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SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW

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THE COURT OF GENERAL SESSIONS  
FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

JOYCE BOONALD  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

Indictment No.: 2013-GS-28-0007

vs.

**ORDER GRANTING IMMUNITY  
FROM PROSECUTION**

SALLY ANNE MEMMERT,

Defendant.

This matter came before the Court on July 28, 2014, December 15, 2014 and January 13, 2015 pursuant to the Defendant's June 3, 2014 Motion to Dismiss Pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.* – hereinafter referred to as the "Act"). The Defendant is charged with Murder, wherein it is alleged that on January 17, 2012, the Defendant shot and killed Petra Boykin. The Defendant admits shooting Ms. Boykin, but asserts that she is absolved from prosecution pursuant to the immunity granted in the "Act" (S.C. Code Ann. § 16-11-450). Present at the hearings were Assistant Solicitors April Sampson, Brett Perry and Brent Arant. The Defendant was present and represented by Jack B. Swerling. For the reasons set forth below, I hereby grant the Defendant's Motion to Dismiss and hold that the Defendant has immunity from prosecution under Section 16-11-450(A) of the Act.

**I. FINDINGS OF FACT**

Based on the testimony before the Court, together with the exhibits introduced at the evidentiary hearings, the Court makes the following Findings of Fact:

ATTEST True, Correct & Certified  
Copy of Original on File in this  
Court  
*Joyce Boonald*  
Clerk of Court  
Kershaw County

1. I find that the Court had the opportunity to hear the testimony of the Defendant and personally observe her during the course of her testimony. Taking this into consideration and the fact that other testimony and the exhibits corroborate and are consistent with her testimony, I find that the Defendant was a credible witness and worthy of belief.

2. I find that the house and farm at 450 Smyrna Road, Elgin, South Carolina, where the incident took place, was owned by the Defendant and her husband. The Defendant visited the farm every day to feed and take care of her horses and she spent the night there on occasion. The Defendant allowed her son to stay at the farm from Thanksgiving 2011 to the date of the incident on January 17, 2012. The Defendant was entitled to the peaceful possession of the premises.

3. I find that the Defendant was a close friend of Jan Emrich who was the mother of the deceased Petra Boykin. On September 25, 2011, Ms. Boykin, who was living with her mother and stepfather, had an altercation with them, causing them to fear for their lives. The Defendant came to the Emrich home and offered to let Ms. Boykin and her two children come to live with her in lieu of going to jail. Ms. Boykin and her two children lived with the Defendant from that day until January 8, 2012. During that period of time, the Defendant treated Ms. Boykin like a daughter. She provided separate accommodations for Ms. Boykin and her children. She charged no rent or utilities. She drove the children to and from school and drove Ms. Boykin from place to place when she did not have her own car. She stayed with the children when Ms. Boykin was out. Ms. Boykin and the Defendant had a close relationship during this period of time and the

Defendant did everything she could to provide a normal home environment for Ms. Boykin and her children. They celebrated Thanksgiving and Christmas together and the Defendant bought her and her children presents at Christmas time.

4. I find that on January 8, 2012, the Defendant questioned Ms. Boykin's son about his playing games on her computer, which he had been told not to do on previous occasions. Ms. Boykin grabbed a knife and while she was screaming and yelling in the face of the Defendant, she was flailing her arms in the air with the knife. The Defendant was scared and based on this and other incidents, told her if she came any closer, she would shoot her. In fact, the Defendant never presented a weapon and called 911. Kershaw County deputies responded and the Defendant told Ms. Boykin to leave her home. After Ms. Boykin left, the Defendant placed her clothes and the children's clothes on the front lawn. No arrests were made.

5. I find that Ms. Boykin had a violent history and a history of psychiatric problems, chemical depression, suicide attempts, substance abuse, drug abuse and alcohol abuse. In addition to the January 8, 2012 incident, on September 25, 2011, the day the Defendant took Ms. Boykin to her home, she had threatened to slit her mother's throat and burn the residence down while her stepfather was asleep. Her parents reported that Ms. Boykin had PTSD from her service in the Army and she was not taking her medication. They also reported that they had her committed but she was released from the Kershaw County Emergency Room after several hours. (Defendant's Exhibit 2).

