

**NOTICE OF APPEAL FROM A RULING IMPOSED BY THE COURT OF
GENERAL SESSIONS**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

J.C. Nicholson, Circuit Court Judge

Case No. 2013-GS-10-0799
Warrant No. 2012A1010202313

The State,

Appellant,

v.

Whitlee Jones,

Respondent.

RECEIVED

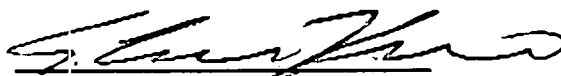
OCT - 8 2014

S.C. Supreme Court

NOTICE OF APPEAL

The State hereby appeals the ruling by the Honorable J.C. Nicholson granting immunity to the respondent following a Duncan hearing held on August 12, 2014 and final order filed on October 3, 2014. Due to one of the principal issues on appeal being the constitutionality of § 16-11-410, *et seq.*, of the S.C. Code (2006) this appeal is made directly to The Supreme Court of South Carolina pursuant to Rule 203(d)(1)(A)(ii), SCACR.

October 8th, 2014
[Notice sent via U.S. Mail on this date]


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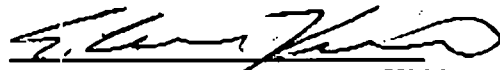
Whitlee Jones,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent, Whitlee Jones, by personally depositing a copy on October 8, 2014, to her attorney of record: Mary Ford, 101 Meeting Street, Charleston, SC 29401.

October 8th, 2014



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FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) 2014 OCT -3 PM 2:53

IN THE COURT OF GENERAL
SESSIONS FOR THE NINTH
JUDICIAL CIRCUIT

JULIE J. ARMSTRONG
CLERK OF COURT

Charge: Murder

STATE OF SOUTH CAROLINA)
BY )

Warrant No: 2012A1010202313

v.)

WHITLEE JONES,)

**ORDER GRANTING IMMUNITY
FROM PROSECUTION TO
DEFENDANT**

DEFENDANT.)

I.

INTRODUCTION

After a hearing before this Court¹ and upon careful consideration of the facts and circumstances of this case, this Court finds that Defendant Whitlee Jones is hereby granted immunity from prosecution based on the Protection of Persons and Property Act (the "Act"), found in § 16-11-410, *et seq.*, of the S.C. Code (2006). Defendant is entitled to immunity under the Act because she was acting lawfully, was in a place where she had a right to be, was being attacked, and was acting in compliance with established common law principles of self-defense, based on facts established by a preponderance of the evidence.

II.


FINDINGS OF FACT

The hearing, which was held according to *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), established many facts that were either undisputed or could not be disproven. On

¹ A pre-trial immunity hearing was held in Charleston, SC, on August 12, 2014 according to *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). The State and the Defendant submitted briefs in support of their position after this Court took the matter under advisement.


November 2, 2012, Defendant stabbed Eric Lee one time. As a result of that wound, Mr. Lee died.

Defendant and the victim Eric Lee were in a romantic relationship and resided together at 7740 Warsaw Road in North Charleston, SC. On the evening of November 1, 2012, the two were in a verbal argument in their shared home over Mr. Lee wanting to take possession of Defendant's phone, a phone he purchased but gave to her. Defendant was in fear for her safety, based on Mr. Lee's actions that night and on prior occasions, and tried to leave their home. However, Mr. Lee pushed and punched her and prevented her from leaving out of the front door. Defendant was eventually able to leave the home through a back door.



Mr. Lee followed her outside and continued to verbally and physically intimidate her to retrieve the phone. He attempted to force her back in the home by pulling her by her hair. According to Defendant and a neighbor Ms. Smith, Mr. Lee dragged Defendant down the street by her hair while she was screaming for help, tearing out a large portion of her hair weave. Ms. Smith called 911 for help at 11:28 p.m. on November 1, 2012. Defendant attempted to call her friend Erica Grant for help. While Ms. Grant did not answer, her voicemail came on and recorded some of the altercation between Defendant and Mr. Lee. As can be heard on the recording, Defendant screamed for help and repeatedly asked Mr. Lee to get off of her. Defendant asked a male neighbor for help but Mr. Lee told him to move along and he did so. Defendant attempted to call the police for help, but Mr. Lee continued to try to force her back in the home, so she gave him the phone and ran away. While Defendant was behind other apartments, a police officer came in response to Defendant's pleas for help due to the neighbor Ms. Smith calling 911. The police officer spoke to Mr. Lee, took Mr. Lee's word that no assault had occurred, and left the scene without making contact with Defendant.

