

**ORIGINAL**

**STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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Appeal from Charleston County  
The Honorable J. C. Nicholson, Circuit Court Judge

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Trial Court Case No. 2013-GS-10-00799  
Appellate Case No. 2014-002123

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**RECEIVED**

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**S.C. Supreme Court**

THE STATE,

Appellant,

vs.

WHITLEE JONES,

Respondent.

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**RECORD ON APPEAL**

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Certificate of Counsel

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2 STATE OF SOUTH CAROLINA )  
3 COUNTY OF CHARLESTON ) Court of General Sessions  
Case No. 2013-GS-10-00799  
4 \_\_\_\_\_ )  
5 STATE OF SOUTH CAROLINA )  
6 VS. ) Transcript of Record  
7 WHITLEE JONES, )  
8 Defendant. )  
DATE: August 12, 2014

9

10 B E F O R E:

11 The Honorable J.C. Nicholson

12

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22 Circuit Court Reporter

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1 (Defendant's Exh. 1, CAD Report, was marked for  
2 identification.)

3 (Defendant's Exh. 2, Photographs, was marked for  
4 identification.)

5 (Defendant's Exh. 3, Photograph, was marked for  
6 identification.)

7 (Defendant's Exh. 4, CAD report, was marked for  
8 identification.)

9 (Defendant's Exh. 5, Officer Bridge's in-car  
10 video, was marked for identification.)

11 (Defendant's Exh. 6, 911 call from neighbor, Ms.  
12 Smith, was marked for identification.)

13 (Defendant's Exh. 7, CD interviews of Jasmine  
14 Taylor and Erica Grant, was marked for identification.)

15 (Defendant's Exh. 8, Two voicemail messages, was  
16 marked for identification.)

17 (State's Exh. No. 1, Witness statement of Jasmine  
18 Taylor, was marked for identification.)

19 (State's Exh. No. 2, Defendant's Statement, was  
20 marked for identification.)

21 (State's Exh. No. 3 through 14, Photographs, were  
22 marked for identification.)

23 THE COURT: Put on the record why we are here.

24 MR. KIDD: Are you ready for argument?

25 THE COURT: Well, I think it's their request for

1 immunity, so I will let them. They've got the burden.

2 So why are we here?

3 MS. FORD: Yes, Your Honor. Do you want me to  
4 start presenting evidence or did you want an argument on  
5 the Manning case?

6 THE COURT: No, I want you to put on the record why  
7 we are here this morning based upon your motion.

8 MS. FORD: Yes, sir, Your Honor. I am seeking  
9 immunity for my client, Ms. Jones, who is accused of murder  
10 for the stabbing death of Eric Lee from November 2nd, 2012.  
11 I believe that the Castle Doctrine laws would apply to her  
12 and she should be granted immunity. And that is why we are  
13 here, to present evidence in support of that.

14 THE COURT: You want a hearing on the defense of  
15 habitation, Section 16-11-440, right, Subsection C?

16 MS. FORD: Yes, Your Honor, Subsection C.

17 THE COURT: Let me say this. In chambers, I have  
18 listened to what portions of the taped interview I could  
19 hear. It's very -- I could probably hear maybe 50 percent  
20 of it, if that much. But I did observe the defendant,  
21 Whitlee Jones, and she was very distraught. She was very  
22 upset. She was crying. A lot of the inability to hear was  
23 her sobbing.

24 MS. FORD: Yes, sir.

25 THE COURT: And I did observe that for about 30

1 minutes. I think the tape itself is about an hour and a  
2 half, but I did watch it and listen when I could hear the 30  
3 minutes. I did read the statement that was presented in  
4 chambers. So I have done that before we started to hear  
5 anything.

6 MS. FORD: Yes, sir.

7 THE COURT: I will be glad to hear you. And I  
8 guess really boils down to, how are you going to distinguish  
9 Manning or get around Manning? Because the dicta in Manning  
10 appears to be right on point where it says -- the language  
11 in another place refers to a place other than one's  
12 dwelling, residence or occupied vehicle.

13 And I understand there's a rehearing being granted  
14 in the case. But right now, it's the law that this Court is  
15 sort of obligated to go by. I mean, seems like Manning is  
16 right on point.

17 MS. FORD: Yes, Your Honor. And I agree if Manning  
18 were the actual law, it would bar --

19 THE COURT: It is the law until it's either  
20 retracted or a new hearing changes it.

21 MR. KIDD: It has been retracted for the rehearing,  
22 Judge.

23 THE COURT: It has been retracted?

24 MR. KIDD: Yes, sir.

25 THE COURT: So it has been retracted?

1 MS. FORD: Yes. So it has been retracted, so it's  
2 not the current state of the law, Your Honor. And so I  
3 think since it's so clearly contrary to the expressed intent  
4 of the General Assembly and contrary to the other statutes  
5 in the act and to the common law of self-defense in general,  
6 I think that there's a good chance that it will be changed,  
7 if not there, then by the Supreme Court.

8 Because I think cases such as State v. Curry, there  
9 was never any suggestion that the Supreme Court thought  
10 there would be such an issue.

11 THE COURT: I think State v. Curry is an important  
12 case that allows C to apply. It was the appropriate  
13 section.

14 MS. FORD: They said that C would have been the  
15 section to apply in that case; however, they didn't feel  
16 that other elements of self-defense were met.

17 THE COURT: Have been met, right.

18 MS. FORD: And that in analyzing an immunity claim,  
19 that the Court is basically to use general self-defense laws  
20 in order to analyze a case, Your Honor.

21 THE COURT: For the record, I will grant you a  
22 hearing on this section. Okay?

23 MS. FORD: Thank you.

24 THE COURT: But before I do that, he has an  
25 argument where we don't need the hearing, if my information

1 is correct here. But go ahead. I should have heard it  
2 before I made that statement.

3 MR. KIDD: Well, and it's fine. I just want to  
4 articulate my perspective for the record in case this --  
5 obviously, if you don't rule against me after the hearing,  
6 it would be a nonissue. But if you were to rule against me  
7 after the hearing, I would like the opportunity to have my  
8 position articulated for the record.

9 And I think that position is in line with State v.  
10 Manning in that when you look at 16-11-440, and the whole  
11 point of the statute is to codify -- we usually have a hard  
12 time finding what legislature intended in South Carolina,  
13 but they actually lay it out in 16-11-440, and that is to  
14 codify the Castle Doctrine.

15 The Castle Doctrine is all about intrusion into  
16 one's home, someone coming in. And that's why we are giving  
17 them the presumption that deadly force can be used when  
18 someone intrudes on your home, place of business, or car.  
19 It's about people being attacked from the outside.

20 THE COURT: Doesn't the Castle Doctrine also apply  
21 to, let's say, two people, husband and wife, okay, and both  
22 reside there, as far as issue of retreat is concerned?

23 MR. KIDD: As far as the issue of retreat.

24 THE COURT: Doesn't Castle Doctrine apply only as  
25 to the issue of retreat?

1           MR. KIDD: Only as to the issue of retreat. I  
2 would agree under the common law, at least in South  
3 Carolina, it seems to exclude that requirement under the law  
4 of self-defense, in that, if two people are lawfully in  
5 one's home and they attack, then neither has the duty to  
6 retreat.

7           But what 16-11-440 does is go a step further,  
8 because it then says that you have the -- you are presumed  
9 entitled to use deadly force. But when you look at  
10 16-11-440C, it specifically does not allow that presumption  
11 under 16-11-440C.

12           THE COURT: C doesn't allow what presumption now?

13           MR. KIDD: The presumption that one is entitled to  
14 use deadly force. Under 16-11-440C, a person who is not  
15 engaged in an unlawful activity and who is attacked in  
16 another place where he has a right to be, including but not  
17 limited to his place of business, has no duty to retreat,  
18 which is what we just talked about, and has the right to  
19 stand his ground and meet force with force, including deadly  
20 force if he reasonably believes it is necessary to prevent  
21 death or great bodily injury.

22           So what we are doing now is saying 16-11-440C is  
23 different from A and B, because you are not entitled to the  
24 presumption that one's allowed to use great bodily injury or  
25 allowed to use deadly force. So, basically, it's saying

1 that under Subsection C, that presumption is nonexistent.

2 And when we are talking about immunity, we are talking about  
3 someone who is so protected and allowed that presumption,  
4 that we can't prosecute them and they shouldn't be subjected  
5 to the laws of self-defense.

6 But when they don't have that presumption, then we  
7 have the jury question of whether or not they exceeded the  
8 force necessary to dispel the situation. And that becomes a  
9 jury question.

10 THE COURT: Don't you think C just basically tries  
11 to codify self-defense under the Castle Doctrine we just  
12 talked about by retreat?

13 MR. KIDD: In a way, yes, sir. And I think that's  
14 articulated in State v. Curry. Although the posture of  
15 State v. Curry was at the directed verdict stage. What they  
16 say in State v. Curry, it was not an error for them not to  
17 grant immunity because there were jury questions as to the  
18 issues of self-defense which had not been established. So  
19 if we have issues of the other elements of self-defense,  
20 whether you brought the situation on or not, whether the  
21 degree of force was necessary --

22 THE COURT: Let me ask you this. Okay? Speaking  
23 to the Manning case -- and let me tell you my problem, my  
24 limited view of the Manning case. The Manning case was  
25 directed by dwelling in Subsection C. Okay? You could have

1 a husband and wife eating supper, they are at Magnolias.  
2 They get into a dispute, and the husband beats the wife, or  
3 whatever occurs, and she shoots him. Under the Manning  
4 case, you could impose C.

5 However, if that same couple was sitting in the  
6 house at the dining room table and having supper and husband  
7 beats wife and wife shoots him, you only have C.

8 It's absurd. It's absurd.

9 MR. KIDD: I understand what you are saying, but I  
10 think when you read C, you understand that we don't have  
11 that presumption. So it's still -- even the couple sitting  
12 at Magnolias, would still have to establish --

13 THE COURT: You still don't have a presumption at  
14 Magnolias. You've got to prove self-defense.

15 MR. KIDD: I respectfully disagree with you, Judge.

16 THE COURT: You think you do have a presumption at  
17 Magnolias?

18 MR. KIDD: I think you do. I think at Magnolias  
19 you do not have the presumption to use deadly force.

20 Because it says under C, you have the right to stand your  
21 ground and no duty to retreat and meet force with force,  
22 including deadly force, if he reasonably believes it is  
23 necessary. So you have the issue of reasonable belief.