On October 8, 2011, Ms. Boykin was arrested by the Richland County Sheriff's Department. Ms. Boykin had been stopped for traffic violations and having front end

damage to her vehicle. Ms. Boykin appeared to be confused. She admitted to drinking and taking prescription medications. Ms. Boykin was placed in the patrol car and began cursing, yelling and kicking around in the back seat of the patrol car. She eventually lunged out of the vehicle and got into an altercation and was resisting arrest with what were now three deputies. She attempted to kick and attempted to bite the officers several times and did in fact kick one of the officers in the chest before she was subdued. Ms. Boykin was charged with simple assault, resisting arrest and traffic violations. The Defendant had firsthand knowledge of this incident as Ms. Boykin told her what happened and she accompanied Ms. Boykin to Court. (Defendant's Exhibit 3).

In addition to the foregoing incidents, the Defendant observed Ms. Boykin having temper outbursts on the phone. According to the Defendant, Ms. Boykin would threaten who she was talking to and threaten to go over to where the person was staying. She would tell people to come to her house so that she could beat their "butts" and beat them to the ground.

Despite these incidents, the Defendant would try to counsel Ms. Boykin and told her it was not appropriate to act like that both for herself and her children. In addition to the foregoing, Ms. Boykin began associating with Tricia Jones and some other people and would smoke marijuana and drink. The Defendant said she would be high and she disapproved of that and told her how critical it was not to do that because of her children and the fact that she could get in an accident.

Michelle Marble, who was one of the EMS personnel who responded to the shooting incident on January 17, 2012, testified that Ms. Boykin was known to EMS and

had a history of psychiatric problems, chemical depression, suicide attempts, substance abuse, drug abuse and alcohol abuse. (Defendant's Exhibit 28).

6. I find that the Defendant told Ms. Boykin on January 8, 2012 that she was not allowed or welcome to stay at the house on Smyrna Road. She was told this by Mr. Memmert too. Although some of her clothes were at the Smyrna Road house, no evidence was presented that she was living there at the time of the shooting or had ever lived there. In fact, it was the Defendant's belief that Ms. Boykin went to stay at Tricia Jones' home and that is where Ms. Boykin was when she spoke to the Defendant on the phone about getting her clothes from the porch. I find that Ms. Boykin had no legal right to enter the home.

7. I find that Ms. Boykin collected her clothes from Smith Road the week following the January 8, 2012 incident without any problem.

8. I find that on January 16, 2012 the Defendant and Ms. Boykin conversed on the phone about going to the Smith Road address to look for some items that belonged to her son. The Defendant testified that the conversations were pleasant and although the Defendant made arrangements for her to come to Smith Road to look for the items, Ms. Boykin never showed up.

9. I find that in the early morning hours of January 17, 2012, the Defendant received a phone call from her son who was staying at the house on Smyrna Road. He was extremely upset and in a panic. Her son told her that Ms. Boykin and he had been arguing on the phone and Ms. Boykin was at Tricia Jones' house with some drug dealers and pimps and that they threatened to come to Smyrna Road and "do him in", "F" him up

and shoot him. The Defendant told him that no one was going to come to Smyrna Road and shoot him and to just turn his phone off. They hung up, but shortly thereafter, she received another call from her son that the people were still calling and threatening him. The Defendant got up and went to the house on Smyrna Road.

10. I find that the Defendant drove to the house on Smyrna Road and found her son upset and scared. He believed that the guys on the phone were going to follow through with their threats.

11. I find that the Defendant and her son, not knowing if anyone were coming or not, did the appropriate thing and called 911 at approximately 2:10 a.m. (Defendant's Exhibits 4 and 6). Deputy Jack Corbett answered the call, who was the same deputy who answered the call on January 8, 2012 at Smith Road, and the deputy who answered the call at Ms. Boykin's mother's house on September 25, 2011. The Defendant and her son asked Deputy Corbett if he would go down to Tricia Jones' house and talk to the folks who had been threatening her son, Ray, and to tell them not to come to the house that night. Deputy Corbett told them that he could not do that, stayed a few minutes and left, saying he would stay in the area. The Defendant testified that there was a discussion between her, her son and Deputy Corbett about having the right to defend themselves if attacked as there was a gun in the house.