After waiting for Mr. Lee and herself to calm down, and unable to contact anyone else without her cell phone, Defendant returned to the home so that she could retrieve her belongings and leave. Shortly thereafter, Defendant's two friends Erica Grant and Jasmine Taylor listened to the voicemail that Defendant left on Ms. Grant's phone, and drove to assist Defendant in removing her belongings. While the women were removing her belongings, Mr. Lee again became agitated and pushed Defendant throughout the home. While going to the upstairs bedroom to get her shoes, Defendant saw Mr. Lee's knife in their bedroom and put it in her bra in case he attempted to attack her again. According to her statement, when Defendant was attempting to leave the home, Mr. Lee attacked Defendant again. He yelled at her and pushed her. As she was trying to leave, he grabbed her and shook her. As he was getting ready to hit her again, she grabbed the knife from her shirt and struck out at him in order to get away. The knife hit him one time in the heart. Her friends were outside of the house, and did not see the last altercation.


 Defendant then left with her friends. Not long after leaving, Defendant asked to go back to check on Mr. Lee because she was concerned for him and she was unsure of the extent of his injury. After arriving at the home, Defendant saw Mr. Lee's condition and took him to the hospital with Ms. Taylor while Ms. Grant stayed at the house to wait for police. Ms. Grant and a neighbor called the police at 12:12 a.m. on November 2, 2012. Once Defendant got to the hospital, she cooperated with police. She was extremely distraught and had to be treated by hospital staff. At the police station, Defendant gave a written statement during the course of giving a recorded statement, both stating she was in fear of her safety when she acted, that she stabbed Mr. Lee to get away, that she believed he would have killed her if she had not acted, and that she never intended to kill him.

III.

CONCLUSIONS OF LAW

A. Standard of Review

The Act provides immunity from prosecution if applicable. S.C. Code Ann § 16-11-450(A). A claim of immunity under the Act requires a pretrial determination under a preponderance of the evidence standard. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). The South Carolina Supreme Court has found that, consistent with the text of the Act and the Castle Doctrine, a valid case of self-defense must exist and the trial court must consider the elements of self-defense to determine the defendant's entitlement to immunity under the Act. *State v. Curry*, 406 S.C. 364, 371 (2013). The court must consider all elements, save the duty to retreat.



B. The Court holds that Defendant is entitled to immunity under § 16-11-440(C) despite the fact that the Defendant and victim were co-residents in their shared home.

When the General Assembly ratified the Act, it made its intent for passing it very clear, actually stating its intent in § 16-11-420:

(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.

In Section 16-11-440, the General Assembly set out the circumstances in which immunity may apply. Section (A) refers to those using force or deadly force if they are attacked in or attempting to remove an unlawful occupant from a dwelling, residence or occupied vehicle. *State v. Curry*, 406 S.C. 364, 370 (2013). The South Carolina Supreme Court states that section (A) is "the main thrust of the Act" and that it provides for the presumption of reasonable fear of imminent peril of death or great bodily injury to someone who uses deadly force to remove another from a

residence, dwelling or occupied vehicle. *Id.* Section (B) lays out exceptions to (A), stating that a person may not utilize section (A) for immunity if the victim is a lawful resident.²

If the victim is a lawful resident, then a person seeking to utilize the Act for immunity is defaulted to Section (C). Section (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.

Section (C) operates in a similar manner as section (A), but does not allow for the presumption of reasonable fear. Because the victim was a co-resident, subsection (A) is inapplicable to the Defendant and she is therefore defaulted into subsection (C). The State has argued that the language, "in another place where he has a right to be," would exclude the Defendant's dwelling, residence, or occupied vehicle, as those places are referred to in section (A).³ They argue that because "another place" does not encompass the Defendant's residence, she cannot utilize Section (C) for immunity. This Court disagrees, finding that the "another place" language is intended to encompass dwellings, residences or occupied vehicles, along with any other place where a person has a right to be and is acting lawfully.

It is this Court's holding that in situations where Section 16-11-440(A) does not apply because of the exceptions in (B), the "another place" language in Section (C) does not preclude one from using force or deadly force to defend themselves in one's own residence. One seeking

² § 16-11-440(B) also states that a person cannot utilize 440(A) if they are acting unlawfully, among other exceptions.

³ Recently, the Court of Appeals decided *State v. Manning*, 2014 S.C. App. LEXIS 95 (S.C. App. 2014), which held that "another place" excludes one's residence. However, this case is not final and a rehearing is pending (Rehearing granted by *State v. Manning*, 2014 S.C. App. LEXIS 193 (S.C. App., June 26, 2014)).

to utilize section (C) against another co-resident simply loses the presumption of reasonable fear of imminent peril of death or great bodily injury. This Court finds that the presumption of reasonable fear found in (A) does not apply to (C), because the presumption applies only to force or deadly force used against someone who is "unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle." S.C. Code Ann. § 16-11-440(A). Section (C) applies in those same locations, but removes the presumption of reasonable fear. In this circumstance, the Defendant does not have the presumption of reasonable fear because the victim was a resident of their shared home.