24 Wherein, Sections A and B, you have the  
25 presumption. It's not about whether it's reasonable or not.

1 It's about you --

2 THE COURT: You can still grant immunity under C,  
3 but it's a different yardstick or different measuring stick.  
4 Why would -- why should it be a different measuring stick if  
5 your home versus at Magnolia Restaurant? That's my question  
6 to you.

7 MR. KIDD: I guess my response, and I'm not  
8 articulating it very well, is that I believe the yardstick  
9 is the same, because in the home, there's also no duty to  
10 retreat. In Magnolias, there's no duty to retreat.

11 THE COURT: Even under A, you don't have the  
12 protection at the dining room in your own house.

13 MR. KIDD: You don't have the presumption.

14 THE COURT: Right.

15 MR. KIDD: But you still have a duty to retreat.  
16 And I'm saying at Magnolias, you have no presumption.

17 THE COURT: You have under common law, but where  
18 the statute takes away that A is if -- let's take -- let's  
19 say husband is trying to get in, break into the house, and  
20 wife shoots him. You don't have A. It excludes that.

21 MR. KIDD: If he has the lawful right to be in the  
22 residence.

23 THE COURT: Right, right. So A excludes that.

24 MR. KIDD: It would be excluded from A. And my  
25 argument would be C doesn't apply either, in that it's

1 specifically excluded from the statute. That doesn't mean  
2 they are not entitled to the law of self-defense; they are  
3 just not entitled to immunity.

4 THE COURT: Under your argument, we might as well  
5 just take C completely out, immunity statute, because the  
6 whole statute is about immunity.

7 MR. KIDD: Correct.

8 THE COURT: Where under C do you think someone  
9 would be entitled to immunity?

10 MR. KIDD: I think all that C does -- I don't think  
11 C entitles anyone to immunity. I think all C does is remove  
12 the duty to retreat in other situations outside of the  
13 dwelling. So it extends the common law of the Castle  
14 Doctrine as it is applied between two people in a dwelling  
15 further, which is the intent of the statute, to other places  
16 in which one might otherwise have been --

17 THE COURT: How can you say immunity wouldn't apply  
18 in C when you read Subsection 16-11-440? That's the one  
19 that says a person who used as permitted by the provisions  
20 in this article, and C is part of the article.

21 MR. KIDD: I agree, Judge.

22 THE COURT: Go ahead.

23 MR. KIDD: I agree with that, but from the way C is  
24 worded, it is requiring that you meet the elements of  
25 self-defense before that immunity is granted.

1           THE COURT: I don't disagree with that. I agree  
2 with that 100 percent.

3           MR. KIDD: So if -- I don't agree that it does, but  
4 if this situation were to fall under Section C, I would  
5 agree that we can then have an immunity hearing if you agree  
6 by a preponderance of the evidence that she has met every  
7 other element of self-defense. Then immunity could be  
8 granted under C. But I guess what I'm saying is that it  
9 doesn't change the law of self-defense, as does Sections A  
10 and B, because there is not that presumption to be allowed  
11 to use great -- I mean, deadly force or great bodily injury  
12 as it is in Sections A and B.

13           But I think the best argument, one that I kind of  
14 curtailed around, is that C is just not applicable because  
15 this situation is specifically excluded in Section B. And,  
16 therefore, it can't just be backdoored in in Section C.

17           THE COURT: Well, that probably is your best  
18 argument.

19           MR. KIDD: Well, right. But, you know --

20           THE COURT: Grants the exception in A and B and not  
21 grant it in C, but they didn't.

22           MR. KIDD: Correct. And I think that is most  
23 telling of the legislature's intent, that we are not here to  
24 grant immunity to people who commit acts of violence on one  
25 another who are both lawfully in the same place or the same

1 dwelling, more specifically.

2 THE COURT: I don't know if I agree with that or  
3 not.

4 MR. KIDD: Because they are entitled to the  
5 self-defense argument. We aren't then going to enter  
6 ourselves into their home and grant immunity for one part or  
7 the other without hashing that out in court, because that's  
8 not what the Castle Doctrine or the legislature intended.  
9 They intended to protect you from attackers, from people  
10 coming from the outside in, to your car, to your place of  
11 business, or to your home, not threats from the inside out.  
12 And that intent is easily drawn from the way they exclude  
13 people lawfully in one's dwelling from applications from the  
14 statute.

15 THE COURT: So you are saying in your opinion, the  
16 entire statute excludes all the domestic issues as far as  
17 crime is concerned and self-defense?

18 MR. KIDD: Sections A and B, when they are both  
19 lawfully --

20 THE COURT: Saying C now? You are telling me C  
21 now?

22 MR. KIDD: C doesn't apply at all, because A and B  
23 specifically excludes it.

24 THE COURT: That's what I'm saying. So in a  
25 domestic situation, the statute doesn't apply under any

1 circumstances, from your argument?

2 MR. KIDD: Yes, sir.

3 THE COURT: Okay. I say domestic. I'm talking  
4 about people that have the right, could be co-owners or  
5 whatever. I was using a domestic issue because it was  
6 easier to give my example earlier.

7 MR. KIDD: Yes, Your Honor.

8 THE COURT: How can you protect the husband and  
9 wife in a restaurant but not at home and not violate equal  
10 protection?

11 MR. KIDD: I think that was what I was trying to  
12 articulate earlier, is I believe that they are in agreement,  
13 Judge, because they are under equal protections of the laws  
14 of self-defense. And the only difference is that we are  
15 extending -- we are removing the duty to retreat to the  
16 couple at the restaurant, where the couple at the home  
17 already did not have the duty to retreat. But they are  
18 still subjected to the law, the first three prongs of  
19 self-defense law. So all we are doing is extending that  
20 protection out to the couple at Magnolias.

21 THE COURT: All you are saying at the home is going  
22 to have to come up with directed verdict stage at trial, not  
23 at the motion hearing for immunity under the code section?

24 MR. KIDD: Well, I don't believe this is ever  
25 proper to hear 16-11-440 at directed verdict --

1           THE COURT: I said only thing you are saying, if  
2   it's in the home, that issue's going to come up at directed  
3   verdict rather than at the restaurant under the code  
4   section?

5           MR. KIDD: If I fail to disprove self-defense, yes.  
6   Yes, sir.

7           THE COURT: Right.

8           MR. KIDD: And so the protection that she's granted  
9   is under the laws of self-defense and not under the laws of  
10 immunity.

11          THE COURT: Well, I think that's what C is saying,  
12 but Manning says different. Okay. But Manning I understand  
13 has been withdrawn.

14          MR. KIDD: And I think what we have to -- when you  
15 look at Section C, a person who is not engaged in unlawful  
16 activity and who is attacked in another place, I mean, when  
17 you read "another place", that means a place other than the  
18 home. Because the Sections A and B are talking about your  
19 home, your car, and your business.

20          The Subsection C says "another place", meaning not  
21 a place that we've already talked about, meaning keeping  
22 Subsection C inapplicable to the home. And that's why it  
23 doesn't apply in this scenario, because that is -- the key  
24 phrase is "another place".

25          And when you look at that under statutory

1 interpretation, you have to take that for the practical  
2 meaning of that language.

3 THE COURT: Hold on just a second. Go ahead.

4 MR. KIDD: And so, I guess, Judge, you know, to not  
5 dwell on the issue any further, I think in conclusion, we  
6 would first argue Subsection C doesn't apply. It doesn't  
7 apply to the dwelling. It applies to another place, a  
8 separate place.

9 Even if you did find that Subsection C did apply,  
10 we then have to look at the first three prongs of  
11 self-defense, in which I think the reasonableness of the  
12 force becomes an issue and becomes a jury question, as it  
13 was in State v. Curry. And that would then be proper to  
14 deny the motion and send the case to trial.

15 THE COURT: Okay. Ms. Ford.

16 MS. FORD: Thank you, Your Honor. May it please  
17 the Court.

18 Some of these things I think are better addressed  
19 after the hearing when we are talking about the other  
20 elements of self-defense and if they've been established or  
21 not, Your Honor.

22 But I would like to say that I think in C, when it  
23 refers to another place, that's just one word, Your Honor,  
24 one word in an act comprising multiple statutes. In this  
25 case, the General Assembly actually have the whole statute

1 dedicated to their intent. And their intent, while it  
2 refers to the Castle Doctrine, that's only in Section A.  
3 There's also Sections B, C, D and E, which don't refer to  
4 the Castle Doctrine.

5 And so, in general, the General Assembly, they make  
6 it clear that it's proper for law-abiding citizens to  
7 protect themselves from intruders and attackers without fear  
8 of prosecution or civil action for acting in the defense of  
9 themselves and others. So the law, they don't just say  
10 intruders or being attacked while there's an intrusion; they  
11 say "or attackers".

12 They also emphasize that people have a right to  
13 expect to remain unmolested and safe within their homes,  
14 businesses and vehicles. And one shouldn't be required to  
15 surrender his personal safety to a criminal or to needlessly  
16 retreat in the face of intrusion or attack. And, again, the  
17 word "or".

18 Your Honor, looking at Statute 440, perhaps the  
19 reason why they excluded "other residence" from A and B is  
20 they are saying that if, basically, your spouse or your  
21 roommate is trying to get in, you can't just -- it's not the  
22 same scenario, you can't just hurt them. There's no  
23 presumption there that they are going to do bodily injury to  
24 you. So I think that's why Sections A and B refer to  
25 excluding other residents of the household.

1           But C, when you look at it, while the language -- I  
2   see where the State is focusing on that one word in the  
3   whole act, "another place" --

4           THE COURT:   Saying attacked in another place.

5           MS. FORD:   Yes, sir.

6           THE COURT:   How could you -- how could that be  
7   explained in any other fashion other than another place  
8   other than dwelling?

9           MS. FORD:   I think that perhaps the General  
10   Assembly -- and, again, this is based on their expressed  
11   intent in other sections of the act, I think that that was a  
12   word they used as a catchall to say includes every place. I  
13   don't think the legislature would have included in C, as the  
14   solicitor is suggesting, merely to tell people that a lot  
15   more people no longer have a duty to retreat. Obviously, C  
16   is in the statute because they are saying that people in  
17   this scenario can also apply and be granted immunity.