12. I find that after Deputy Corbett left, the Defendant and her son began setting Ms. Boykin's clothes, in bags, on her covered porch. The clothes were in the house without the Defendant's knowledge or permission, and the purpose of putting the bags on the porch was so Ms. Boykin could come and get them whenever she wanted to.

Because of the threats that evening and what Ms. Boykin had told her about the people, the Defendant was reasonably afraid so she retrieved the gun from the residence and put it in a holster in the front of her pants. She had a right to arm herself in her home.

13. I find that there were phone calls going back and forth between Ms. Boykin and her son, and the Defendant took her son's phone and called Ms. Boykin. She told her she was putting her clothes on the porch, that they would not be damaged because the porch was deep and covered and that she could pick them up then or she could pick them up in the morning. According to the Defendant, she was not upset or excited and spoke in the same normal tone that she was speaking with during her testimony before the Court. She also told her that there would be no more phone calls and she was turning the phone off and putting it in her pocket. According to the Defendant, Ms. Boykin started "yelling and screaming at me on the phone and telling me that she was going to kick my ass, that she was going to beat me to the ground. She was calling me names. Then she hung up on me."

14. I find that shortly before 3:00 a.m. on January 17, 2012, the Defendant was coming out of the bedroom and entering the foyer. As she turned the corner into the foyer, Ms. Boykin was in the foyer of her home and coming toward the Defendant. Ms. Memmert believed she entered her home through the front door. The front door had either been closed or slightly ajar. Even if it was slightly ajar, Ms. Boykin had to push the door open to get in. Ms. Boykin had not been invited into the home, had no right to enter the home and had no reason to believe she could lawfully enter the home. She entered the home with the intention of assaulting the Defendant. She was told she could

pick up her clothes on the front porch which certainly gave her no right to enter the home to assault the Defendant. As set forth in Section V above, the Court finds that Ms. Boykin unlawfully and forcefully entered the defendant's home through the front door. The evidence presented to the Court does not leave open any other conclusion. Ms. Boykin and the Defendant met in the middle of the foyer. Ms. Boykin was angry and lunged at the Defendant. Ms. Boykin began slapping, choking and shoving the Defendant, and shoved her back near the wall between the bathroom and the wall in the foyer. Ms. Boykin was a young female who was twenty-nine (29) at the time of the incident. The Defendant was a fifty-seven (57) year old woman who suffered from fibromyalgia, which made touching her very painful, and if her neck were grabbed she would drop to the floor. Ms. Boykin continued the assault, hitting the Defendant with her fists and hands. The Defendant was attempting to fend her off. Ms. Boykin grabbed and choked the Defendant on the neck. The Defendant was telling Ms. Boykin to get off her and stop hurting her, but she did not. Instead she kept hitting her and kept shoving her to the wall in the foyer near the bathroom. Ms. Boykin was calling the Defendant a bitch, telling her she was going to beat her into the "fucking ground" and that she was going to "fuck her up." The Defendant told Ms. Boykin she had a gun and did not want to use it. Ms. Boykin responded "shoot me bitch, shoot me. You had better shoot me." Her failure to stop the assault after being told Mr. Memmert had a gun, and her response was a clear indication she intended to do Ms. Memmert serious or great bodily injury. The Defendant was afraid of being seriously hurt, that Ms. Boykin would get her on the floor and just kick her to "no end." The Defendant felt like she could not get away from Ms. Boykin,

and while being backed near the wall she had nowhere to go. The Defendant was in pain and continued to get assaulted. Ms. Boykin was “on top of her” and hitting her. The Defendant had never been beaten like that before, was afraid, and was getting hurt. It was at this time, feeling like she had no other options, being afraid for her life, the Defendant pulled out the pistol and shot Ms. Boykin one time. The shot appears to have been fired when the Defendant was near the wall to the right of the bathroom with Ms. Boykin facing her and with the bannister behind Ms. Boykin.

