention that these charges involve the same underlying facts, the same evidence, and stems from a singular chain of circumstances, thus the charges are of the same general nature.

Lastly, no right of the defendant will be prejudiced by the joinder of these indictments. Without evidence of both charges, the jury would be deprived of an accurate portrayal of the events and circumstances that occurred on the date in question. The State argued that there is a logical relevance between the shooting at the Pool Room and the shooting that occurred on Log Creek

Road under the theory of res gestae. The res gestae theory recognizes that evidence of other crimes may be necessary and admissible where the evidence furnishes part of the context of the crime. *State v. Adams*, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996). Additionally, the State argued that the temporal proximity of the shooting at the pool room and the incident on Log Creek road is so close that one cannot deny that each incident was a part of the environment of the crime.

This Court agrees. When evidence is admissible to provide a "full presentation" of the offense, there is "no reason to fragmentize the event under inquiry by suppressing parts of the res gestae." *Id.* Upon review of the facts, the testimony, and the evidence presented at the hearing, this Court finds that the evidence is relevant, and the probative value of presenting a full presentation of the case to the jury is substantially outweighed by any danger of unfair prejudice.

CONCLUSION

The Court finds that events alleged in the indictments (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) that no real right of the defendant has been prejudiced. Therefore, Defendant's Motion to Sever Indictments is DENIED.

IT IS SO ORDERED.

Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

October 1, 2021

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)** **2018A1910100226-30)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **)** **)** **Barry Jones,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers: 2018A1910100216,** **DEFENDANT'S OBJECTION TO ORDER GRANTING IMMUNITY**

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A pre-trial immunity hearing was held in Edgefield, SC, on September 7th, 2021 through September 8th, 2021 in accordance with *State v. Duncan*, 329 S.C. 404 (2011). The Honorable Judge McLeod issued his Order Denying Immunity and an Amended Order Denying Immunity issued October 14, 2021 and October 15, 2021, respectively, denying Mr. Jones immunity under the Protection of Persons and Property Act (the "Act"), found in Section 16-11-410, *et seq*, of the S.C. Code (2006). Defendant respectfully objects to the Honorable Judge McLeod's orders denying immunity under the Act, and respectfully believes Judge McLeod misapprehended the law and facts in this case. The defense believes immunity was proven by a preponderance of the evidence under the Act, and applicable law, and asserts that a correct application of the law to the facts can be found *infra*.

FACTS

The shooting incident subject to defense's motion for immunity occurred May 7, 2018, at the Johnson Pool Room ("Pool Room"), located at 158 Lee Street, Johnston, South Carolina. The Defense called five witnesses to prove its case, and they consisted of (1)Tony Friar, (2) Randy Yonce, (3) Doug Lacey, (4) Dr. David Eagerton and the Defendant. Mr. Friar and Mr. Yonce were lay witnesses, while Mr. Lacey and Dr. Eagerton were qualified as expert witnesses and

testified in the fields of forensic video enhancement and forensic toxicology/pharmacology respectively. The evidence shows that Mr. Barry Jones ("Jones") was from Johnston, SC and attended Lander University after high school, where he earned a degree in Business Management. He testified that after college he was offered a job at the Savannah River Site ("SRS"), and he would ultimately work there for twenty-seven years. It was there that he met his wife as well as witness Tony Friar, who were both employed at SRS. Jones testified that his wife died after a grueling eight-year battle with cancer, and the depression from that experienced forced him to take an early retirement at a reduced pension, as he cold no longer bear to work where he used to work with his wife. Jones testified that after his retirement he eventually moved back to Johnson to help take care of his father in the fall of 2017. Jones described Johnson as a small town with little in the way of restaurants and entertainment, and the Pool Room was one of the few places where you could get a good meal, drink a beer, and watch sports. When Jones first moved back to Johnson the Pool Room was owned by a man named Jerry Holloway, and he described the Pool Room as being well run with quality food and service. He was a regular patron, and it was at this time that he met Angie Smith ("Angie"), another Johnston local, and they started dating and would continue to date until the May 7th, 2018 incident. While at the Pool Room Jones also struck up a friendship with Johnson Police Officer Joseph Mathis, and they exchanged cell phone numbers and were on friendly terms.

In the winter of 2017 Jones testified that the Pool Room was sold and under new management by the Hall family. Specifically, that Clayton and Madison Hall were the owners, and it was at this time that Jones met the decedent in this case, Milledge Hall, who he only knew as "B-Boy." Evidence was presented that Milledge Hall ("Hall") was an investor in the business, grandfather of Clayton Hall, as well as the second cousin of Jones' then girlfriend Angie. Jones

testified that he really had no interaction with Hall initially, as they did not have much in common other than the fact that he dated Hall's second cousin. Jones described a sharp decline in the quality of the food and service at the Pool Room since the Halls had assumed ownership. He specifically testified to inconsistent quality of food, inappropriately cold inside temperature which forced patrons to wear their winter coats, warm beer and miscalculation of bar tabs by staff. Jones described addressing his complaints over the quality of service to Clayton Hall and other staff members; however, he indicated that his complaints were ignored. Jones claimed that he wanted the Pool Hall to succeed, as there were few other restaurant and entertainment options in Johnston, and he felt that if the Pool Room did not improve the quality of its service, it would likely lose business and shut down.