18           Also, if you look at Statute 450, which is the  
19   statute that actually grants immunity, it says, "looking at  
20   provisions of this act and other provisions." So you can  
21   look at self-defense in general and you can grant someone  
22   immunity based on common law principles of self-defense.

23           But, ultimately, I think we are entitled to a  
24   hearing. I do not think that the law excludes a scenario  
25   with the current one from someone being granted immunity.

1 While there's a Manning case, that has been withdrawn. And  
2 it's so contrary to the legislative intent to other statutes  
3 and sections in the act and the general common law, and it's  
4 contrary to common sense, that you would -- that someone  
5 would be more protected outside their home instead of  
6 inside, when one of the main reasons for the act being  
7 passed was to enhance people's ability to protect themselves  
8 from attacks in general in their own home.

9           So we just think that Manning would not apply, or  
10 their reasoning should not apply, but that we should be able  
11 to have a hearing. And perhaps afterwards some of these  
12 issues can be further addressed in determining if Ms. Jones  
13 should be granted immunity.

14           THE COURT: Okay. As far as dismissing the motion,  
15 your motion by the State, I'm going to deny it. I'm going  
16 to grant the hearing, evidentiary hearing to determine  
17 whether or not immunity should be granted under 16-11-410  
18 and subsequent sections. Okay?

19           MS. FORD: Yes, sir.

20           THE COURT: How do you want to proceed? Do you  
21 want to stipulate to the facts in her statement as far as  
22 stipulations of facts and sorting out evidentiary --

23           MS. FORD: We've already had -- the Court has  
24 already had an opportunity to review Ms. Jones's statement.

25           THE COURT: I've read her statement. I've listened

1 to 30 minutes of the taped interview or recorded interview  
2 with the police.

3 MS. FORD: Yes, sir. I don't know if you would  
4 like the statement read into the record or just --

5 THE COURT: Why don't you just mark the statement  
6 as Court's Exh. No. 1.

7 MR. KIDD: I believe the copy I gave you was  
8 pre-marked.

9 THE COURT: Is it Defense Exhibit 1; whatever it  
10 is?

11 MS. FORD: For the record, the defendant's written  
12 statement can be found in State's Exhibit No. 2.

13 THE COURT: Is there anything else y'all can agree  
14 on as far as factually, the facts are concerned?

15 MR. KIDD: I think it would be fair to stipulate,  
16 Judge, and correct me if I am wrong, that earlier in the  
17 evening, the victim, Eric Lee and Ms. Whitlee Jones, got  
18 into a physical altercation in front of the residence over a  
19 cell phone. There's a recorded message that you will hear  
20 that, you overhear a part of that.

21 THE COURT: The 911 call?

22 MR. KIDD: There is a phone call which she made to  
23 a friend of hers that was saved on an answering machine.

24 THE COURT: Right.

25 MR. KIDD: So there will be that which you will

1   hear a good part of a disturbance in the residence. North  
2   Charleston Police Department responded. Ms. Jones had fled  
3   the area at the time. North Charleston Police Department  
4   talked to the victim, Eric Lee. This was before he was  
5   stabbed. They then looked for Ms. Jones, couldn't find her,  
6   left.

7           Ms. Jones then returned to the residence, entered  
8   the residence, called two of her friends to come pick her up  
9   to move her stuff out of the house.

10           THE COURT: That's when she had the second  
11   incident, right, after she already left?

12           MR. KIDD: Correct. She had entered a second time.  
13   In the initial disturbance, some of her hair was pulled out  
14   and was seen in the front yard. She comes back to the  
15   residence. She's with her two friends, Erica and Jasmine.  
16   They are loading up all her stuff into the car. They are  
17   just about done.

18           The defendant goes into an upstairs bedroom to get  
19   her shoes. She's followed by the victim. She grabs a knife  
20   off of a window sill, tucks it into her bra. They proceed  
21   back downstairs. The two friends, one of them is back in  
22   the car. The other is in the entranceway of the residence.  
23   Ms. Jones and Mr. Lee enter into the kitchen. There is a  
24   brief disturbance which Ms. -- Jasmine will explain as she  
25   hears a loud noise. Ms. Jones comes running out. And

1 Mr. Lee has been stabbed in the chest. Presumably, he had  
2 grabbed her some way, prompting her to stab him.

3 They then fled the scene, made it a few blocks  
4 away. She said, we need to turn around to check on him.  
5 They go back, find him in the doorway of the residence  
6 collapsed. Load him into a vehicle, drive him to the  
7 hospital, at which time North Charleston Police Department  
8 responds. And I think just about everything is on video  
9 from there on out, her reactions. I believe that it will be  
10 important to hear from --

11 THE COURT: Well, Ms. Ford, can you agree to those?  
12 Basically, everything he said was in her statement. Would  
13 you agree to the stipulation of those facts for the purpose  
14 of this motion hearing?

15 MS. FORD: Yes, Your Honor. I think a few things,  
16 like the recordings we obviously want played, because I  
17 think they portray the picture, you know, the scenario. But  
18 yes, those are the general facts, Your Honor, which we agree  
19 upon.

20 THE COURT: You want these exhibits that you have  
21 given me, defendant's recorded statement, the 911 call and  
22 the voicemail? Have they been marked?

23 MS. FORD: Those have already been marked, other  
24 copies, Your Honor.

25 THE COURT: What's the numbers and we will put them

1 into evidence. Defendant's Exhibit 2 in evidence, any  
2 objection from the State?

3 MR. KIDD: No, sir.

4 We have a voicemail message, which is Defense 8.  
5 We have two interviews of Jasmine Taylor, and one of Erica  
6 Grant, which is Defense 7. We have two 911 calls, which is  
7 Defense 6. And we have Officer Bridge's in-car video, which  
8 is Defense 5. And in addition, we have a written statement  
9 from Jasmine Taylor, which is State's Exhibit 1. We have  
10 CAD report, which is Defense Exhibit 1. Two photographs  
11 from Defense, Exhibit 2 and 3. Another CAD report, which is  
12 Defense Exhibit 4. And we have a series of photographs from  
13 the State, which would be 3 through 14.

14 MS. FORD: For the record, the CDs are actually the  
15 State's. I had given them to the court reporter, so they  
16 were marked as defense exhibits. Most of them are things I  
17 would have put in anyway. I know one is the recorded  
18 interviews of the two friends, Jasmine and Erica. That's  
19 not something that I would put in. I don't think that's  
20 necessary for this hearing, but I don't necessarily have a  
21 strong objection to it either. I just wanted to clarify  
22 that that's the State's --

23 THE COURT: So do you object? You can't have it  
24 both ways.

25 MS. FORD: No, Your Honor. I'm basically saying

1     because it's marked as my exhibit, but --

2             THE COURT:   Do you want them in?

3             MS. FORD:    Sure, Your Honor.   Yes.

4             THE COURT:   Exhibits marked and admitted into  
5     evidence without objection.

6             MR. KIDD:    Correct.

7             (Whereupon, S-1 through 14 are moved in evidence.)

8             (Whereupon, D-1 through D-8 are moved in  
9     evidence.)

10            THE COURT:   What live testimony do you want to  
11     offer?   How do you want to proceed?

12            MS. FORD:    Well, Your Honor, I would intend to play  
13     the 911 call from a neighborhood in which Ms. Jones is being  
14     dragged on the street violently by Mr. Lee, and she's  
15     screaming and begging.

16            THE COURT:   I've listened to it.   I will be glad to  
17     listen to it again.

18            MS. FORD:    Yes, Your Honor.   And there's a voice  
19     recording as well as she was calling for help.   Her friend  
20     didn't answer.   So she wasn't actually leaving a voicemail,  
21     but it happened to be on, where she's begging Mr. Lee to get  
22     off of her.

23            THE COURT:   I have not heard that one.

24            MS. FORD:    That I intend to present.   And just for  
25     timing purposes, the reason for the CAD reports in evidence,

1 Your Honor, are to establish the time, that there was a very  
2 short amount of time between these two incidents. The first  
3 incident with the hair pulling, that 911 call was made on  
4 the night of November 1st at 11:28 p.m. And so the 911 call  
5 after Mr. Lee has been stabbed, when the girls go back and  
6 are taking him to the car, that was at 12:12 a.m. So we are  
7 talking about a time frame of less than 45 minutes.

8 THE COURT: I think y'all said earlier there was  
9 some information at the hospital. Are you all going to put  
10 in -- anything there you are going to put in, what occurred  
11 at the hospital?

12 MR. KIDD: Yes, there's an in-car video from  
13 Officer Bridges that we have marked and entered as a State's  
14 exhibit which we would like to play in court, in our  
15 rebuttal case anyway. I think the only other stipulation we  
16 think is important is -- I think it's important for this  
17 motion to understand that we are stipulating that the victim  
18 and Ms. Jones were in a relationship and were cohabitating  
19 at the time of this incident.

20 THE COURT: Living in the same residence? They  
21 both had a right to be there?

22 MR. KIDD: Correct.

23 MS. FORD: Yes, sir.

24 The only possible testimony from the friend, I  
25 don't know if the State was intending to put them on, I

1 think their statements are put in evidence, but I think it  
2 might be somewhat misleading as far as the officers are  
3 asking them about prior incidents of behavior.

4 THE COURT: I'm going to let you call whoever you  
5 want to call. Do you want to call those witnesses? You've  
6 got the burden. You've got to prove preponderance of the  
7 evidence; your burden, so call whoever you want to call.

8 Anything else? Y'all prove -- or stipulated to  
9 prove all of the facts. Whoever else you want to call,  
10 please feel free to do that. Okay?

11 MS. FORD: Yes, sir. I don't think there will be  
12 many actual witnesses.

13 Would you like me to begin then?

14 THE COURT: Yes, ma'am.

15 MS. FORD: Well, we at first would like to play the  
16 911 call made by the neighbor, Ms. Smith, which that is  
17 marked as Defense Exhibit 6.

18 THE COURT: This is the neighbor, right?

19 MS. FORD: Yes, this is the neighbor. Again, this  
20 call was made at 11:28 p.m.

21 (Video Playing.)