To hold that a person cannot utilize Section 16-11-440(C) if the person were inside of their own home would create a nonsensical result— that a person can defend themselves from attack by their spouses, lovers, or any other co-resident while outside of their home, but not inside of their home. When using force or deadly force against someone else that has a right to be there, but is acting unlawfully, the person defending themselves simply loses the presumption of reasonable fear under (A) and they must establish the fear element through the other principals of self defense. The Court must examine each individual factual situation to determine whether the Defendant had the reasonable belief that their actions were necessary to prevent death, or great bodily injury, or the commission of a violent crime as defined in section S.C. Code Ann § 16-1-60.

C. The Court orders that Defendant is granted immunity because her actions were in accordance with the Act and common law self-defense principles, as established by a preponderance of the evidence.

Under South Carolina common law self-defense, a person can use deadly force to protect himself or herself if certain elements are met:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or

sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.


State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

Defendant's actions complied with these self-defense elements. Defendant stated that she believed that if she did not act as she did, then she would have been killed. Nothing suggests that Defendant was at fault for bringing on the difficulty. Throughout the evening, her actions demonstrated that she wanted to get away from Mr. Lee and to retain her phone.

Based on Mr. Lee's behavior throughout the night, Defendant's belief that she was in danger was reasonable for both her and a reasonably prudent person. Earlier in the evening, less than forty-five minutes before the final altercation, Mr. Lee had perpetrated at least two crimes against Defendant, both of which would be classified as "violent" in its everyday meaning and under Section 16-1-60 of the South Carolina Code of Laws: Kidnapping and Criminal Domestic Violence of a High & Aggravated Nature ("CDVHAN"). The Act specifically allows for people to act "to prevent the commission of a violent crime as defined in Section 16-1-60." S.C. Code Ann. § 16-11-440(C).

Under Section 16-3-910, S.C. Code, Kidnapping is defined as occurring when someone, "unlawfully seize[s], confine[s], inveigle[s], decoy[s], kidnap[s], abduct[s] or carr[ies] away any other person by any means whatsoever without authority of law." As for CDVHAN, Defendant and Mr. Lee were household members to which criminal domestic violence laws would apply under the definitions in the S.C. Code: They fit section (4), "a male and female who are cohabiting or formerly have cohabited." § 16-25-10. Under § 16-25-20, a criminal domestic

violence is defined as follows: "(A) It is unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril. . . ." S.C. Code Ann. § 16-25-20(A). Section 16-25-65, provides that domestic violence that "would reasonably cause a person to fear imminent serious bodily injury or death" elevates that act to CDVHAN, which would qualify as a violent crime under Section 16-1-60.

 Mr. Lee was attacking Defendant and trying to prevent her from leaving as he had done so earlier in the evening. Defendant had reason to believe that violent crimes were about to be committed against her again at the time she acted with the knife, and a reasonably prudent person could have believed that her actions were necessary to save herself from great bodily harm or death. It is well-settled that evidence of a victim's past acts of violence against a defendant are admissible to help establish the reasonableness of a defendant's actions, in particular if those acts were connected closely in time or event to the homicide, since they would be an indication of the victim's state of mind at the time of the homicide and why the defendant may have reasonably feared him. *See State v. Day*, 341 S.C. 410, 419-20, 535 S.E.2d 431, 436 (2000).

However, while allowing prior incidents to be considered in a self-defense analysis, when someone is acting in defense, that action must be based on a current threat. *See State v. Stockman*, 82 S.C. 388, 64 S.E. 595 (1909). When Defendant acted, she was not merely following up on the prior attack. Instead, a new immediate threat existed and she acted on that. Mr. Lee was yelling, pushing, grabbing, shaking, and about to hit Defendant again. When she acted, she was assessing the threat based on Mr. Lee's current and past actions against her, which she was allowed to do.

