

**THE STATE OF SOUTH CAROLINA**  
In the Court of Appeals

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**APPEAL FROM BEAUFORT COUNTY**  
Court of General Sessions

The Honorable Diane S. Goodstein, Circuit Court Judge

**RECEIVED**

JUN 19 2014

**SC Court of Appeals**

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Appellate Case No. 2012-213026

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The State.....Respondent,  
v.  
Jabari Linnen .....Appellant.

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**REPLY BRIEF OF APPELLANT**

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## REPLY ARGUMENTS

In response to Appellant's argument that the trial judge erred by failing to instruct Appellant's Request to Charge Number 4 on the "Protection of Persons and Property Act," S.C. Code § 16-11-410 *et seq.* ("the Act"), Respondent argues that Appellant waived the right to a jury charge on the Act by failing to seek a pretrial determination of immunity under the Act and that, even if Appellant had sought immunity, the evidence presented at trial did not support a jury charge under the Act.

Respondent respectfully submits that a pretrial determination of immunity from prosecution leaves intact the Act's extension of the Castle Doctrine to occupied vehicles, such that a jury charge on the Act is appropriate when supported by facts in evidence. Furthermore, as set forth in Appellant's Initial Brief, the evidence presented at trial supported such a charge, because Appellant was attacked by the alleged victim while inside his vehicle and the shooting occurred in a protected area immediately outside the vehicle. Therefore, the trial judge's refusal to charge on the Act was in error.

**A. Appellant Did Not Waive Substantive Provisions of the Act by Failing to Seek a Pre-Trial Determination of Immunity.**

Respondent contends that Appellant's failure to seek a pretrial determination of statutory immunity from prosecution waived his entitlement to a jury charge on the Act. Neither the South Carolina Supreme Court nor this Court have directly addressed the question presented in this case: whether the failure to seek a pretrial determination of immunity waives the right to a jury instruction on the substantive provisions of the Act. The Act's codification of the common law Castle Doctrine extends beyond its provision of prosecutorial immunity and includes a substantive change in the law of self-defense by extending the Castle Doctrine to the protection of occupied vehicles. Appellant was

entitled to the requested jury charge on this provision of the Act.

Section 16-11-450 of the Act provides that a person who uses deadly force as permitted in the Act is generally “immune from criminal prosecution.” S.C. Code § 16-11-450(A). In *State v. Duncan*, the South Carolina Supreme Court held that a pretrial determination of immunity from prosecution was the only way that a defendant’s statutorily-granted right to immunity could be meaningfully enforced. 392 S.C. 404, 409-10, 709 S.E.2d 662, 667 (2011) . In doing so, the Court focused on Section 16-11-450’s use of the language “immune from criminal prosecution” as a signal of the legislative intention “to create a true immunity, *and not simply an affirmative defense.*” *Id.* at 410, 709 S.E.2d at 667 (emphasis added).

In *State v. Curry*, the Supreme Court held that, because the trial court had denied the defendant’s motion for immunity under the Act, the Act’s recitation of the elements of the common law Castle Doctrine in Section 16-11-440(C) should not have been charged to the jury, and instead only the common law Castle Doctrine and related defenses should have been charged. 406 S.C. 364, 373, 752 S.E.2d 263, 267 (2013). In a concurrence and partial dissent, Justice Pleicones agreed with the majority’s ruling on the jury charge issue, stating that, “once the case goes to trial a defendant’s right to a jury charge on these defenses is determined under common law principles.” *Id.* at 375, 752 S.E.2d at 268. In this case, Respondent cites this language from Justice Pleicones’ concurrence to argue that Appellant’s failure to request a pretrial determination of immunity was tantamount to a denial of a motion for immunity, requiring, as in *Curry*, that *only* the common law Castle Doctrine be charged. On Respondent’s theory, Appellant was not entitled to a jury instruction on *any* portion of the Act, including the

Act's application of the Castle Doctrine to persons in occupied vehicles.

Appellant respectfully submits that Justice Pleicones' concurrence in *Curry* does not extend so far as to mandate a finding that the failure to seek a pretrial determination of immunity waives the substantive provisions and protections of the Act. *Curry* stands solely for the proposition that the denial of a motion for immunity under the Act supports the denial of a request to charge the jury on the Act's recitation of the common law elements of the Castle Doctrine found in Section 16-11-440(C). *See Curry*, 406 S.C. at 373, 752 S.E.2d at 267. *Curry* expressly leaves open the question of whether the Act contains additional substantive provisions that reach beyond the common law Castle Doctrine which may survive the denial of a motion for immunity: "[t]he full reach of the Act and whether statutory provisions in the Act extend beyond the common law Castle Doctrine are questions for another day." *Id.* As such, neither the majority holding in *Curry* nor Justice Pleicones' concurrence address the precise issue in this case: whether Appellant's failure to request a pretrial determination of immunity waived his right to a jury charge on substantive provisions of the Act.