During the spring of 2018 Jones testified to a specific threat of violence by Hall approximately one month prior to the May 7th shooting incident. He described how he was sitting at the bar in the Pool Room with Angie, and she informed him that Hall was telling people that he was fired from SRS rather than retired. Jones described this as upsetting, given the early retirement he took after his wife's death, and he took the opportunity to go over to Hall, who was also sitting at the bar, and find out if this was true. He testified that he inquired of Hall if he was telling people that he was fired from SRS, as this was not true, and he wanted to know who told him this. He described how Hall was unapologetic, refusing to provide information regarding where he heard this, and that Hall jumped up out of his seat and physically backed Jones away over the course of several feet and threatened, "I'm going to beat your little ass all about this bar." He described being afraid of Hall, as he was a much larger man who physically looked down on him and was roughly three hundred pounds. He felt he had the physical capacity to hurt him, and he had also been warned from his friend Tony Friar that Hall had a reputation for

fighting his entire life. During this confrontation Jones denied getting angry or heated himself, and he testified that he quickly got his bar tab and he and Angie left. Jones stated that this event changed the way he viewed Hall, as they previously had little interaction, and that from this point on he was wary of Hall. He began sitting on the other side of the bar when at the Pool Room, and he also testified that he and Angie began traveling out of town to a bar called Foley's in Saluda, SC in an effort to avoid Hall. Jones also described and reviewed text messages between himself and Officer Joseph Mathis, approximately one month prior to the shooting incident, where he sought out a time to talk in person with Officer Mathis shortly after Hall's threat. Although he never ended up speaking with Officer Mathis, he stated it was his concern over this incident that he wanted to discuss. Animus and threats of violence by Hall towards Jones were also corroborated by witness Tony Friar. He described a day about one month prior to the shooting incident when he happened to be at the Pool Room, which he rarely patronized. He was unaware that Jones had moved back into town and upon seeing Jones the two men talked and caught up. During this conversation he described how Jones brought up his concern regarding Hall spreading rumors that he was fired versus retired from SRS, and Friar testified that he took the opportunity to speak to Hall about this as he was also in the Pool Room at the time. When Friar confronted Hall over the false rumor[2], Hall was unapologetic and stated that he did not like Jones and that he "had something for him" while making a fist with one hand and pounding it into the other. Friar also testified that he had grown up going to school with Hall and he knew him to have a reputation in the community for fighting and violence. In the State's case Hall's widow was called purportedly to dispute the specific threat of violence by Hall; however, she corroborates Jones' account of the genesis of the conflict. She described an earlier dispute where she acknowledged Hall was telling people at the Pool Room that Jones had been fired rather than

retired from SRS. She described how Jones approached Hall to discuss this and that Hall turned in his bar stool and ordered Jones to "sit down," but denies that he got up or offered any specific threat of violence. Although the testimony varied somewhat about the timeframe of this dispute, it is clear that the source of the dispute was Hall's spreading of false information regarding the circumstances of Jones' departure from SRS.

Jones testified that by the day of the May 7th, 2018 shooting incident, his relationship with Angie had soured, as she was "smothering" him and drinking excessively. The text messages in evidence support this, and it was also testified to that during the early morning hours of May 6th, 2018 that Jones texted Officer Mathis again – this time to have him come to he and Angie's shared residence to calm her down. Jones testified that Officer Mathis did arrive at their home and was successful in calming her down without further incident. The State presented evidence through Clayton Hall, that the night of May 5th, 2018 Jones and Angie were in the Pool Room and Jones was angry over a miscalculation in his tab concerning fifty cents. Clayton Hall descried Jones as becoming belligerent to the point that he made a decision that Jones would not be welcome in the Pool Room again. Clayton Hall claimed he did not want to inform him that night, purportedly to not escalate the situation, and he testified that Jones left peaceably on his own accord. Jones testified that he recalled this incident, and that there was a miscalculation over his bar tab; however, after he voiced his complaint to Clayton it was ignored and that he chalked it up to just another issue with the Pool Room's service. He also testified that he left without incident and was not advised that he was no longer welcome to patronize the Pool Room. Clayton Hall testified that he made a decision to task Hall with informing Jones that he was no longer welcomed at the Pool Room the next time he saw him. Clayton also acknowledged that he kept his gun behind the bar for protection, and that several employees who were responsible for

closing the bar knew of its whereabouts, but he denied that Hall knew where the gun was – even as a part owner of the bar and someone that was tasked with protecting the bar and putting unruly patrons on trespass notice. Clayton Hall also acknowledged he had put three patrons on official trespass knowledge using local law enforcement, but Jones was not on this list.

The day of May 7th, 2018 was a Monday and Jones described how he started off running errands but went by the Pool Room for his "meeting," and this was an afternoon session with several friends at the Pool Room to talk about their weekends. Hall's widow described how Hall would also meet with friends on Mondays for a similar purpose, and that he had been doing this for over forty years. It is very clear from the text messages that Angie is upset that Jones went to the Pool Room without her, texting that she "is really pissed now" and that she'll "come show out." Jones described that at this point he had made up his mind to end the approximately eight-month relationship that he had with Angie. He described how a short while later Angie arrived at the Pool Room, but rather than talk to him where he was seated with friends by the bar near the door, she sat next to Hall who was on the other side of the bar. Given Angie's mental state, Jones stated he was concerned that she would start a conflict with him at the Pool Hall, so he made a decision to leave and go to her house and grab any valuables and toiletries he would need to move out. Randy Yonce also testified to Jones' concern over Angie and recalled Jones asking him to "watch his back" regarding Angie. Mr. Yonce and Jones testify consistently that Jones had no interaction with Hall at this point, and Mr. Yonce identified himself on surveillance video leaving at the same times as Jones. Yonce also denies that he had ever seen Jones unruly or disrespectful at the Pool Hall. The surveillance video[3] at 5:30PM shows Jones casually walking out to his Mercedes sedan parked on the far side of the parking lot facing the IGA. As Jones is slowly backing up and positioning himself to exit the parking lot, Hall can be seen in both

interior and exterior surveillance footage coming out of the Pool Room and walking to Jones' car. While Jones is attempting to turn out of the parking lot Hall can be seen striking the back right of Jones' car with an open hand, and while Jones continues to drive away Hall is seen holding his hands out gesturing. Jones testified that he was shocked and afraid when Hall came out and "beat on" his car. He said the loud strike caught his attention, and that Hall's gesture clearly indicated a desire to initiate a physical confrontation, although Jones did not know why, as they'd had no interaction that day. Jones left the parking lot without engaging Hall, but he testified that he was upset and concerned by Hall's aggressions, as he was already wrestling with the difficult decision to break up with Angie. Hall can be seen re-entering the Pool Room and smiling at unknown people outside the view of the video.