When the gun went off, Ms. Boykin took two steps back and fell to the floor of the foyer, completely inside the home of the Defendant. The bullet passed through Ms. Boykin and struck a spindle on the bannister on the stairs leading to the second floor. The bullet then struck the window frame directly behind the spindle, ricocheted, possibly hit the front door and then landed in the alcove of the foyer to the right of the door. The shell casing was ejected from the 9mm pistol and landed in the bathroom to the right of where the Defendant was standing.

15. As the Court stated above, the Court observed and listened to the Defendant’s testimony, and found the Defendant to be a credible witness. The Defendant’s testimony was unchallenged by the State. However, in addition to the Court’s observations, I find that the following evidence corroborated and was consistent with the Defendant’s version of events:

- (a) Defendant’s Exhibits 4 and 6 which are the CAD report of the 911 call and the tape of the 911 call.
- (b) Defendant’s Exhibits 8 and 9 are photographs which show the front of the home.

- (c) Defendant's Exhibit 10 which shows the front door, the foyer, the bathroom to the right, the wall to the right of the bathroom, the bannister and the window. (This photograph was taken after the scene had been returned to normal.)
- (d) Defendant's Exhibit 11 which is a photograph of the foyer and was taken the night of the incident. The rug in the foyer is clearly out of place and had been moved.
- (e) Defendant's Exhibit 12 which is a photograph of the front porch, and the foyer taken the night of the incident.
- (f) Defendant's Exhibits 14 and 15 which are photographs that were taken the night of the incident and clearly show the damage to the spindle on the staircase from the bullet that passed through Ms. Boykin. These photographs clearly show that Ms. Boykin was in the foyer when she was shot, facing the Defendant and in front of the bannister.
- (g) Defendant's Exhibit 16 which is a photograph that was taken the night of the incident and shows the bullet hitting the window frame, further corroborating that Ms. Boykin was in the home and in front of the bannister facing the Defendant when she was shot.
- (h) Defendant's Exhibit 17 which is a photograph that was taken the night of the incident and shows the shell casing that was ejected to the right and resting in the bathroom in the foyer.
- (i) Defendant's Exhibit 19 which is a photograph that was taken the night of the incident and shows the bullet that ended up in the alcove to the right of the front door.
- (j) Defendant's Exhibits 4 and 20 which are the second CAD report and 911 call made after the shooting. Significantly it can be heard on the 911 tape where the Defendant described the parties at close range to one another when the shot was fired.
- (k) Defendant's Exhibit 21 which is a diagram made by the Defendant for the investigator showing approximately where Ms. Boykin and the Defendant were standing at the time of the shooting. The Defendant placed herself near the wall and close to the bathroom with Ms. Boykin in close proximity.

- (l) Defendant's Exhibits 22, 23, 24 and 25 were photographs taken that day by investigators and clearly show the extensive injuries suffered by the Defendant.
- (m) Defendant's Exhibits 26 and 27 were photographs taken by the Defendant's daughter a couple of days after the incident showing additional injuries to her arm.

The Court finds compelling corroborative evidence of the Defendant's testimony from Donald Girndt. Mr. Girndt has a history of over twenty (20) years in law enforcement. He was employed by SLED for twelve (12) years, the last nine (9) years in the crime scene unit as a crime scene analyst. He is now employed at the University of South Carolina Police Department as a fingerprint examiner. He is a forensic consultant in the area of crime scene analysis, fingerprint identification, footwear identification, and blood stain pattern interpretation. Mr. Girndt has been qualified as an expert in crime scene analysis on numerous occasions in the courts of this state. The Court qualified him as an expert in crime scene analysis.

Mr. Girndt consulted with Mr. Swerling on this case. He visited the location of the shooting on Smyrna Road and reviewed the discovery in the case. When visiting the scene he had the opportunity to compare the photographs referenced above to the actual location. He also utilized Defendant's Exhibit 7 to demonstrate to the Court the relevant matters he was testifying to.