22 MS. FORD: In further support to show what happened  
23 that evening, I provided pictures, Defense Exhibit 2 and 3,  
24 just showing the part of Ms. Jones's hair in front of the  
25 apartment. One you can see it in relation to the apartment,

1 and the other is a close-up. This is a weave. It's not a  
2 barrette. It's an actual weave woven into her hair.

3 And next, Your Honor, we are going to call Erica  
4 Grant.

5 THE COURT: I thought you were going to play  
6 another video or -- were you going to play the neighbor's  
7 video?

8 MS. FORD: Yes, Your Honor, I was going to play her  
9 voice recording that Ms. Grant received. The reason that --

10 THE COURT: Do you want to call this witness first?

11 MS. FORD: Yes, Your Honor.

12 THE COURT: Who are you calling?

13 MS. EHRLICH: Erica Grant.

14 ERICA GRANT,

15 having been duly sworn, testifies as follows:

16 THE CLERK: State your full name for the record,  
17 spelling your last.

18 THE WITNESS: Erica Grant, G-r-a-n-t.

19 DIRECT EXAMINATION

20 BY MS. FORD:

21 Q. Ms. Grant, do you know Whitlee Jones?

22 A. Yes, ma'am.

23 Q. And did you receive calls from her the evening of  
24 November 2nd, 2012?

25 A. Yes, uh-huh.

1 Q. Did you answer those calls?

2 A. No, I didn't.

3 Q. Did you receive a recording?

4 A. Yes.

5 MS. FORD: At this point, we would like to play  
6 Defense Exhibit 8, Your Honor.

7 THE COURT: Okay.

8 (Whereupon, audio is played.)

9 BY MS. FORD:

10 Q. Ms. Grant, what was -- what did hearing that  
11 message cause you to do?

12 A. Go there immediately.

13 Q. So what was your purpose in going to get her?

14 A. To get her out of there.

15 Q. Were you worried for her safety?

16 A. Yes, ma'am.

17 Q. And just to clear up a few things in your  
18 statement, because your written statement has been placed  
19 into evidence, but the officers had asked you a few  
20 questions about Whitlee's and Eric's relationship, right?

21 A. Uh-huh.

22 Q. And they asked you had you ever seen them fighting  
23 before?

24 A. Uh-huh.

25 Q. And you said not really, but he was very insecure?

1 A. Uh-huh.

2 Q. What did you mean by that?

3 A. Like popping up places, like at the club and  
4 stuff.

5 Q. Like, what would he do when he would pop up?

6 A. Like, when -- I remember one night he was banging  
7 up on the window trying to get her out of the car.

8 Q. And what happened; do you know?

9 A. She got out of the car. Well, no, she didn't get  
10 out that night. They just dropped me off home. And that's  
11 when I saw him following wherever they went out. I don't  
12 know what happened after that.

13 Q. So he followed?

14 A. Yeah.

15 Q. In the car?

16 A. Uh-huh.

17 Q. So that time she had not gotten out of the car?

18 A. Uh-huh.

19 Q. And did that happen more than one time?

20 A. Yes, ma'am.

21 Q. And was he -- when he would show up places, was he  
22 nice towards Whitlee?

23 A. No.

24 Q. How did he act toward her?

25 A. He was very angry.

1 Q. Did he indicate why he would be angry?

2 A. No.

3 Q. During those incidents when y'all were in the car,  
4 would he do anything? Like, what was he doing?

5 A. One time he pulled her out of the car.

6 Q. He pulled her out of the car?

7 A. Uh-huh.

8 Q. And did she get away from him?

9 A. She went with him.

10 Q. And what about another time?

11 A. Let's see, like, just popping up in clubs and  
12 stuff.

13 Q. Would he ever bang on the window or anything like  
14 that?

15 A. Yes, ma'am.

16 Q. Of the car?

17 A. Uh-huh.

18 Q. And the officer asked you, is it correct, you were  
19 only aware of arguments? Had you ever seen any injuries on  
20 Ms. Jones?

21 A. Yes, she had a burn mark on her, but she didn't  
22 tell us where, you know, what happened.

23 Q. You saw a burn mark on her?

24 A. Uh-huh.

25 Q. On where?

1 A. On her arm.

2 Q. Was it small or big?

3 A. It was a little big, medium size.

4 MS. FORD: Beg the Court's indulgence.

5 No further questions for this witness.

6 THE COURT: Cross on the motion.

7 CROSS-EXAMINATION

8 BY MS. MULKEY:

9 Q. Erica, had you ever received a message like this  
10 before?

11 A. Yeah.

12 Q. From the defendant?

13 A. Uh-huh.

14 Q. And what happened then?

15 A. Nothing.

16 Q. Can you elaborate nothing happened?

17 A. Like, when she didn't -- like, let's say -- it  
18 wasn't really, like, big things, but like fighting, but they  
19 was fighting and stuff.

20 Q. So it was typical for them to have dramatic fussing  
21 sessions?

22 A. Uh-huh.

23 Q. During which time she would call you?

24 A. Sometimes.

25 Q. Because you were her friend?

- 1 A. Uh-huh.
- 2 Q. And you would come save the day and pick her up and  
3 let her leave?
- 4 A. Yes.
- 5 Q. And then she would go back?
- 6 A. Uh-huh.
- 7 Q. Because they were in love?
- 8 A. Yes, ma'am.
- 9 Q. Could you tell what they were arguing about on the  
10 phone that day?
- 11 A. No, ma'am, I don't know what happened.
- 12 Q. Did you hear them arguing about a phone on that  
13 voicemail?
- 14 A. Oh, yes, ma'am. It was her phone. And I guess he  
15 paid for it, so he was saying it was his phone.
- 16 Q. So she could have given back the phone and that  
17 argument could have been over?
- 18 A. I don't think so.
- 19 Q. Why not?
- 20 A. Because he was controlling.
- 21 Q. Excuse me?
- 22 A. Because he was controlling.
- 23 Q. But what they were saying on that voicemail that  
24 day was in reference to her returning his phone?
- 25 A. Yeah.

1       Q.    You said you went over because you were worried for  
2   her safety.

3       A.    Uh-huh.

4       Q.    And so you went to the house that she shared with  
5   Eric?

6       A.    Yes.

7       Q.    And you were so worried for her safety that you  
8   stayed outside during this?

9       A.    Yes.  We was loading up the car with her stuff.

10      Q.    But you were still worried for her safety?

11      A.    Yes.

12      Q.    And you stayed outside?

13      A.    Yes.  And I sent Jasmine inside to see what was  
14   going on.

15      Q.    Did you hear any loud noises while they were  
16   inside?

17      A.    Yes, they were just fussing.  They were just  
18   fussing.

19      Q.    Were you still concerned for her safety at that  
20   point?

21      A.    Yes, ma'am.

22      Q.    But you never felt the need to go inside to help?

23      A.    It wasn't that serious.  They was just fussing and  
24   we were just loading her stuff up in the car.

25      Q.    Just arguing?

1 A. Yeah.

2 Q. Back and forth?

3 A. Uh-huh.

4 Q. Just verbally?

5 A. Yes.

6 Q. And that's why you stayed outside?

7 A. Uh-huh.

8 Q. Because at that point, you were not concerned for  
9 her safety?

10 A. Not at that point.

11 Q. You also mentioned that the victim, Eric, was  
12 insecure?

13 A. Uh-huh.

14 Q. Do you know why?

15 A. No.

16 Q. Was it because he caught the defendant cheating on  
17 him?

18 A. No, not that I know of.

19 MS. FORD: Objection. Relevance.

20 THE COURT: Overruled. Go ahead.

21 BY MS. MULKEY:

22 Q. So you were unaware that the defendant had cheated  
23 on Eric in the past?

24 A. Yeah, uh-huh.

25 Q. You know or you are unaware?

1           A.    I'm unaware.

2           Q.    But you guys are really good friends?

3           A.    Uh-huh.

4           Q.    So would she have told you?

5           A.    Not really.

6           Q.    You also mentioned that she had a burn mark on her

7    arm.

8           A.    Uh-huh.

9           Q.    But you didn't know where it was from?

10          A.    It was from him, but she really didn't tell us what

11   happened. So we don't know what happened, but we know it

12   was from him arguing and stuff.

13          Q.    Excuse me?

14          A.    Arguing and fighting.

15          Q.    So you were really good friends?

16          A.    Yes.

17          Q.    But she didn't tell you certain things?

18          A.    Yeah.

19          Q.    But you are good enough friends that you went there

20   that day because you were concerned?

21          A.    Yes.

22          Q.    And you are here today for her?

23          A.    Yes.

24                MS. MULKEY: Beg the Court's indulgence.

25   BY MS. MULKEY:

1 Q. Erica, had you ever seen the defendant hit Eric?

2 A. No.

3 Q. In any of their conversations and their arguments,  
4 their fussing, you never saw Whitlee put her hands on Eric?

5 A. No, ma'am.

6 Q. Did you tell the detectives anything different that  
7 day?

8 A. No.

9 Q. Are you aware that the victim, Eric, and the  
10 defendant lived in [REDACTED] [REDACTED] at one point?

11 A. Uh-huh.

12 Q. Do you know why they moved from [REDACTED] [REDACTED]

13 A. No.

14 Q. She never told you?

15 A. No. I thought they just moved.

16 MS. MULKEY: Beg the Court's indulgence one last  
17 time, Your Honor.

18 We have no further questions.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MS. FORD:

22 Q. When you were at the house that night, you weren't  
23 actually inside the apartment, correct?

24 A. Uh-huh.

25 Q. Yes or no?

1 A. Yes.

2 Q. Okay. At the time of the stabbing, you were not  
3 inside the apartment, correct?

4 A. No, ma'am.

5 Q. So you don't know for sure what happened at that  
6 point, correct?

7 A. No.

8 Q. And at some point, did Eric actually close the door  
9 on y'all?

10 A. Like, she was going upstairs. And I guess he,  
11 like, closed it lightly. And that was it. That's all I  
12 saw.

13 Q. He closed the front door?

14 A. Yeah.

15 Q. While y'all were outside?

16 A. Uh-huh.

17 Q. And she was inside with him?

18 A. Uh-huh.

19 MS. FORD: No further questions.

20 THE COURT: Recross?

21 MR. KIDD: No, sir.

22 MS. MULKEY: No, Your Honor.

23 THE COURT: You may step down. Thank you very  
24 much.

25 Call your next witness.

1 MS. FORD: Thank you, Your Honor. Beg the Court's  
2 indulgence.

3 At this point, we would play Officer Bridges's  
4 in-car video at the hospital, Defendant's Exhibit 5.

5 (Video Playing.)