After Jones left to move out of Angie's house, he also testified and reviewed several texts he received from Angie where she expresses her anger and embarrassment about him leaving the Pool Room without speaking to her. He describes how he is both wrestling with how to go about ending the relationship with Angie, and also how to perform the act of breaking up without leaving himself exposed to further conflict, as he was the night before when he had to call for Officer Mathis. This matter has been complicated in his mind by the unprovoked aggression from Hall, and Jones testified that he begins reaching out to people he believes can help him with this situation. He texts a friend by the name of Joe Mims, who he describes as tough guy who he did not think Hall would start a conflict with if around, and he askes Mims to "come calm him down." He also texts that he was "gonna kill that be boy" and that he was out on bond and "don't need this bs." Jones testified that he did not make a literal plan to kill Hall, but rather he was just venting his frustrations via text at Hall's aggressive posturing occurring at the same time he had made plans to end the relationship with Hall's cousin Angie. He stated he was trying to defuse

the situation by trying to enlist his friend Mims, and explained that when asserting he didn't need "that bs" he meant any conflict with Hall. When it was clear Mims would not or could not come to his aid he again texted Officer Mathis and asked, "are you available?" He testified that he was looking for any figures of authority that would assist him in avoiding conflict with Hall, and by this time Angie had texted "CU soon. No fighting." After Angie's text Jones testified that he decided the Pool Hall was the best place to break up with Angie, ideally with a private conversation in the car, and with her latest text appearing more calm he felt this could be accomplished.

Jones can be observed arriving back at the Pool Hall at approximately 6:06pm per surveillance video. He parks in in front of the Pool Hall, and he testified that with the large windows making up the front of the Pool Room he expected Angie to see him arrive and that she would come out to his car. The video shows him waiting in his car for approximately forty seconds before Hall exits and walks over to his driver's side window. Jones testified to the dread he felt as he saw Hall approach, compounded by the earlier act of aggression that day as well as the threat of violence one month prior. Hall's encounter at Jones' driver side window lasts approximately nine minutes, and can objectively be described as one that increases in agitation and aggression. Jones testified that when Hall approached, he locks the doors of his vehicle and only rolls down the window about six inches so that he can hear what Hall is saying but not allow him access to his person. Jones testified that Hall begins airing his personal grievances with Jones, including his treatment of his cousin Angie, which included calling Officer Mathis on her the night before. He also described Hall admonishing him for taking Angie and their business to other bars such as Foley's, as well as his dislike for Jones' "know it all" attitude concerning the running of the Pool Hall. Jones described Hall's breath as smelling of alcohol and

also testified to his slurred speech. Dr. Eagerton, the former head of SLED Toxicology and current chair of pharmacology at Campbell University testified that his expert opinion of Hall's blood alcohol content during this encounter was between a .10 to .13, and when cross examined on the matter his expert opinion was that he believed Hall had more than six beers. He also described how this level of intoxication could lesson inhibitions, diminish judgement, and cause aggression. Jones testified that Hall wanted Jones to get out of the car to fight, and that he used expletives when Jones refused. Jones described how Hall repeatedly attempted to open the door by pulling on the handle, and that his demeanor became more and more angry. Jones says that Hall advised he "had something for him" and could "make him get out" to fight. It was at this point that Jones described in great detail how Hall began brandishing a gun, and at one point saw him lift up his shirt to show him the gun in his waistband. The actions Jones testified to can clearly be seen at 6:14pm on the exterior surveillance video. Zoomed in and enhanced videos and still images of the gun brandishing were entered into evidence through expert witness Doug Lacey. Jones identifies on the video and photos how he sees Hall resting his right hand on his cell phone in a case clipped to his right pocket, while using his left hand to lift up his shirt to reveal a black gun in his waistband. Jones described this point in the encounter as "taking it to a new level," and he felt like his life was in danger. It was at this point that he reached over and retrieved a gun out of a bag he had on the seat which contained several guns collected from Angie's house. He advised it was a gun he had purchased for his wife and was unfamiliar with, but he put it in his lap and it was not visible to Hall due to the tinted windows. By this time in the encounter Jones' headlights can be seen as on, having initially been off, and he states that he started up the car to leave but Hall stated he would not let him leave until he got out to fight. Jones testified he repeatedly told Hall to calm down, and that if he would just go back inside he

would in turn leave. Jones testified that with Hall angrily wanting to fight while armed with a gun and trying to get him out of his car, he did not feel that it would be safe to turn his back on Hall and operate the vehicle to attempt a retreat. Eventually, after Hall is unsuccessful in getting Jones out of the car to fight, Jones testifies that Hall begins to walk away and he is hopeful that he will reenter the Pool Hall. He says that only at this point does Hall begin to tell him to leave[4], making consistent hand gestures; however, he still does not feel safe to leave until Hall is back inside. The video shows Hall appear certain to reenter the Pool Hall; however, at approximately 6:16:34PM he can be seen turning quickly and moving again in the direction of Jones' vehicle. He can be seen pausing briefly before moving again quickly past a yellow bollard towards the driver's door, while Jones quickly opens the door and stands up shooting twice, at a distance of approximately four feet per his testimony. Hall can be seen falling backwards, and Jones then leaves the parking lot at a high rate of speed. Numerous bar patrons and staff exit to come to Hall's aid, and it is uncontroverted that Jones did not call police after the shooting. Hall would die at the hospital the following day.

CONCLUSIONS OF LAW

A. Standard of Review

As our Supreme Court noted in State v. Jones, 416 S.C. 283, 296, 786 S.E.2d 132, 139 (2016), "the Legislature clearly enunciated its intent and reasons for promulgating the Act in section 16–11–420." The complete text of S.C. Code Ann. § 16-11-420 provides:

> (A) 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.
>
> (B) The General Assembly finds that it 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.