Mr. Girndt stated that at the time of the shooting, Ms. Boykin had to be in the foyer, with her back to the bannister and facing the Defendant. Mr. Girndt stated that the bullet passed through Ms. Boykin, hit the spindle on the bannister, struck the window and ricocheted into the alcove. Mr. Girndt stated that in order for the shell casing to wind up

in the bathroom of the foyer, the Defendant would have had to be in the area of the bathroom, since the shell casing would eject to the right. The bathroom had to be lined up with the ejection port. The Court finds Mr. Girndt's testimony, observations and opinions are consistent and corroborate the Defendant's testimony.

Christopher Phillips testified for the defense. Mr. Phillips is employed by the State of South Carolina, Division of Alcohol and Drug Abuse. He also owns Palmetto Protective Services where he is certified by SLED to teach concealed weapons classes, and also teaches advanced firearms training, self-defense, castle doctrine, and similar issues. He teaches at the University of South Carolina in the Criminal Justice Program and holds a Bachelor's Degree, two (2) Master's Degrees and would begin working on a Ph.D. in January. Mr. Phillips has had twenty (20) years of training in law enforcement and was a Captain at the Kershaw County Sheriff's Department at the time of the incident on January 17, 2012. Mr. Phillips responded to the scene at Smyrna Road and participated in the investigation.

When he arrived at the scene, Ms. Boykin was still there and her body was completely in the house. When he saw the Defendant she was physically shaken, had been crying and had tears in her eyes.

Mr. Phillips reviewed the photographs referenced above. He reviewed the photographs with the Court during his testimony. He observed the rug was out of place in the foyer, and that it had not been moved by law enforcement, and he observed the damage to the spindle in the bannister and determined that it was a ricochet of the bullet that entered and exited Ms. Boykin. He observed that in order for the bullet to strike the

spindle on the bannister, the person who got shot had to be standing in front of the bannister when she got shot, putting Ms. Boykin in the house.

Mr. Phillips observed the bullet lying in the alcove. He observed that the bullet also struck the inside of the front door and bounced off. (Defendant's Exhibit 19-A). He observed the shell casing in the bathroom in the foyer. He observed the wall on the right hand side of the bathroom.

Mr. Phillips was present later in the morning when the Defendant agreed to be interviewed by Investigator DeVors. He observed the interview on a live feed on television. Mr. Phillips was present when the photographs showing the Defendant's injuries were taken and testified that the photographs referenced above accurately depicted what he personally observed.

Mr. Phillips testified that the Defendant told him and other investigators that she was confronted by Ms. Boykin and pushed to the wall to the right of the bathroom. Mr. Phillips testified that based on his training and experience that the Defendant's version of the events was consistent with what he found at the scene. According to Mr. Phillips, the Defendant would have to have been close to the bathroom door for the shell casing to eject into the bathroom.

Mr. Phillips testified about the Castle Doctrine, not as a matter of law, but as to his opinion being a captain of the Sheriff's Department at the time of the incident and being authorized by SLED to teach people about self-defense. It was his opinion that based upon what the Defendant said and what he observed, that it was consistent with someone

exercising their right of self-defense and their rights under the Castle Doctrine. In fact, Mr. Phillips relayed that same opinion to the Assistant Solicitor handling the case.

The Court finds that Mr. Phillips' testimony, observations and opinions are consistent with and corroborate the Defendant's version of the events.

Michelle Marble testified for the defense. She was one of the EMS personnel that responded to the scene at Smyrna Road. As she entered the residence, a man (later identified as the Defendant's son) said that "she (Ms. Boykin) attacked my mom and my mom shot her." (Defendant's Exhibit 28). This testimony and the exhibit were entered without objection, but clearly what the son said would have been admissible under S.C.R.E. 803(1) and (2). The witness also testified that Ms. Boykin had a history of psychiatric problems, clinical depression, suicide attempts, substance abuse, drug abuse, and alcohol abuse. Ms. Marble also testified that Ms. Boykin's body was inside the Defendant's residence.

The Court finds that the testimony of Ms. Marble and Defendant's Exhibit 28 are consistent with and corroborate the testimony of the Defendant that Ms. Boykin entered her residence and attacked her.