6 THE COURT: Is that it, Ms. Ford?

7 MS. FORD: Yes, Your Honor. We have no other  
8 evidence to present.

9 THE COURT: State want to put up any evidence?

10 MR. KIDD: Yes. The State calls Jasmine Taylor.

11 JASMINE TAYLOR,

12 having been duly sworn, testifies as follows:

13 THE CLERK: State your full name for the record,  
14 spelling your last. And please be sure to speak in a loud  
15 and clear voice. There's a microphone there.

16 THE WITNESS: Jasmine, T-a-y-l-o-r.

17 DIRECT EXAMINATION

18 BY MR. KIDD:

19 Q. Good afternoon, Ms. Taylor. Can you tell the judge  
20 how long have you known Whitlee Jones.

21 A. All my life.

22 Q. All your life?

23 A. Uh-huh.

24 Q. Are you related to her in any way or just friends?

25 A. Cousins.

1 Q. Cousins?

2 A. Uh-huh.

3 Q. Do you know Eric Lee?

4 A. I knew him for a little bit.

5 Q. Are you familiar with the relationship Mr. Lee and

6 Ms. Jones had together?

7 A. Yeah, somewhat.

8 Q. When did they start seeing each other?

9 A. I mean, I don't know. I know they were together

10 for a long time.

11 Q. They were together for a long time?

12 A. Uh-huh.

13 Q. Do you remember when they first lived together?

14 A. I knew they had the apartment in [REDACTED] [REDACTED]

15 Q. An apartment in [REDACTED] [REDACTED]

16 A. Uh-huh.

17 Q. And that was before they moved into the

18 apartment --

19 A. -- on [REDACTED] Road.

20 Q. Do you remember why they moved out of the apartment

21 in [REDACTED] [REDACTED]

22 A. They just wanted to move.

23 Q. Did they move together or did they separate at that

24 point?

25 A. They moved together.

1 Q. Where did they go?

2 A. To [REDACTED] Road.

3 Q. They didn't move into -- or Erica didn't move back  
4 in with his mom for a while?

5 A. No, not that I'm aware of.

6 Q. And so they got this apartment together where this  
7 happened, is that fair to say; they were living together?

8 A. Uh-huh.

9 Q. Can you tell the judge a little bit about Eric and  
10 Ms. Jones's relationship?

11 A. Well, it was -- I mean, it was --

12 THE COURT: Speak up so I can hear you.

13 THE WITNESS: You can hear me now?

14 THE COURT: Yes, ma'am.

15 THE WITNESS: I mean, it was all right, but he  
16 was -- to me, he was like a -- like I told him when I was  
17 talking to him, he was a snake in disguise.

18 THE COURT: He was what?

19 THE WITNESS: A snake in disguise. Like, when you  
20 around him, he didn't show anything. Like, he'll talk to  
21 you. But behind closed doors, he was abusive. He would pop  
22 up.

23 BY MR. KIDD:

24 Q. I'm sorry, I didn't mean to cut you off. Did you  
25 ever see him act aggressively?

1       A.    No, I haven't seen it, but you could tell by the  
2   way he talked to her and stuff like that.

3       Q.    What was his overall demeanor like?  Was he loud,  
4   quiet?

5       A.    No, he wasn't loud.

6       Q.    He wasn't loud?

7       A.    No.

8       Q.    What was his day-to-day sort of demeanor?

9       A.    He would, like, go to work.  He wouldn't come  
10   around much, and when he do, it was like a pop-up.

11      Q.    Do you know, where did he work?

12      A.    I don't know where he worked at.

13      Q.    Did he work hard; do you know?

14      A.    No.

15      Q.    Now, you were with Whitlee when Eric was killed,  
16   correct, that day?

17      A.    Yes.

18      Q.    And you went with Erica over to their apartment  
19   after she received that phone call?

20      A.    Yes.

21      Q.    I want you to tell the judge as much detail as you  
22   can everything that happened from the time that y'all  
23   arrived at that apartment.  So if you want, I can kind of  
24   prompt you with questions or we can kind of go through it.  
25   What was the first thing that you saw when you arrived at

1 the apartment?

2 A. When we got there?

3 Q. Yes, ma'am.

4 A. I didn't see anything, like, no police was out  
5 there, nothing. We was basically just looking for her.

6 Q. And did police arrive at some point?

7 A. I didn't see any police out there when we got  
8 there.

9 Q. Okay. Did you go to the apartment door?

10 A. No. We was looking for her.

11 Q. Did you find her?

12 A. Yes, we did find her.

13 Q. Where did you find her?

14 A. Find her, she was looking -- saw her, like, at the  
15 head of the street, or something like that.

16 Q. You gave a statement to North Charleston Police  
17 Department, correct?

18 A. Yes.

19 Q. And I'm not trying to confuse you. I just want to  
20 make sure. Would it help you kind of refresh your  
21 recollection if you had an opportunity to see it?

22 A. It was like two years ago.

23 Q. I'm going to show you State's Exhibit 1. I'm not  
24 trying to mix you up or anything. So let me give you a  
25 chance to kind of read that front page of your statement.

1 A. You want me to read it out loud?

2 THE COURT: No, read it to yourself.

3 BY MR. KIDD:

4 Q. You just read it to yourself. So when you first  
5 arrived at the residence, did you see someone outside?

6 A. No.

7 Q. So when you said you saw two policemen at the  
8 house, that is not accurate?

9 A. Well, that's what I said, but I don't remember.

10 Q. Don't remember that?

11 A. Hum-um.

12 Q. But this statement is in your handwriting, right?  
13 You signed it?

14 A. Yes. It's sloppy. That's my handwriting.

15 Q. And this is what you wrote on November 2nd, 2012,  
16 at 1:37 in the morning, right? I'm looking at the same one  
17 you are. It's just a copy; same one you are.

18 A. Uh-huh.

19 Q. Right?

20 A. Uh-huh.

21 Q. And in your writing you said when you arrived at  
22 the house, there were two policemen outside, right?

23 A. That's what it says, uh-huh.

24 Q. And told the police that Eric was standing outside?

25 A. Uh-huh.

1 Q. Is that true or not?

2 A. That's what it says.

3 Q. Well, I mean, I know what it says. I'm just asking  
4 you if that's what you saw when you arrived or not?

5 A. Yeah.

6 Q. Okay. And what -- after you arrived and saw the  
7 policemen and Eric outside, what did you all do next?

8 A. Drove around.

9 Q. Looking for Whitlee?

10 A. Uh-huh.

11 Q. Okay. So you are driving around looking for  
12 Whitlee. Then what happens?

13 A. We pick her up.

14 Q. All right. I just want to refer you back to your  
15 statement. Do you remember getting a phone call from  
16 Whitlee while driving around?

17 A. Yes.

18 Q. So you got a phone call from her. And what did she  
19 say?

20 A. Come pick her up.

21 Q. Come pick her up. All right. And do you remember  
22 where you picked her up from?

23 A. On her street.

24 Q. Do you recall telling the police that you went to  
25 pick her up from the house?

1       A.    Yeah.

2       Q.    Did you pick her up -- I'm not trying to confuse

3   you.

4       A.    No, we picked her up from the house.

5       Q.    So not from the street?  You went to pick her up

6   from the house?

7       A.    We did pick her up from the house.

8       Q.    That's exactly why I'm trying to make sure we are

9   all on the same page.  So you went and picked her up from

10   the house?

11      A.    Uh-huh.

12      Q.    Did you knock on the door?  How did you get her

13   from the house?

14      A.    She was there.

15      Q.    She was there?

16      A.    Uh-huh.

17      Q.    So y'all --

18      A.    We all was there.

19      Q.    What's that?

20      A.    We all was there.

21      Q.    So it was you, Erica, Whitlee, and Eric?

22      A.    Yes.

23      Q.    And y'all knocked on the door?  Did they let you

24   in?  How did you get in the house?

25      A.    Opened the door.

1 Q. Opened the door? All right. So the four of y'all  
2 are in the house now?

3 A. No.

4 Q. No? What's going on?

5 A. Erica is outside, and me and Whitlee are gathering  
6 her things.

7 Q. Erica is outside the car, you and Whitlee and Eric  
8 are inside the residence; is that right?

9 A. Say that again.

10 Q. Erica is in the car. You, Whitlee and Eric are  
11 inside the apartment?

12 A. Uh-huh.

13 Q. So what are you, Whitlee, and Eric doing inside the  
14 apartment?

15 A. Eric is inside, and me and Whitlee is getting her  
16 things.

17 Q. How long would you say that you are in the  
18 apartment?

19 A. I don't know. I can't give you a time on this.

20 Q. Okay. And so you are gathering Whitlee's things?

21 A. Uh-huh.

22 Q. What are y'all doing with Whitlee's things when you  
23 gather them?

24 A. Putting them inside the car.

25 Q. Are you making multiple trips?

1       A.    Yes.

2       Q.    So y'all are walking around the house with Whitlee,  
3   picking up her things, taking them and putting them in the  
4   car?

5       A.    Uh-huh.

6       Q.    And that's kind of what's going on?

7       A.    Uh-huh.

8       Q.    All right.  What is Eric doing at this point?

9       A.    Sitting there fussing with her.

10      Q.    So they were kind of arguing back and forth while  
11   all of this was going on?

12      A.    Uh-huh.

13      Q.    Are they physically fighting at all during this  
14   time?

15      A.    No.

16      Q.    And are you kind of trying to keep an eye on them  
17   to make sure it doesn't escalate?

18      A.    Yes.

19      Q.    And so is it safe to say you were kind of following  
20   them around trying to keep peace, so to speak?

21      A.    Basically.

22      Q.    And at the same time, kind of collecting her  
23   things?

24      A.    Yes.

25      Q.    At some point, do you all go upstairs?

1           A.    Yes.

2           Q.    Tell the judge what happens while y'all are  
3 upstairs.

4           A.    Well, we were upstairs in the bathroom and all  
5 that, getting her stuff out of the bathroom. In her room  
6 she's getting her stuff and walking back out into the  
7 bathroom, basically in and out of the bathroom getting her  
8 stuff.