(C) **The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.**

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds 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.**

(emphasis added).

In order to accomplish the objectives set forth in section 16-11-420, the Legislature enacted section 16-11-440. Jones, 416 S.C. at 296, 786 S.E.2d at 139. This section "identifies the circumstances for which a person may invoke the protection of the Act." Id. Specifically, subsection (A) of section 16-11-440 provides:

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.

Subsection (c) of section 16-11-440 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.

(emphasis added).

The General Assembly created a statute providing for immunity from prosecution to "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law." S.C. Code Ann. § 16-11-450(A). The phrase "another applicable provision of law" found within the Act "includes the common law of self-defense." State v. Glenn, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). Thus, a person who proves by a preponderance of the evidence that he satisfied (1) the elements of common law self-defense *or* (2) the elements of the Act is entitled to immunity from prosecution.

According to the Supreme Court, "a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence." Glenn, 429 S.C. at 118, 838 S.E.2d at 496. "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." Id. Thus, "in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(C) is applicable because the provision was enacted to extend the protections of the Castle Doctrine to other places where he has a right to be." Id. at 118-119, 838 S.E.2d at 496. "Where this section is applicable, it replaces the duty to retreat element required to establish self-defense." Id. at 119, 838 S.E.2d at 497. "In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be." Id. Pursuant to Glenn, if it is determined that the defendant was in a place he had no right to be, or was acting unlawfully,

analysis must be conducted to determine if either of these two issues is the proximate cause of the shooting. Id. at 123.

Additionally, the case law had made clear that witness testimony is likely to differ concerning issues of fact during the course of an immunity hearing. This does not in and of itself create a "quintessential jury question" such that immunity should be denied. Rather, it is more the norm than the exception that both parties will present evidence that is factually incompatible with each other, and it is the Court's duty to sit as fact finder and reach a conclusion regarding immunity under the Act. See State v. Cervantes-Pavon, 426 S.C. 442, 451 (2019).

B. Jones is immune from prosecution under the common law elements of self defense

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) 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, or if the defendant was actually 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; and (4) 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 the particular instance. State v. Hendrix, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); see also State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

An individual has the right to act on appearances. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000); see also State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955). One may act on

appearances. He may be mistaken. The law does not hold him to a ***refined assessment*** of the danger, provided, of course, he acted as the person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger. He doesn't have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him. State v. Rash, 182 S.C. 42, 50 (1936), Starnes at 322. Furthermore, an individual has the right to judge the conduct of his assailant more harshly if he has had prior difficulties with his assailant or is aware of their reputation for violence. State v. Day, 341 S.C. 410, 535 S.E. 2d 431 (2000).

Additionally, "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense." State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951). Furthermore, "when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased." Hendrix, 270 S.C. at 661, 244 S.E.2d at 507. In Douglas v. State, 332 S.C. 67, 72-73, 504 S.E.2d 307, 309-10 (1998), the Supreme Court noted the judge had charged that if the defendant was justified in firing the first shot he was justified in continuing to shoot until any danger to his life and body had ceased.

State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014) is instructive. Douglas and his friend, Charles Smith, had spent the day on the golf course drinking. Id. at 312, 768 S.E.2d at 236. After leaving the golf course, the two went to Douglas' home and continued drinking. Id. at 313, 768 S.E.2d at 236. Smith found a bottle of Douglas' anti-anxiety medicine and began teasing Douglas about it. Id. When Douglas grew angry, Smith "snapped" and "went crazy." Id. Smith grabbed Douglas by his arms and threw him against the refrigerator. Id. When Douglas

fell to the floor, Smith got on top of him and struck him in the eye. Id. at 314, 768 S.E.2d at 236. Although Douglas told Smith to leave, Smith refused, but did go into another room. Id. Douglas crawled to his bed and got a pistol from the nightstand. Id. Douglas, returning to the kitchen, again told Smith to leave. Id. Instead, Smith advanced toward Douglas. Id. Douglas lifted the pistol to scare Smith. Id. When Smith was two feet away, Douglas fired the pistol. Id. A bullet hit Smith, and he died within minutes. Id.

This Court held Douglas proved by a preponderance of the evidence that he reasonably believed shooting Smith was necessary to prevent great bodily injury to himself, and that he acted in self-defense. Id. at 319, 768 S.E.2d at 239. Of importance as that the physical evidence was consistent with Douglas' testimony, showing that Smith was in close proximity when the pistol was fired. Id. at 319-320, 768 S.E.2d at 239. This Court noted that Douglas was injured in the altercation prior to the fatal shot, and that in light of Smith's lack of serious injury, Douglas' belief that Smith was about to inflict serious bodily injury upon him if he did not act to protect himself was reasonable. Id. at 320, 768 S.E.2d at 240. This Court also considered evidence that several years prior to the shooting, Smith assaulted Douglas by slamming him against a wall and choking him. Id.

In the present case, Jones cannot be said to have brought about the difficulty. Jones was preoccupied with his decision to break-up with Angie, his girlfriend of eight months, and he and Hall had no interaction the day of the shooting incident until Hall walked out after Jones and aggressively struck his car. This caused Jones renewed fear of Hall after the recent threat by Hall against Jones, coupled with Jones' knowledge of Hall's reputation for violence. Jones' decision to come back to the Pool Room was not unlawful or intended to start a conflict with Hall, but was merely the best option under the circumstances to end the relationship with Angie. The State asserts