This precise issue is critical to resolution of this appeal because Appellant's requested charge involves a provision of the Act that extends beyond the common law Castle Doctrine: the application of that doctrine to persons in occupied vehicles. This issue was not resolved by *Curry*, nor by any other case interpreting the Act. The General Assembly expressly intended "to codify the common law Castle Doctrine which recognizes that a person's home is his castle *and to extend the doctrine to include an occupied vehicle* and the person's place of business." S.C. Code § 16-11-420(A) (emphasis added). Appellant's Request to Charge Number 4 requested an instruction to

the jury that, pursuant to the Section 16-11-410(A) and (D) of the Act, the Castle Doctrine and its effect on the duty to retreat are applicable to persons attacked while in their vehicles. These are separate, substantive provisions of the Act that are independent of the Act's procedural mechanism of prosecutorial immunity for those who successfully move for immunity at a pretrial hearing. Appellant's failure to request a pretrial determination of immunity should not equate to a denial of the Act's substantive provisions.

Appellant may have waived his right to prosecutorial immunity by failing to request a pretrial determination of immunity, but the Act's substantive extension of the Castle Doctrine to occupied vehicles remained intact as an affirmative defense. Because facts presented at trial established that Appellant was attacked in his vehicle immediately prior to the shooting, Appellant was entitled to a jury charge which instructed the jury that the Act afforded him the presumption of reasonable fear of great bodily injury so as to absolve him of the duty to retreat. Therefore, the trial court's refusal to charge the requested instruction was in error.

**B. Appellant's Request to Charge on the Act was Supported by Evidence Presented at Trial.**

Citing Section 16-11-440(A)(1), Respondent argues that the Act requires a forcible entry into an occupied vehicle before imposing the presumptions of the Castle Doctrine, such that Appellant's exit from the vehicle immediately prior to the shooting failed to meet the requirements of the Act. However, Section 16-11-440(A)(2) extends the protections of the Act to circumstances in which the defendant "knows or has reason

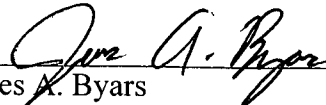
to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.” S.C. Code § 16-11-440(A)(2).

Contrary to Respondent’s assertion, Section 16-11-440(A)(2) of the Act expressly envisions a case in which the defendant must use force against someone who has not yet forcibly entered an occupied vehicle, but appears to be in the process of doing so. As set forth in Appellant’s Initial Brief, Appellant’s exit from the vehicle was precipitated by the alleged victim’s approach to the vehicle while making death threats to Appellant and the alleged victim’s act of throwing a soda can into the vehicle, striking Appellant. Under these circumstances, Appellant had reason to believe that an unlawful and forcible entry of his vehicle was occurring, such that he was entitled to use force to repel the attack while inside the vehicle or within its curtilage. For these reasons, Appellant was entitled to the requested charge on the Act, and the trial court’s refusal to give the charge was in error.

### CONCLUSION

For the reasons stated herein, in Appellant’s Initial Brief, and in any oral argument on this matter, Appellant Jabari Linnen respectfully requests a new trial.

This 19<sup>th</sup> day of June, 20 14.



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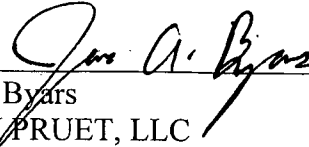
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**PROOF OF SERVICE**

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I hereby certify that I have served the foregoing Reply Brief of Appellant on the Respondent by placing a copy in the United States mail, addressed to J. Benjamin Aplin, Assistant Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Columbia, South Carolina 29201.

This 19<sup>th</sup> day of June, 2014.



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June 19, 2014

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**VIA HAND DELIVERY**

The Hon. Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Re: *The State v. Jabari Linnen*  
Appellate Case No. 2012-213026

Dear Ms. Kitchings:

On behalf of Appellant Jabari Linnen, please find enclosed an original and two (2) copies of Appellant's Reply Brief.

Please return two clocked-in copies of the Motion to our courier. By copy of this letter, Appellant has served copies of this motion on all counsel of record. Thank you.

Very truly yours,



Jimmy Byars

JAB/jab  
Enclosure

cc: Robert Michael Dudek  
J. Benjamin Aplin, Assistant Attorney General