9           Q.    So you are in and out of the bathroom getting her  
10 stuff. Where is Whitlee and Eric?

11          A.    They are in the room.

12          Q.    Can you see them at the time?

13          A.    Yes, I still see her.

14          Q.    Did he get physical with her in that bedroom at  
15 all?

16          A.    No, but he was raising his voice at her loudly --

17          Q.    So they were arguing?

18          A.    -- and aggressively. Yes.

19          Q.    When y'all left the bedroom, who went downstairs  
20 first?

21          A.    Whitlee.

22          Q.    And who followed her?

23          A.    Eric.

24          Q.    And then you followed the two of them?

25          A.    Yes.

1 Q. And at this time, Erica is still in the car or  
2 outside?

3 A. No. I mean, she was -- she was helping us but she  
4 was still outside.

5 Q. She was still outside at this time?

6 A. Yes.

7 Q. What happened next?

8 A. We all went downstairs.

9 Q. Okay. So you are all downstairs? In the living  
10 room? Where is everybody?

11 A. Well, they are in the living room and going back  
12 and forth, like, and I was standing outside.

13 Q. I'm going to show you what's been marked and  
14 entered as State's Exhibit No. 9. And this is just to kind  
15 of give you an understanding of a little bit what we are  
16 talking about here. Do you recognize this photograph?

17 A. Uh-huh.

18 Q. This is the bottom of the stairs, sort of the  
19 living room of that apartment, correct?

20 A. Uh-huh.

21 Q. So when y'all went downstairs, it's now yourself,  
22 Eric Lee and Whitlee. Where are y'all in relation to this  
23 picture? And if it helps you, actually, that screen in  
24 front of you is a touch screen. So, like, this one right  
25 here, so if you want, you can kind of draw on it.

1 THE COURT: Show her how to erase it.

2 BY MR. KIDD:

3 Q. So if you want, can you please indicate on that  
4 photograph where yourself, Mr. Lee, and Ms. Jones were when  
5 y'all came downstairs?

6 A. We came downstairs, they were like going back and  
7 forth in here.

8 Q. They were kind of in that hallway between the  
9 living room and the kitchen?

10 A. Yeah.

11 Q. And where were you?

12 A. I was in there. And I walk up just through and I  
13 walking out the door with the stuff. And now as they came  
14 back through the kitchen, they are right here. They are  
15 right there in that area.

16 Q. So you exited the residence with some of the  
17 belongings?

18 A. Yeah.

19 Q. And when you came back in, they were entering the  
20 living room?

21 A. Yeah, right here, in this area.

22 Q. Standing in the middle of the living room  
23 arguing?

24 A. Yeah. And I'm standing right here, outside this  
25 door leaning.

1 Q. Doing what?

2 A. I'm standing outside the door leaning on this, on  
3 the little brick thing, right here on the corner.

4 Q. And I'm going to show you what's been marked as  
5 State's Exhibit No. 3. This is the front of the residence.  
6 Can you identify where you were standing on that photograph?

7 A. Uh-huh. (Witness indicates.)

8 Q. So you were immediately outside the front door?

9 A. Yeah.

10 Q. And the door was opened?

11 A. Uh-huh.

12 Q. Okay. And Eric and Whitlee were in the middle of  
13 the living room?

14 A. Right here.

15 Q. So they were 6, 7 feet away from you?

16 A. Yeah, you can say.

17 Q. What happened next?

18 A. They fussing.

19 Q. They were arguing? They are fussing?

20 A. Uh-huh.

21 Q. And then what happened?

22 A. She ran out.

23 Q. And then she ran out?

24 A. Yeah.

25 Q. Did you hear something first?

1 A. Like "uh".

2 Q. Did you ever see him hit her?

3 A. No.

4 Q. So they are standing in the living room fussing --

5 THE COURT: What was your answer? Did you ever see  
6 him hit her? He said: Did you ever see him hit her? What  
7 was your answer?

8 THE WITNESS: No, no.

9 THE COURT: Okay.

10 BY MR. KIDD:

11 Q. And so they are standing about 6 feet away from you  
12 in the living room. What's the kind of -- let me ask you  
13 this. What would you have done if you had seen him hit her?

14 A. If I had seen him hit her?

15 Q. Yeah.

16 A. We would have fought him.

17 Q. And there was three of y'all, right?

18 A. Right.

19 Q. And one of him, right?

20 A. Yes.

21 Q. And what was sort of the demeanor about how you  
22 were feeling at this time before -- I mean, just what was  
23 the attitude like?

24 A. Towards him?

25 Q. No, no, just before the stabbing, like, how was --

1 you know, were you scared? Were you just laughing? Were  
2 you joking? What was going on?

3 A. No, it wasn't a laughing-joking matter. It was a  
4 get-your-stuff-and-get-out matter. He was saying, get your  
5 -- excuse me, but, get your shit and get the fuck out.

6 Q. So he was telling her to get out?

7 A. Basically. Her stuff was packed as we got there,  
8 thrown by the door and everything. So it was, "Get your  
9 shit and get the fuck out." Like, he was saying the whole  
10 time, b-i-t-c (sic), bitch. All that. "I don't give a  
11 fuck, trick," everything, "Just get your stuff and get the  
12 fuck out." As he was cussing her and everything, he was,  
13 "Get her stuff and get out." But if I had seen him hit her,  
14 yeah, we would have fought him.

15 Q. So you hear a noise. Kind of say what that noise  
16 was again that you heard.

17 A. "Uh".

18 Q. Kind of like --

19 A. Yeah, just like a -- like a -- like she had pushed  
20 him, like "uh", just like that.

21 Q. And then you say she came running out?

22 A. Yeah.

23 Q. What did you all do when she came running out?

24 A. We ran.

25 Q. You ran?

- 1 A. Uh-huh.
- 2 Q. Ran, jumped in the car?
- 3 A. Yeah.
- 4 Q. And this was Erica's car you jumped into?
- 5 A. Uh-huh.
- 6 Q. What did you all do?
- 7 A. We left.
- 8 Q. How far did you all get before you turned around?
- 9 A. Like, around the corner.
- 10 Q. Right around the corner?
- 11 A. Uh-huh.
- 12 Q. And why did you turn around?
- 13 A. She said, turn around.
- 14 Q. Did she tell you why?
- 15 A. Yeah.
- 16 Q. What did she say?
- 17 A. She stabbed him.
- 18 Q. So you go back to the house?
- 19 A. Uh-huh. What did I see?
- 20 Q. What did you see when you get back to the house?
- 21 A. Him being at the door.
- 22 Q. You saw Eric laying out on the ground?
- 23 A. Uh-huh.
- 24 Q. In the doorway of the apartment?
- 25 A. Uh-huh.

1 Q. So what did you all do at that point?

2 A. We ran out the car. And we like dragged him  
3 outside. And we tapping him. And she was just screaming,  
4 "Eric, wake up, Eric, Eric, Eric." And he was still  
5 conscious.

6 Q. He was still conscious? Did he say anything?

7 A. He was moaning.

8 Q. He was moaning? Whose car did you put him in?

9 A. His car.

10 Q. Put him in his own car? And then who drove him to  
11 the hospital?

12 A. Whitlee.

13 Q. Were you with him?

14 A. Yeah.

15 Q. Were you in the courtroom when we played the  
16 officer's cruiser video? I think you might have been  
17 outside.

18 And so you arrived at the hospital with Whitlee.

19 And was Eric in the backseat?

20 A. Uh-huh.

21 Q. And you and Whitlee were in the front seat?

22 A. Yes.

23 Q. Whitlee was driving?

24 A. Uh-huh.

25 Q. Did you ever see Whitlee with a knife?

1 A. Hum-um.

2 Q. Do you know what happened to the knife she stabbed  
3 Eric with?

4 A. No.

5 Q. Now, when you gave your statement that we are  
6 talking about earlier to the police, did you know Eric was  
7 deceased at that time?

8 A. No.

9 Q. So when you gave your written statement, you didn't  
10 realize that Eric had passed away?

11 A. I was tapping him in his face.

12 Q. No, no. I'm talking about when you were at North  
13 Charleston Police Department and you wrote this statement.

14 A. No.

15 Q. You didn't know he had passed away?

16 A. Hum-um.

17 Q. And I want -- just so the Court knows, I want to  
18 make sure that we understand what you mean by a couple of  
19 lines that you said in your statement. Okay?

20 Did you tell the police that when Whitlee and you  
21 ran out of the house, y'all were laughing?

22 A. Yeah.

23 Q. Yes, you did say that?

24 A. Yes.

25 Q. And that when y'all drove off, y'all were laughing?

1 A. Uh-huh.

2 Q. Can you explain that?

3 A. Yes, I will explain it. I mean, when we ran out,  
4 it wasn't like laughing as, oh, she stabbed him. It was  
5 like laughing as, oh, we got away. That's -- it was chuckle  
6 or something like that, like, and then jumped in the car.  
7 It wasn't like -- I didn't even know she stabbed him. It  
8 was as we got around the corner, then she said it, and it  
9 wasn't a laughing matter anymore.

10 Q. Right.

11 A. That's how it was.

12 Q. But you did say, we ran to the car, got in the car,  
13 and we drove off laughing?

14 A. Yeah, it was like we got away.

15 MR. KIDD: Court's indulgence.

16 BY MR. KIDD:

17 Q. Did Eric and Whitlee fight a lot in their  
18 relationship?

19 A. Uh-huh.

20 Q. Like, when I say fight, I mean like argue and  
21 bicker? What sort of things would they fight about?

22 A. Like, if she leave or if she going to -- a lot of  
23 stuff, like, you know, little things, big things.

24 Q. Do you know why he was trying to be controlling  
25 like that?

1 A. Jealousy.

2 Q. Jealousy?

3 A. Uh-huh.

4 Q. Do you know why he would be jealous?

5 A. No.

6 Q. No?

7 A. I don't know why.

8 MR. KIDD: I don't have any further questions.

9 THE COURT: Let me see the lawyers up here just a  
10 second.

11 (Whereupon, a bench conference takes place off the  
12 record.)

13 THE COURT: What we are going to do, it's quarter  
14 to one, we are going to take a lunch break and recess until  
15 two o'clock. During the lunch recess, please don't discuss  
16 the case with anyone. Be back here at two o'clock. Okay?  
17 Do you understand? Yes or no?