Jones' texts are literal and show his intention to "kill that B Boy;" however, read as a whole, common sense dictates that Jones is seeking help from Mims and Officer Mathis to assist in avoiding the situation – however unartfully. When Jones arrives at the Pool Hall it is telling that he remains in his car and does not get out looking for a conflict with Hall. Hall comes to him, and the entire course of the video is consistent with Jones' account of airing of grievances by Hall to Jones that are personal in nature. The State claims that Jones told to leave by Hall early in the encounter and therefore is at fault in bringing about the difficulty when he refuses. This assertion is not convincingly proven by the evidence[5], and even if clear proof is made of Hall's demand of Jones to leave, not instantly fulfilling that request does not make one guilty of bringing about the difficulty. Jones testified that as Hall's aggression escalated, he wanted to leave as shown by his headlights coming on when he started his car; however, he felt that using his hands to operate his vehicle and taking his eyes of Hall for an instant would expose him to further harm. Jones was not required to retreat "if by doing so he would increase his danger of being killed or suffering serious bodily injury." See State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989). It is clear from the testimony and video surveillance that Jones was in an actual threat of imminent danger of death or great bodily injury. If a picture is worth a thousand words than a video is worth a million words, and there can be no other conclusion based on the evidence that Hall brandished and threatened Jones with a gun that day. The moment when Hall lifts up his shirt to show Jones the black object in his waistband is almost universally recognized as a boast that one is armed, and to conclude otherwise would defy reason. The State asserts that Hall was unarmed and that all that is captured on surveillance video is his phone. The State relies on the testimony of Hall's grandson Clayton to support this assertion, as well as it's other witnesses, to say they never saw Hall with a gun that day[6]. The claim from Clayton Hall that Hall served as a protector of the Pool Hall, and was

specifically tasked with informing Jones to leave, yet he is unaware of the existence or location of the gun behind the bar is unconvincing. However, belief in this claim is unnecessary, as even if Jones was not in actual danger, based on the words and actions of Hall coupled with his prior threat and reputation for violence, Jones reasonably would have been entitled to believe his life was in danger. He would have been entitled step out of his car and strike the fatal blow in order to prevent Hall from getting the drop on him, and even if Hall did not appear to have a gun raised in the moment Jones shot, he would have been entitled to judge Hall's actions more harshly based on prior threats and reputation. See Day at 535, Rash at 50, Starnes at 322.

C. Hall brought about the difficulty by attempting to put Jones on trespass notice while acting in bad faith.

A business proprietor has a right to eject a trespasser from his premises. State v. Brooks, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969) (citing State v. Rogers, 130 S.C. 426, 126b S.E. 329 (1925)). If the proprietor is "engaged in the ***legitimate exercise in good faith*** of his right to eject, he would in such case be without fault in bringing on the difficulty..." *Id.* (citing Rogers, 130 S.C. at 426, 126 S.E. at 329)) (emphasis added); State v. Wiggins, 330 S.C. 538, 547, 500 S.E.2d 489, 494 (1998) (testimony that appellant threatened to "kick both [victim's and sister's] a—es" raised a jury question as to whether appellant was exercising good faith in ejecting victim)). However, "no man has the right...to kill an invited guest without any notice to leave and one so killing does not occupy the position of one who slays in defense of the castle, and for similar reasons excessive force, or a needless battery, resulting in the death of one, employed in the ejectment of such person from the dwelling house cannot be excused." State v. Bradley, 126 S.C. 528, 534, 120 S.E. 240, 242 (1923). Additionally, "where one, although forbidden to enter, went in peaceably, the occupant had no right to kill him upon a failure to instantly obey an order

to leave, and that such act was murder." Id. Finally, "[i]f [the occupant] attempted to do what he had no right to do, to kill the trespasser in order to get him off the premises, the right of the trespasser to rely upon the plea of self-defense was unaffected by the fact that the deceased was on his own premises." Id.

In State v. Dickey, the S.C. Supreme Court found that defendant Dickey, a self-armed apartment security guard who shot and killed a trespasser while attempting to eject the trespasser, had not brought about the altercation and had legitimately exercised in good faith his right to eject the alleged victim. State v. Dickey, 394 S.C. 491, 500, 716 S.E.2d 97, 101 (2011). Dickey "did not know [the victim] prior to his attempt to eject him and only did so in his capacity as a security guard..." Id. Additionally, "[Dickey] routinely carried the concealed weapon, and did not deliberately arm himself in anticipation of a conflict that evening." Id. To eject the trespasser, Dickey first "called the police before ejecting [the trespassers]..." and did not approach the trespassers until he mistakenly believed officers had arrived. Id. After requesting in good faith that the trespassers leave, Dickey only discharged his firearm once the trespasser "began advancing in an aggressive manner." Id. The Court stated "[h]ad [Dickey] accompanied the ejection with threatening words or posture" a question of bad faith would arise. Id. at 501 (citing State v. Wiggins, 330 S.C. at 547, 500 S.E.2d at 494).

In State v. Wiggins, the S.C. Supreme Court affirmed Wiggins conviction of voluntary manslaughter finding the existence of a question of fact as to whether Wiggins was exercising good faith in attempting to eject an individual who twice had been informed that he was not allowed at Wiggins business. State v. Wiggins, 330 S.C. 538, 542, 500 S.E.2d 489, 491 (1998). After Victim had been told to leave, Victim's Sister and Brother arrived at the Wiggins' business to express their displeasure over victim's ejectment from the establishment. Id. Sister testified

that after arriving at Wiggins place of business Victim arrived at the motel informing Wiggins that "he did not come looking for trouble; he had only come to get Sister." Id. Wiggins told both victim and sister that he would "kick both of [their] asses." Id. Victim responded "'we'll settle this,' and turned to get out of the car" at which point Defendant began shooting. Id.