## II. LAW

The Defendant has moved for dismissal of the indictment and immunity from prosecution pursuant to the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-450(A) (Supp. 2013). The Act provides in pertinent part:

Section 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.

Section 16-11-440 provides, in pertinent part:

(A) 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.

(C) 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.

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

Section 16-11-450(A) provides:

(A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force.

The South Carolina Supreme Court held in State v. Duncan, 709 S.E.2d 662 (2011) that a claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard. In State v. Curry, 752 S.E.2d 263 (2013), the Supreme Court held that where a defendant claims immunity under the Act, a valid claim of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining the defendant's entitlement to immunity, including all elements of self-defense, save the duty to retreat. It is well settled in South Carolina that there are four elements required by law to establish a case of self-defense:

(1) The defendant must be without fault in bringing on the difficulty;

(2) 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;

(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. 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 to save himself from serious bodily harm or losing his own life.

(4) The defendant had no other probably means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in his particular instance.

Curry at 372, n. 4, citing State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). It is the fourth element, the duty to retreat, that is excused under the Act. Curry at 372.

Under Curry, *supra*, the defendant has the burden of establishing the applicability of the Act and self-defense by a preponderance of the evidence standard. To establish immunity under 16-11-440(C), a defendant must by a preponderance of the evidence, establish the following:

- (1) She was not engaged in an unlawful activity;
- (2) She was attacked in a place where she had a right to be; and
- (3) She reasonably believed that her actions were necessary to prevent death or great bodily injury to herself or another person or to prevent the commission of a violent crime as defined in S.C. Code Ann. § 16-1-60.

In State v. Douglas, Op. 5286 (Sup. Ct. 12/23/14), the Supreme Court held that:

The State places emphasis on the word “another” in the phrase “another place where [the accused] has a right to be” in subsection (C) of section 16-11-440. The primary definition of “another” is “different or distinct from the one first considered.” *Merriam Webster’s Collegiate Dictionary* 51 (11<sup>th</sup> ed. 2003). This definition would arguably modify “place”, as used in section 16-11-440(C), in such a way as to make “dwelling, residence, or occupied vehicle” and “another place” mutually exclusive. This is the interpretation the State proposes. On the other hand, the second and third definitions of “another” are “some other” and “being one more in

addition to one or more of the same kind”, respectively. *Id.* The third definition is more inclusive and arguably would not eliminate “dwelling, residence, or occupied vehicle” as a possible “place” where the person using deadly force has a right to be pursuant to section 16-11-440(C).

.....

The General Assembly’s use of this “language in section 16-11-420 clearly indicates its intent to provide the protections of the Act to persons within their own home facing not only unwelcome intruders but also “attackers,” including those who are initially invited into the home and later place the homeowner in reasonable fear of death or great bodily injury. Further, the language of section 16-11-440(C) itself indicates that its application is not limited to businesses. Therefore, the more inclusive definition of “another” is the proper definition to employ in interpreting section 16-11-440(C).

In other words, a defendant may rely on sections 16-11-440 (A)(1)(2) and (C) to be entitled to immunity under Section 16-11-450(A) depending on the circumstances.

**A. Immunity under 16-11-440(A)**

The relevant language for the Court to consider under 16-11-440(A)(1) is whether Ms. Boykin was in the process of unlawfully and forcibly entering the Defendant’s residence, or had unlawfully and forcibly entered the Defendant’s residence, and the relevant language for the Court to consider under 16-11-440(A)(2) is whether the Defendant knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

The State has argued that this section of the Act is not applicable to the Defendant because Ms. Boykin was invited to obtain her clothing from the Defendant’s attached

porch and an attached porch is included in the definition of “dwelling” under Section 16-11-430(1). The Court does not find this argument persuasive.