In addition, self-defense is met in that Defendant was not in a position to get away without acting, even though she did not have a duty to retreat. While Defendant had two friends nearby, they were talking to each other outside of the home at the time of the final altercation. Defendant was not required to wait for possible assistance from others. It was reasonable for her to believe that others would not be able to help her. Earlier in the evening, Defendant had sought help from neighbors and had been unsuccessful. Mr. Lee had been able to convince the male neighbor, whom Defendant had asked for help while she was being dragged by her hair, to just walk away. Mr. Lee was in close contact with Defendant and had his hands on her just prior to when he was about to hit her again. Nothing suggests that Defendant would have been able to physically overpower Mr. Lee. In addition, people do not have to retreat if doing so would increase the danger. *See State v. McGee*, 185 S.C. 184, 190, 193 S.E. 303, 306 (1937). Since Defendant's prior pleas for help had escalated Mr. Lee's actions, she had reason to believe that asking for help, if even possible, would have had the same effect this time. Defendant acted reasonably based on a reasonable and genuine fear of Mr. Lee.

Furthermore, since Defendant was in her own home, she was not under a duty to retreat. *See, e.g., State v. Jackson*, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955). This rule applies even to situations in which both parties are residents of the home in question. "Where a house, premises, or place of business is jointly occupied, used, and possessed by two persons, as by partners, joint tenants, or tenants in common, each joint occupant, being equally entitled to possession, need not retreat when attacked while in the building or premises by the other joint occupant." *State v. Grantham*, 224 S.C. 41, 44, 77 S.E.2d 291 (1953), citing *State v. Gordon*, 128 S.C. 422, 426, 122 S.E. 501, 502 (1924).

Most of the evidence presented on what happened on November 1, 2012, and November 2, 2012, was based on Defendant's statements to police. While her friends were present for part of the time, neither saw the final exchange leading to Mr. Lee's death. They did, however, corroborate that Mr. Lee was angry and intimidating towards Defendant and was possessive and controlling in general. Further, the prior attack, less than forty-five minutes beforehand, was corroborated by Ms. Smith's 911 call, the voice recording left by Defendant to Ms. Grant, and a picture taken by police of Defendant's hair weave torn out by Mr. Lee.


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The State has argued, according to its reading of *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013), that the reasonableness of someone's beliefs and actions are meant for a jury and not a judge during a *Duncan* hearing. However, that interpretation would disallow any finding of immunity under section (C) of § 16-11-440. Instead, "[c]onsistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat." *Curry* at 371. The South Carolina Supreme Court specifically found that, "such immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence," saying that a trial court is allowed to make such a finding. *Id.* at 372.

This Court is satisfied that Defendant has proven, by a preponderance of the evidence, that she was reasonably in fear of great bodily injury, possibly death, and certainly the perpetration of violent crimes, and that she acted in self-defense, in compliance with the law.

D. The Court holds that the Act is constitutional and the Court is allowed, under authority of the Legislature, to grant immunity to those charged with crimes.

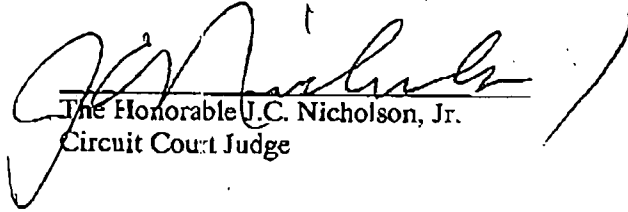
The Court does not agree with the State that the Act is unconstitutional in depriving society of its interest in a Speedy Trial. Judges are allowed to make decisions of law. Those decisions are at times necessarily based on certain decisions of fact. The Legislature created the crimes with which people such as Defendant are charged. It has set out the elements that need to be established for a person to be charged and convicted of a crime. Conversely, it can set out means to find that someone cannot be prosecuted. Society is not served by allowing the State unrestricted decision-making authority.

CONCLUSION




Whitlee Jones is granted immunity under § 16-11-450 of the S.C. Code. This Court finds that under § 16-11-440(C), the Defendant was not engaged in unlawful activity, was attacked in a place where she had a right to be, had no duty to retreat, and had the right to stand her ground and meet force with deadly force. Because her actions fell under section (C), she does not have the presumption of reasonable fear. However, the §16-11-440(C) applies to her actions because she was being attacked in her own home and she acted in self-defense based on the law. Mr. Lee had committed multiple violent crimes against her that evening. She admitted in her statement that she believed he would have killed her at the time she acted, based on his actions at that moment and earlier in the evening. A reasonably prudent person would have believed she was in imminent danger of great bodily injury, or death, or of Mr. Lee committing additional violent crimes against her. Therefore, the Court grants Whitlee Jones immunity from prosecution.

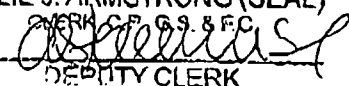
IT IS SO ORDERED!



The Honorable J.C. Nicholson, Jr.
Circuit Court Judge

Charleston, South Carolina
10/3, 2014

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