Hall's actions during the confrontation are more akin to Wiggins, if not substantially more egregious, than to Dickey. Hall, like Dickey and Wiggins, had some right to eject Jones so long as that right was legitimately exercised in good faith like Dickey and unlike Wiggins. Like Wiggins and unlike Dickey, Hall knew Jones and, in fact, had prior disputes with Jones regarding the false rumor Hall had spread. The day of the incident, unlike Wiggins who had previously put the victim on trespass notice, Hall took the opportunity to air those grievances prior to personally requesting that Jones leave instead of using law enforcement to put Jones on trespass notice like other Pool Hall patrons. The confrontation began when Hall, who was intoxicated, approached Jones sitting in his vehicle in front of the Pool Hall with no intention of exiting his car and entering the Pool Hall. The evidence offered by the State is that Hall did not routinely carry a gun; however, the enhanced photos entered into the record by the Defense clearly depict a gun, which is separate and distinct from the cell phone clipped to Hall's pants. Unlike Dickey, Hall armed himself specifically for his confrontation with Jones. Once Hall was situated in front of Jones' passenger driver door, Hall began making verbal threats against Jones like Wiggins; however, Hall did not make just one verbal threat like Wiggins. Hall spent roughly eight minutes verbally threatening Jones telling him he "had something for him" and could "make him get out" to fight. While making various threats, Hall attempted to open Jones' door which was locked. As Hall's anger escalated, Hall pulled up his shirt to show Jones the gun tucked in his waistband and brandished the aforementioned gun. All while Jones remained in his

vehicle. Finally, Hall walked away from Jones' vehicle, still yelling and waiving his hands in an aggressive manner, only to swiftly turn back around to advance in an aggressive manner towards Jones like the victim in Dickey resulting in Jones need to utilize self-defense. Hall was not exercising good faith in his attempt to eject Jones from the Pool Hall when Hall armed himself for the confrontation, was intoxicated, and aired unrelated grievances while threatening Jones all while Jones remained in his vehicle to avoid a physical confrontation. Subsequently, Hall was at fault for bringing about the difficulty.

While Hall had a right to eject Jones from the Pool Hall, Hall only had a right to do so if he was exercising good faith in attempting to eject Jones. State v. Brooks, 252 S.C. 504, 510, 167 S.E.2d 307, 310 (1969); State v. Rogers, 130 S.C. 426, 126b S.E. 329 (1925). Otherwise, Hall was the party bringing about the difficulty entitling Jones to legally exercise his right to self-defense. Id. Furthermore, Hall did not have an unfettered right to use excessive or lethal force where Jones came to the Pool Hall peaceably and remained in his vehicle. See, State v. Bradley, 126 S.C. 528, 534, 120 S.E. 240, 242 (1923). Hall's verbal and physical threats are not deemed legally sound just by virtue of Hall's presence at his establishment where he failed to exercise good faith in attempting to eject Jones and subsequently, Jones' right to rely on a plea of self-defense is unaffected. Id.

D. Jones would also be immune under 16-11-440(A).

The above analysis confirms that Jones is entitled to immunity pursuant to common law principles of self-defense; however, for the purposes of argument, even if Jones' self-defense claim failed in one ore more respects, he would then be entitled to seek immunity by looking to the Act in either 16-11-440 (A) or (C). Glenn at 118. Section 16-11-440(A) is applicable in this

case based on the evidence, and it provides the Act's strongest protections. 16-11-440(A) provides:

> 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.

(Emphasis added). It is clear from the testimony of Jones, who was the sole testifying witness to the context of the dispute, that Hall demanded Jones get out of his car to fight him while pulling at his door handle in an attempt to get him out of the vehicle. He describes how Hall's frustrations had boiled over, based on Jones' refusal to get out, and that he was going to make him get out and fight, at gun point if necessary. Jones also asserts it was his belief that Hall intended to force his removal from his vehicle, as he came towards him "with steam," just prior to Jones making the decision to shoot. This act by Hall is supported by the video evidence and falls squarely within the prohibition of 16-11-440 (A) against attempting to remove another against his will from his occupied vehicle. This portion of the Act states, even in the absence of an obvious attack, that the act of attempting to remove an individual against his will from his vehicle creates a presumption of reasonable fear of imminent death or great bodily injury such that he can use deadly force against his assailant. State v. Duncan, 392 S.C. 404. 709 S.E.2d 662 (2011). Jones has established immunity under 16-11-440(A) by a preponderance of the evidence.

E. Jones would also be immune under the provision of 16-11-440 (C)

Although immunity has been established by a preponderance of the evidence under common law principles of self-defense and pursuant to the Act under 16-11-440 (A), for the sake of argument and in keeping with the holding from Glenn, if 16-11-440 (A) was not applicable Jones has established immunity under 16-11-440 (C). This section states:

> 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.

(emphasis added). This portion of the Act specifically does away with any common law duty to retreat[7], so long as an induvial can prove he was attacked while acting lawfully and in a place he had a right to be. There has been no claim by the State that Jones was acting unlawfully at the time of his fatal encounter with Hall, and Jones was in a place where he had right to be while sitting in his car in the Pool Hall parking lot, as discussed supra. Factually consistent with findings of immunity in cases like State v. Douglas and State v. Jones, 416 S.C. 283, S.E.2d 132 (2016), Jones had a right to use deadly force in the face of an attack by an intoxicated Hall, who was determined to fight and armed with a gun to accomplish his aim. Jones' use of his own gun to combat the threat of an armed attack by Hall was an appropriate "force for force" response to end the attack and prevent death or great bodily injury to himself. He had no duty to retreat pursuant to the Act. Jones has met his burden by a preponderance of the evidence and would be immune from prosecution under 16-11-440(c).

CONCLUSION

Jones has proven his immunity by a preponderance of the evidence pursuant to both the common law principles of self-defense as well as the text of the Act in both 16-11-440(A) and (c), and therefore, Jones' actions are immune from prosecution under the Act, as interpreted by State v. Glenn and Jones is immune from prosecution for murder for the shooting of Hall on May 7th, 2018 that ultimately resulted in his death.

s/ Luke A. Shealey

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 1**
Barry Jones,) **Defendant.)**	

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Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, demeanor, and manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. Consider any bias, prejudice, or motive of a witness in determining the weight to be accorded his or her testimony. Consider any criminal record that the witness may have in determining their credibility, and the weight to be accorded his or her testimony.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

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Columbia, South Carolina

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 2**
Barry Jones,) **Defendant.)**	

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Reasonable Doubt

The State has the burden of proving the defendant guilty beyond a reasonable doubt. The State is required to prove every element of the charged offense by evidence which satisfies the jury of the guilt of the defendant beyond a reasonable doubt. The defendant is not required to prove his innocence. The burden of proof always remains upon the State of South Carolina to prove guilt beyond a reasonable doubt.