It is true that under Section 16-11-430(1) a “dwelling means a building or conveyance of any kind including an attached porch . . .” Section 16-11-430(3) defines “residence” as a dwelling in which a person resides either temporarily or permanently . . .” The Court finds that the house on Smyrna Road where the shooting took place was the Defendant’s residence. The Court also finds from the testimony and evidence presented, that even if Ms. Boykin were invited to retrieve her belongings from the Defendant’s porch, such invitation in no way could be construed as an invitation to enter her residence. This would lead to an absurd result and would allow any invitee or guest to a person’s porch to feel free to enter the residence. Including a “porch” within the definition of “dwelling” was meant to expand the right of the homeowner and protect herself from an intrusion on the porch. It could not logically mean to expand the rights of an invitee to the porch, to enter the residence itself. I also find that the invitation was strictly limited to retrieving her belongings from the porch, not the house itself.

In addition, when the Defendant told Ms. Boykin she could retrieve the clothes from the porch, Ms. Boykin started yelling and screaming at the Defendant on the phone and telling her that she was going to kick her ass, and that she was going to beat her to the ground. I find that Ms. Boykin’s response voided any invitation for Ms. Boykin to retrieve her belongings from the porch at that time, and I further find that her response to the Defendant could never have been considered by her to be an invitation for her to enter the Defendant’s residence so that she could carry out her threats to assault the Defendant.

Based on the presented at the evidentiary hearing, I find that at the very minimum, Ms. Boykin's conduct constituted a violation of Section 16-11-311(A) or Burglary in the first degree. Ms. Boykin entered the defendant's home through the front door. The entry was without consent, was in the early morning hours of January 17, 2012 and Ms. Boykin caused physical injury to the Defendant. I therefore find that Ms. Boykin's entry was unlawful as set forth in Section 16-11-440(A)(1).

Furthermore, I find that Ms. Boykin's entry was forceful. Ms. Memmert testified that the front door was closed or could have been slightly ajar at the time Ms. Boykin entered her residence. Ms. Boykin entered the Defendant's residence after making threats of physical violence to the Defendant. If Ms. Boykin opened the door, her entry was clearly with force. If the door was slightly ajar and she pushed it open wide enough to gain entry, this clearly was with force as well.

**B. Immunity pursuant to Sections 16-11-440(C) and 16-11-450(A) of the Act.**

This provision involves the so-called "stand your ground" portion of the Act, found in S.C. Code Ann. § 16-11-440(C). To establish immunity under the "stand your ground" portion of the Act, a defendant must by a preponderance of the evidence establish the following:

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.

To simplify, the elements of this defense, as it applies to the instant case are:

- (1) She was not engaged in an unlawful activity;
- (2) She was attacked in a place where she had a right to be; and
- (3) She reasonably believed that her actions were necessary to prevent death or great bodily injury to herself or another person or to prevent the commission of a violent crime as defined in S.C. Code Ann. § 16-1-60.

The Court finds that there is no evidence that the Defendant was engaged in an illegal activity.

The Court finds that the Defendant was attacked in a place where she had a right to be - her residence. In State v. Douglas, the Court of Appeals held that the language of the statute “in another place where he has a right to be” would not eliminate “dwelling, residence or occupied vehicle.” Here, there is no question that the Defendant was in her dwelling or residence at the time she shot Ms. Boykin and therefore 16-11-440(C) is applicable to this case.

The Court finds that the Defendant would have a reasonable belief that Ms. Boykin was going to commit or did commit attempted murder (16-3-29), assault and battery with intent to kill (16-3-620) or assault and battery of a high and aggravated nature (16-3-600(B)), and the Defendant had a reasonable belief that it was necessary to fire the fatal shot to prevent that from happening.

The Court finds that the Defendant did suffer serious bodily injury. Furthermore, Section 16-11-440(C) allows the use of deadly force if a person reasonably believes it is necessary to prevent death or great bodily injury, and in State v. Davis, supra the question

is whether a Defendant is entitled to strike a fatal blow in order to save herself from serious bodily harm or losing her life. Thus, the question is not whether a person did sustain great bodily injury or serious bodily injury, but whether they were in danger of sustaining great bodily injury or serious bodily injury and whether they fired the fatal shot to prevent that from happening.