18 THE WITNESS: Yes.

19 THE COURT: Thank you very much. See you at 2.

20 (Luncheon recess was taken).

21 THE COURT: Is Mrs. Taylor out there?

22 MR. KIDD: I will double check and see if she  
23 arrived. We will do cross when Ms. Ford gets here.

24 THE COURT: Ready for cross-examination?

25 Ready?

1 MS. FORD: Yes, sir.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MS. FORD:

5 Q. Ms. Taylor, Whitlee did not call you that evening,  
6 correct?

7 A. No, ma'am.

8 Q. She had called Erica?

9 A. Yes, ma'am.

10 Q. And so Erica called you, correct?

11 A. Yes, ma'am.

12 Q. Because she was concerned for Whitlee?

13 A. Yes, ma'am.

14 Q. And did she play you the voice recording?

15 A. Yeah.

16 Q. And that concerned you?

17 A. Yes, ma'am.

18 Q. And so the two of y'all decided to go over to  
19 Whitlee's apartment?

20 A. Uh-huh.

21 Q. And the reason y'all did that is because y'all  
22 wanted to get her out of there, correct?

23 A. Yes.

24 Q. And y'all wanted to do that because y'all were  
25 concerned, correct?

1       A.    Yes, ma'am.

2       Q.    You actually sped trying to get there, correct?

3       A.    Uh-huh. Uh-huh.

4       Q.    Y'all were speeding in the car?

5       A.    Yes, ma'am.

6       Q.    And you called her phone at some point, correct?

7       A.    Uh-huh.

8       Q.    But you never could get through, correct?

9       A.    No, ma'am.

10      Q.    So when you got to the apartment, I know it is hard

11   to remember, but you got there and you saw the police cars

12   out there, correct?

13      A.    Hum-um. No, ma'am, it was none there.

14      Q.    You don't remember seeing the cars there?

15      A.    No, there were no car there on the road.

16      Q.    But you saw Eric there, correct?

17      A.    Eric was home.

18      Q.    Right, at the apartment?

19      A.    Yeah, he was at his apartment.

20      Q.    Yeah. He made a comment: See what your cousin

21   did, or, you see what your cousin do?

22      A.    Ah-huh.

23      Q.    Made a comment about that?

24      A.    Uh-huh.

25      Q.    He was upset, wasn't he?

1       A.    Yeah, he was upset.

2       Q.    But Whitlee wasn't there at that point?

3       A.    Excuse me?

4       Q.    Whitlee was not there at that point?

5       A.    No.

6       Q.    Correct?  Okay.  And y'all went looking for her?

7       A.    Yes, ma'am.

8       Q.    And, eventually, she was able to call y'all for

9   help, correct?

10      A.    Uh-huh.

11      Q.    And so when y'all got back to the apartment, she

12   came outside crying, correct?

13      A.    Yes, ma'am.

14      Q.    Now, at some point, you were telling us how you

15   were helping her gather her belongings, correct?

16      A.    Uh-huh.

17      Q.    Eric was following her the whole time, right?

18      A.    Yes.

19      Q.    He was up on her, wasn't he?

20      A.    Yes.

21      Q.    And wasn't he kind of, like, pushing and shoving

22   her the whole time?

23      A.    Well, I mean, he was up on her, but I didn't see

24   him --

25      Q.    Like, actually push her?

1 A. -- push her, but he was on her.

2 Q. And at some point when you had gone outside, he ran  
3 up behind Whitlee and closed the door, didn't he? At some  
4 point, he closed the door to the apartment and you had to  
5 open it up a little bit, didn't you?

6 A. Outside?

7 Q. Yes, the door to outside. Let me show you your  
8 statement again. Okay?

9 A. Okay.

10 Q. I'm showing you what you were looking at earlier,  
11 which is State's Exhibit 1, which is the written statement  
12 you gave. And on the second page at the top, you wrote in  
13 your statement that: She ran upstairs. He ran behind her  
14 and closed the door.

15 A. Oh, yeah, yeah, that part.

16 Q. Yes.

17 A. Yeah, he did.

18 Q. So he closed the door on y'all, right?

19 A. Yeah.

20 Q. And but you decided to open it up a little to make  
21 sure he didn't fight her?

22 A. Yeah, that he didn't hit her, yeah, that part.

23 Q. Because you were concerned for her, right?

24 A. Yeah.

25 Q. You didn't like the idea of him closing the door on

1 y'all, right?

2 A. No.

3 Q. So at that point, you had opened the door a little  
4 bit, correct?

5 A. Uh-huh.

6 Q. But you were talking to Erica, weren't you?

7 A. Oh, yeah, I was talking to Erica.

8 Q. Okay. So you could hear them a little bit, Whitlee  
9 and Eric?

10 A. Uh-huh.

11 Q. But you weren't actually able to watch them the  
12 whole time, correct?

13 A. Hum-um.

14 Q. You saw them a little bit, though, didn't you?

15 A. Yeah, I was like keep turning, but then turn back  
16 to Erica, talking to her outside.

17 Q. And you had seen him put his hands on her, correct?

18 A. Eric?

19 Q. Yeah, putting his hands on Whitlee and pulling at  
20 her? Do you remember talking to the investigator in my  
21 office, Matt Davis, this past April?

22 A. Yeah. I remember talking to him, but I don't  
23 remember what --

24 Q. You told him that they were arguing over money that  
25 Eric said Whitlee owed him. Eric kept putting his hands on

1 Whitlee, kind of pulling at her?

2 A. In the kitchen.

3 Q. So you saw that, right?

4 A. Uh-huh.

5 Q. Okay. And at some point, you turned to Erica and  
6 said, we are going to have to beat his ass, correct?

7 A. Oh, yeah.

8 Q. So you actually said that, correct?

9 A. To Eric -- I mean, Erica.

10 Q. Yeah. And you said that because you didn't want  
11 Eric getting physical with Whitlee, correct?

12 A. Uh-huh.

13 Q. The reason you said that is because you were  
14 fearful that he was getting or going to get physical with  
15 her?

16 A. Yes.

17 Q. And Eric's cussing at Whitlee the whole time,  
18 correct, calling her --

19 A. Nasty names.

20 Q. -- calling her nasty names, correct?

21 A. Uh-huh.

22 Q. Calling her degrading names, correct?

23 A. Yes, ma'am.

24 Q. And shortly after, that's when you see Whitlee run  
25 outside saying that y'all needed to leave?

1 A. Yes, ma'am.

2 Q. And so when y'all left, you had no clue that the  
3 stabbing had occurred, correct?

4 A. Yes, ma'am.

5 Q. So you had not actually seen what happened at that  
6 point, correct?

7 A. No, ma'am.

8 MS. FORD: Beg the Court's indulgence. No further  
9 questions.

10 THE COURT: Any redirect?

11 MR. KIDD: Very briefly, Judge.

12 REDIRECT EXAMINATION

13 BY MR. KIDD:

14 Q. When we were talking about closing the door, it  
15 wasn't the front door we were talking about, it was the  
16 bedroom door; is that right? Because when you said you ran  
17 upstairs and he tried to close the door, that's the upstairs  
18 bedroom door?

19 A. Uh-huh.

20 Q. Yes?

21 A. Yeah.

22 Q. So the stabbing didn't happen upstairs in the  
23 bedroom, did it?

24 A. No, stabbing happened downstairs.

25 Q. Downstairs, right. And the front door was open,

1 correct?

2 A. Yes.

3 MR. KIDD: No further questions, Your Honor.

4 THE COURT: Any recross?

5 MS. FORD: No, Your Honor.

6 THE COURT: You may step down. Thank you very  
7 much.

8 MR. KIDD: State calls Jason Graves.

9 MS. FORD: Your Honor, may I approach?

10 (Whereupon, a bench conference takes place.)

11 MR. KIDD: The State rests, Your Honor.

12 THE COURT: All right. Does the defendant have any  
13 reply testimony?

14 MS. FORD: No, Your Honor.

15 THE COURT: Anything very briefly you would like to  
16 state, or have you already said it when were first started?

17 MS. FORD: Well, yes, Your Honor. There are two, I  
18 guess, main issues to address. One would be, does the law  
19 even apply to a situation like the current one? That's what  
20 we've already discussed, I think.

21 THE COURT: We've already discussed that in great  
22 detail.

23 MS. FORD: Yes, Your Honor. Assuming that it does,  
24 I think we have to go -- did Ms. Jones in this particular  
25 instance, was she entitled -- is she entitled to immunity

1 that evening? And we would say that, yes, she was.

2           Your Honor, you have to look obviously to  
3 self-defense laws in general. Other than the duty to  
4 retreat, there's no duty to retreat based on the statute,  
5 the act in general. But also, the general common law  
6 principles that if you are in your home, you don't have a  
7 right to retreat -- you don't have a duty to retreat,  
8 rather. So I think we have to look at the other factors,  
9 Your Honor.

10           The first is, was she without fault in bringing on  
11 difficulty? I would argue that no way was she at fault in  
12 bringing on difficulty. The only thing that she tried to do  
13 was leave and take her belongings with her. Initially, she  
14 was trying to take her phone. The State has seemed to  
15 indicate that she should have just given him his phone back.  
16 Your Honor, this was her phone. He had paid for it, but  
17 this is the phone that people, family, friends, everyone  
18 called her on. She had every reasonable expectation that  
19 this was her phone. This was her life line. Quite  
20 literally, that evening she was using it to call for help.  
21 She called Erica for help and she tried to call 911, as she  
22 mentions in her statements.

23           And as you heard too, at some point they try to  
24 call her. They can't reach her because, guess what, at that  
25 point, she had given Eric the phone. She had given up her

1 life line so she could run away.