A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. The term "reasonable doubt" should be given its plain and ordinary meaning. The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove the fact is more likely true than not, such as by the greater weight or preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible

doubt. The law does not require that. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you conclude there is a real possibility that he is not guilty, you must give the defendant the benefit of the doubt and find the defendant not guilty.

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216,** **2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 3**
Barry Jones,) **Defendant.)**	

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Presumption of Innocence

The defendant is presumed to be innocent unless and until the State has established guilt beyond a reasonable doubt. It is a vital, important rule of the law that the defendant in a criminal trial, no matter how grave or serious the offense with which he is charged, must always be presumed innocent, unless and until his guilt has been proven beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

This presumption of innocence is legal proof of innocence. This presumption of innocence remains with the defendant at all times from the moment of his arrest, throughout the trial proceedings, and goes into your jury room and remains with the defendant even then unless and until you, the jury, reach a verdict of guilty based on evidence that the State has presented satisfying you of the defendant's guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible

doubt. The law does not require that. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you conclude there is a real possibility that he is not guilty, you must give the defendant the benefit of the doubt and find the defendant not guilty.

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216,** **2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 4**
Barry Jones,) **Defendant.)**	

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Credibility of the Investigation

You, as jurors, are the sole judges of the credibility of the investigation by law enforcement and the weight that the investigation deserves.

You should carefully scrutinize all the testimony regarding the investigation by law enforcement, and every matter in evidence that goes to the credibility of the investigation. Consider each step taken by law enforcement in their investigation and each step that was not taken. Consider the tactics that law enforcement chose to employ in this case and tactics that they chose not to employ. Consider any bias, prejudice, or motive that may have influenced the investigation in this case. Consider all the actions and inactions that occurred in the investigation of this case.

After making your own judgment, you will give the investigation in this case such credibility, if any, as you may think it deserves.

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 5**
Barry Jones,) **Defendant.)**	

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Right to Stand Your Ground

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 for 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. South Carolina Code 16-11-440(C)

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216,** **2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 6**
Barry Jones,) **Defendant.)**	

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Self Defense – Acting on Appearances

If one reasonably believes he is in danger of death or serious bodily harm, then he is entitled to defend with deadly force if necessary, even though in fact he was not in such danger, for the law says he is entitled to act on reasonable appearances.

The law of self-defense encompasses preventive action taken to protect one's life if such action is taken in anticipation of danger and in response to an immediate threat.

One who acts in self-defense may act on appearances. He may be mistaken. The law does not hold him to a *refined assessment* of the danger, provided, of course, he acted as the person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger. He doesn't have to wait until his assailant gets the drop on him. He has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, one who acts in self-defense must take steps first to prevent such assailant from getting the drop on him. *See State v. Rash*, 182 S.C. 42, 50 (1936), *State v. Starnes*, 340 S.C. 312, 322 (2000).

In determining whether the defendant's belief in the apparent danger and in the necessity of his actions meets the objective standard, you should consider a hypothetical person of ordinary firmness but one who shares the physical characteristics of the defendant such as age, general physical condition, and sex in contrast to those physical characteristics of the aggressor.

Factors that would give the defendant the right to judge the conduct of his adversary more harshly than otherwise would include, but are not limited to the following: (1) age difference; (2) prior "bad blood" or prior difficulties between the two; (3) the deceased's alcohol or drug consumption; (4) prior threats by the deceased against the defendant; (5) the deceased's reputation for violence.

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE #7**
Barry Jones,) **Defendant.)**	

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Imminent Danger

A defendant must have believed he was in imminent danger, not that he was actually in such danger. The defendant has the right to act on appearances, and under the circumstances as they appeared to him, if he believed he was in such danger and a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. *State v. Jackson*, 227 S.C. 271, 87 S.E.2d 681 (1955); *see also State v. Rivers*, 186 S.C. 221, 196 S.E. 6 (1938).

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 8**
Barry Jones,) **Defendant.)**	

No Duty to Retreat, where Doing so Would Increase the Danger

An individual has no duty to retreat if by doing so he would increase his danger of being killed or suffering serious bodily injury.

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216,** **2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 9**
Barry Jones,) **Defendant.)**	

Prior Difficulties between the Deceased and the Defendant

In this case, there was evidence of prior difficulties between the parties. You may consider these prior difficulties in assessing the reasonableness of the defendant's action. These prior difficulties are relevant in showing the defendant's state of mind on this particular occasion. Evidence of prior difficulties may be considered by you as showing the animus or attitude of the parties to each other, to assist you in determining who was the aggressor. However, this evidence may be considered by you for that purpose only.

State v. Brown, 334 S.C. 543 (2001)

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216,** **2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 10**
Barry Jones,) **Defendant.)**	

Victim's Past Violence toward Defendant

In considering the actions of the defendant, the jury is warranted in considering the propensity for acts of violence of the victim. If the defendant knew the victim was of such propensity, then the defendant would be warranted in construing the victim's actions more harshly and acting upon hostile appearances more readily than he would have been entitled to do as a man who was not of such propensity. State v. Atchinson, 268 S.C. 588 (1977).

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 11**
Barry Jones,) **Defendant.)**	

Self Defense – Not Precluded When in Unlawful Possession of a Weapon

A person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting. *See State v. Burriss*, 334 S.C. 256, 259 (1999), *State v. Slater*, 373 S.C. 66, 70 (2007).