Based on the injuries already suffered by the Defendant, the Court finds by a preponderance of the evidence that under Section 16-11-440(C), the Defendant reasonably believed that she had to fire the fatal shot to prevent death or serious bodily injury, and under State v. Davis, supra, the Defendant had the right under the circumstances to fire the fatal shot to save herself from death or serious bodily harm.

In conclusion, the Court finds by a preponderance of the evidence that the Defendant has established all the elements required under 16-11-440(C) of the Act and is entitled to immunity from prosecution pursuant to Section 16-11-450(A) of the Act.

**C. The accused has made out a valid claim for self-defense.**

Ms. Memmert has a colorable claim to self-defense under State v. Davis, supra, and its progeny which counsel that the accused must demonstrate the elements of self-defense by a preponderance of the evidence before receiving immunity. Those elements, as stated above, are as follows:

- (1) The defendant must be without fault in bringing on the difficulty;

(2) 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;

(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. 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 to save himself from serious bodily harm or losing his own life.

The first element of self-defense under State v. Davis, supra is that the Defendant must be without fault in bringing on the difficulty. The Court finds by a preponderance of the evidence that the Defendant was without fault in bringing the difficulty

The Defendant's request did not amount to "bringing on the difficulty." The Court in State v. Douglas, supra cited with approval, the following language from 40 Am. Jur. 2d Homicide § 146 n. 6 (2008) which cited State v. Jackson, 328 P.2d 229 (Ariz. 1963)" "One who does an action [that] offers an opportunity for conflict is not thereby precluded from claiming self-defense. Fault implies misconduct, not lack of judgment" and "Before an act may cause forfeiture of the fundamental right of self-defense, it must be willingly and knowingly calculated to lead to conflict." The Court finds that the Defendant's acts is no way amounted to misconduct or were willingly and knowingly calculated to lead to conflict. The Court also finds that the Defendant did not use language so opprobrious as would be reasonably calculated to bring on the difficulty and did not actually contribute to bringing on the encounter. State v. Woodham, 160 S.E. 885, 889 (1931).

The Court finds that the Defendant was not committing any act in violation of the law, nor was her action reasonably calculated to produce the attack on her by Ms.

Boykin. State v. Slater, 644 S.E.2d 50, 52 (2007) and State v. Bryant, 520 S.E.2d 319 (1999). The Court further finds that the actions of the Defendant did not amount to misconduct, nor were her actions willingly and knowingly calculated to lead to conflict. The Court further finds that the Defendant did not provoke or initiate the assault and she is not deprived of her right to rely on self-defense.

As discussed above, Ms. Memmert had a reasonable belief that she was in danger at the time she shot Ms. Boykin. I find that this belief would be shared by a person of ordinary firmness under the same circumstances as were present at the time Ms. Memmert discharged her weapon.

Under the mandate of State v. Curry, *supra*, the Court has examined the elements of self-defense set forth in State v. Davis, *supra* and finds that the Defendant has demonstrated the elements of self-defense to the Court by a preponderance of the evidence. The Court has also found by a preponderance of the evidence that the Defendant has proven all the elements required under Section 16-11-440(A)(1)(2). The Court therefore finds that by a preponderance of the evidence the Defendant is entitled to immunity from prosecution pursuant to Section 16-11-450(A) of the Act.

#### IV. CONCLUSION

Based on the evidence presented to the Court at the evidentiary hearings, the Findings of Fact made by the Court above, the Court's determination that the Defendant has a right to rely on Sections 16-11-440(A)(1)(2) and (C), and the Court's finding that the Defendant has demonstrated the elements of self-defense by a preponderance of the evidence, the Court concludes as a matter of law that the Defendant is immune from

criminal prosecution under Section 16-11-450(A) of the Act and the case is accordingly dismissed.

IT IS SO ORDERED.

*Re Hood*

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Robert E. Hood  
Chief Administrative Judge, General Sessions  
Fifth Judicial Circuit

4/24, 2015  
Columbia, South Carolina

FILED FOR RECORD  
2015 APR 28 PM 4:54  
JOYCE McDONALD  
CLERK OF COURT  
KERSHAW COUNTY, S.C.