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The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 12**
Adrian Lawrence,) **Defendant.)**	

Use of Force

The rule is that ordinarily one is not justified in shooting or employing a deadly weapon after the adversary has been disarmed or disabled. 40 C.J.S. Homicide § 131(b) at 1020 (1944), and see *State v. Jackson, supra.* However, the rule is also that "when a person is justified in firing the first shot, he is "***justified in continuing to shoot until it is apparent that the danger to his life and body has ceased***". *See State v. Hendrix*, 270 S.C. 653, 661 (1978).

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 13**
Barry Jones,) **Defendant.)**	

Malice

The State is required to prove the element of malice beyond a reasonable doubt for the charge of Murder as well as for the charge of Attempted Murder. The proof of malice must be independently proven for each charge. In other words, if you were to find proof beyond a reasonable doubt of malice for one charge, you may not use such proof as evidence of malice for the other charge.

The evidence of malice for both charges must be express or actual, and you may not imply the existence of malice from any facts or circumstances.[1]

If you are not satisfied that the State has proven the element of malice beyond a reasonable doubt, you must find the defendant not guilty.

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[1] State v. Smith, 430 S.C. 226 (2020).

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216,** **2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 14**
Barry Jones,) **Defendant.)**	

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Right to Use Reasonable Force to Defend Against the Use of Excessive Force by a Police Officer Incident to a Lawful Arrest

Even during the course of a lawful arrest, a person has the right to use reasonable force to defend themselves against the use of excessive force by the police officer conducting the arrest. In other words, the fact that a person is being lawfully arrested does not deprive them of the right to defend themselves against an arresting officer's use of excessive or unlawful force.[1]

To the charge of Attempted Murder, Mr. Jones has asserted the right to defend against the use of excessive or unlawful force by an arresting officer. In assessing this issue, you should consider the following:

1). Whether Mr. Jones was being arrested on Log Creek Road by Sgt. Florida;

2). Whether such arrest was lawful;

3). Whether Mr. Jones initially complied with all requirements placed upon citizens subject to a lawful arrest;

---

[1] State v. Williams, 367 S.C. 192 (2005); McCracken v. Commonwealth, 572 S.E.2d 493 (Va. App. 2002); State v. Anderson, 253 S.E.2d 48 (N.C. App. 1979); Cunningham v. State, 471 S.E.2d 273 (Ga. App. 1996).

4). Whether Sgt. Florida used excessive or unlawful force in effecting the arrest;

5). Whether Mr. Jones had a reasonable belief that the degree of resistance he used was necessary to defend himself against Sgt. Florida's excessive or unlawful force; and

6). Whether Mr. Jones resisted only to the extent necessary to protect himself from serious physical harm.

If you find that Sgt. Florida used excessive or unlawful force in effecting a lawful arrest of Mr. Jones, and that Mr. Jones's actions were reasonable and necessary to protect himself from that excessive or unlawful force, then you must find Mr. Jones not guilty of the charge of Attempted Murder.

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216,** **2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 15**
Barry Jones,) **Defendant.)**	

RIGHT TO DEFEND YOUR OCCUPIED VEHICLE

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:

> Against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered an **occupied vehicle,** or if he removes or is attempting to remove another person against his will from an **occupied vehicle.**[1]

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[1] See 16-11-440(A); State v. Glenn, 429, S.C. 108, 118.

STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 16**
Barry Jones,) **Defendant.)**	

Self-Defense – Victim's Reputation for Violence and Turbulence

In a case where self-defense has been raised, you may consider the victim's reputation for turbulence and violence in the community as it bears on self-defense. In considering the actions of the defendant, you are warranted in considering the bad character and reputation for turbulence and acts of violence of the victim. If the defendant knew the victim was of such character and reputation, then he would be warranted in construing his actions more harshly and acting upon hostile appearances more readily than he would have been entitled to do to a man of good character and reputation. If the victim was a man of violent and dangerous character, more prompt and decisive measures of defense are justifiable than if he was of a peaceable disposition. Further, you may consider the victim's temper at the time of the fatal encounter.

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216, 2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 17**
Barry Jones,) **Defendant.)**	

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TRESPASS

It is unlawful for a person to refuse to leave the business or premises of another person after being ordered or requested to do so by the person in possession or his agent or representative. However, such conduct is not unlawful if there is good cause or excuse for the refusal to leave.[1]

The State has asserted in this case that Milledge Hall ordered Mr. Jones to leave the parking lot of the Johnston Pool Room on May 7, 2018. This is a factor you may consider only if:

1). You find there is credible evidence that Mr. Hall was in legal possession of the premises of the Johnston Pool Room, or that he was the agent or representative of the legal possessor of the Johnston Pool Room;

2). You find there is credible evidence that Mr. Jones was committing an unwarranted intrusion;[2]

3). You find there is credible evidence that Mr. Hall in fact ordered Mr. Jones to leave;

4). You find there is credible evidence that Mr. Hall was acting lawfully and in good faith when he ordered Mr. Jones to leave;[3]

5). You find there is credible evidence that Mr. Jones refused the lawful order to leave; and

6). You find there is credible evidence Mr. Jones was without good cause or excuse in failing to leave.

If you do not find that there has been evidence to establish each of these factors, you may not consider this issue in your deliberations or verdicts.

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[1] SC Code 16-11-620.
[2] State v. Rye, 375 S.C. 119 (2007).
[3] State v. Starnes, 213 S.C. 304 (1948).

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STATE OF SOUTH CAROLINA) **COUNTY OF EDGEFIELD)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2018A1910100216,** **2018A1910100226-30**
The State of South Carolina,)	
vs.)	**DEFENDANT'S REQUEST TO CHARGE # 18**
Barry Jones,) **Defendant.)**	

RIGHT TO EXPEL TRESPASSER

The right of a lawful occupant of a premises to expel a trespasser and to use such force as is necessary is limited to the place of his habitation or curtilage, and does not apply to other parts of occupant's premises.[1]

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December 12, 2021
Columbia, South Carolina

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SC Court of Appeals

[1] State v. Bradley, 126 S.C. 528 (1923).