2 Now, she ended up going back to the house that  
3 evening. But at that point, she was gone for awhile after  
4 he had violently pulled out her hair, Your Honor. I think  
5 that it can be argued that at that time, at the very least,  
6 two violent crimes were committed against Ms. Jones. The  
7 first would be kidnapping. Because kidnapping is a very  
8 broad law, Your Honor. And it does include preventing  
9 someone -- confining someone. The testimony is clear that  
10 she was trying to get out of the house and he would not let  
11 her. She had to run out the back door. She was able to do  
12 that, but he continued to follow her and try to pull her  
13 back in the house by dragging her by her hair, dragging her  
14 so hard that her hair came out, Your Honor, which that  
15 testimony given by or from the statements --

16 THE COURT: That was the first instance. She left,  
17 that was before the second before she came back.

18 MS. FORD: That was before. Yes, sir, but I think  
19 you have to consider those which were very, very close in  
20 time, less than 45 minutes, before the ultimate altercation.  
21 I think you need to consider that, because it's one chain of  
22 events. And in looking at self-defense claim laws in  
23 general, you can look to the prior acts, but in particular,  
24 acts that happened within close proximity. And so,  
25 obviously, these things are running through her head. I

1 mean, her hair had been yanked out. So she still, when  
2 she's dealing with him, she doesn't even have, like, a good  
3 portion of her hair on her, Your Honor.

4           So I think at the very least, he committed  
5 kidnapping and criminal domestic violence of a high and  
6 aggravated nature upon Ms. Jones at that time. So she got  
7 away, because this had happened, like, incidents, things  
8 happened rough between them. You were able to hear a little  
9 of that, Your Honor. So at that time, as she indicated in  
10 her statements, she believed that probably things had cooled  
11 off. She was a little less upset at that point. She  
12 figured he had cooled off, because he's gotten aggressive  
13 with her before and he tends to cool off.

14           So she goes back to the house. But at that point,  
15 her intention is to leave. So she's able to get her phone  
16 when she gets there, and her friends are there. So she's  
17 leaving. She's trying to leave her home. She has her  
18 friends there. But the whole time, he doesn't just let her  
19 be. He's not just sitting there waiting for her to leave.  
20 The whole time he's up on her, following her, intimidating  
21 her, cursing her, calling her names. He is being very  
22 intimidating this whole entire time.

23           At one point, he shuts her friend up, her friend  
24 Jasmine who just -- cousin, who just testified. At one  
25 point Eric shuts the door on Jasmine. Since Jasmine is

1 fearful, she has to open the door. So things were hostile  
2 at this time.

3 And, yeah, he was telling her, you need to get your  
4 stuff. But he's mad, he's mad because the police came, Your  
5 Honor. And he was able to convince them, sweet talk them,  
6 oh, no, there's nothing physical happened here. But he was  
7 mad because of that.

8 This is a domestic situation. Just because he was  
9 saying, yeah, I want you to leave, this was a couple that  
10 had been together for years, Your Honor. I don't think it's  
11 unreasonable when Ms. Jones is dealing with him that -- it's  
12 not as simple as he said you need to leave. I think that  
13 common sense that most people could understand, that it's  
14 not that black and white. He wasn't really saying you need  
15 to leave, I want nothing to do with you.

16 And so Ms. Jones had every reason to believe -- in  
17 her statements, she tells you or tells us that he was coming  
18 at her, that he, again, was trying to prevent her from  
19 leaving. And she says repeatedly in her statements, I just  
20 wanted him to leave, I just wanted him to get away. That's  
21 why she grabbed the knife when she did. It was not -- her  
22 statements are clear, she did not grab that knife with the  
23 intention of hurting him. She wasn't angry. She said that  
24 multiples in her statements.

25 The officers tried numerous times to try to get her

1 to admit, oh, that you were angry that he was telling you to  
2 leave. No, she wanted to leave. She wasn't angry. She was  
3 upset and distraught because he was being so intimidating  
4 towards her.

5           So when she acted as she did, Your Honor, it was  
6 based on everything that evening. And she had every reason  
7 to believe that he was going to do something to her again.  
8 And so that's why she grabbed that knife in self-defense,  
9 just in case. She wasn't brandishing it at him. So he had  
10 no reason to do anything to her. He didn't know she had it.  
11 She only pulled it out, not even intending to kill him, but  
12 pulled it out because that's the only thing that she could  
13 think of to help herself.

14           Your Honor, not even 45 minutes earlier, we all  
15 heard the recording, the recording that she was able to  
16 leave on Erica's voicemail. In that recording, she is  
17 begging a man for help: Please sir, please, sir, help me.  
18 And what happens? This neighbor doesn't do a thing to help  
19 her. Instead, Mr. Lee is able to convince them to just move  
20 along, everything is good here.

21           Because it's domestic, quite frankly, that makes  
22 people uncomfortable sometimes. They don't want to deal  
23 with that. So a lot of times, they do turn away. They  
24 do -- you know, they just ignore it because they just  
25 figure, oh, it's domestic.

1           So she already asked for help one time that  
2 evening. And, yes, her friends were outside. But there's  
3 no reason to believe that if she hadn't acted the way she  
4 did at that moment, that they would have been able to do  
5 anything. Just earlier that evening, again, not even 45  
6 minutes earlier when she had asked the man for help, she had  
7 tried to call for help. All that did was escalate Mr. Lee's  
8 behavior. All it did was make him get worse.

9           And so -- and her friends were outside, you know,  
10 and they both testified that they couldn't see anything.  
11 They didn't know what was going on at that point. So it's  
12 not fair -- and, again, she has no duty to retreat either.  
13 It's not fair for the State to act like she has to act like  
14 a damsel in distress and wait for somebody to help her.  
15 Under the law, she is allowed to protect herself. And  
16 that's all she did.

17           The State from their questioning, they seemed to  
18 suggest that criminal domestic violence is not really an  
19 issue in society, that if a woman doesn't tell people, they  
20 don't tell their friends that, yes, this man abuses me, yes,  
21 this man treats me wrongly, then it must not exist, then,  
22 you know, she's not abused. That's not the way it is, Your  
23 Honor. We have whole sets of laws that basically show that  
24 our government recognizes issues of domestic abuse. We have  
25 laws saying when the police go out, they have to arrest

1 somebody. They don't have a choice. If the one person is  
2 saying, I don't want you to arrest him, too bad, the law  
3 says that you have to.

4           There is definite policy in Solicitor's Offices  
5 throughout the state that if someone wants to drop a  
6 domestic case, they are not allowed to. Basically, the  
7 State will do everything they can, despite a victim begging  
8 to have a charge dropped, not to drop them.

9           The reason I bring up those things is because those  
10 laws recognize that that's normal in domestic situations.  
11 It's normal for a woman in particular, could be a man, but  
12 in this case, it's a woman, so I'm going to use that  
13 language, it's normal for a woman to not want to -- or to  
14 want to drop charges, to not pursue charges, to go back to  
15 the man. That's why we have these whole domestic laws; Your  
16 Honor.

17           And so her behavior that night and, you know, that  
18 night, considering what happened earlier and that night  
19 considering her past, it doesn't mean that she wasn't  
20 allowed to defend herself in that moment. The State seems  
21 to almost be suggesting, I guess, because things like this  
22 have happened before, that it is, therefore, consensual.  
23 And, therefore, since she knew that he hadn't killed her  
24 before, that she didn't have a reason to believe that he  
25 could hurt her seriously this time. But he could. He

1 was -- he definitely could have committed serious bodily  
2 injury upon her.

3 And in addition, according to the act, it  
4 specifically includes not just if you have reason to fear  
5 serious bodily injury, but if you have a reason to fear that  
6 a violent crime is going to be committed against you. And  
7 violent, they are using it in the legal term, both  
8 kidnapping and CDV/HAN are violent crimes. Since those  
9 crimes have just been committed on her less than 45 minutes  
10 before, she most definitely had reason to believe that they  
11 were going to be committed against her at that moment, Your  
12 Honor.

13 So we do believe that she was without fault in  
14 bringing on the difficulty, and that she did believe she was  
15 in imminent danger of losing her life or sustaining serious  
16 bodily injury or having the violent crimes committed against  
17 her. She states -- makes statements that she was fearful  
18 that he could kill her, and that she constantly says she was  
19 afraid of him, constantly in her statements. And based on  
20 what had happened earlier that evening especially, that a  
21 reasonable person would have thought the same.

22 I don't think it's a stretch, Your Honor, to come  
23 to the conclusion of what kind of man Mr. Lee was, in  
24 particular, how he treated Ms. Jones. A man who grabs a  
25 woman by the hair and is dragging her down the street,

1 that's indicative of a lot, Your Honor. That's not a man  
2 who is frustrated because some woman is being hysterical and  
3 he decides to pop her. At least from my experience, I hope  
4 most people's experience, it is not okay to drag a woman by  
5 her hair down the street, especially to the point of taking  
6 out her weave, Your Honor. That is very violent behavior.  
7 And I don't know how the State could argue that it's not  
8 something that should have been a concern to Ms. Jones.

9 Even the 911 caller, you could hear how fearful she  
10 was, Your Honor. And you could especially hear from the  
11 voice recording of how fearful Ms. Jones was when she begged  
12 over and over and over to get off, get off her, get off her.  
13 And he wouldn't. And so I think you can tell from those  
14 recordings the kind of man, or at least how Mr. Lee treated  
15 Ms. Jones, and how it was reasonable for her to fear for  
16 herself when she acted.

17 So we would ask you to grant Ms. Jones immunity.  
18 Thank you.

19 THE COURT: Thank you very much.  
20 Solicitor.

21 MR. KIDD: Thank you, Your Honor. May it please  
22 the Court. I think a lot of why I wanted to call Mr. Graves  
23 is to combat some of those character accusations that were  
24 made against the deceased, in large part, because they are  
25 largely unfounded. And I think what we have is Mr. Lee and

1 Ms. Jones in a relationship. And I think they truly loved  
2 each other. And the way it goes in relationships and with  
3 people that you love and care about, they are the ones that  
4 make you the maddest. And it's those times in which tempers  
5 flare.

6 But I think the Whitlee Jones today and I think the  
7 Whitlee Jones you see on videos, which is a little more  
8 dramatic, likes to be the center of attention, likes to be  
9 the person in control of the situation. And I think if you  
10 read into her statement and you see the Whitlee Jones that  
11 wasn't going to allow this relationship to end on Mr. Lee's  
12 terms, you will see someone who lashed out at him. And you  
13 will see someone who lashed out at him not because she was  
14 provoked or in fear of her life, but because she was going  
15 to be in control of that situation.

16 And, you know, it's funny when the burden of proof  
17 is on the defense and the two best witnesses they have  
18 aren't on the stand, being the defendant and the person who  
19 was closest to the scene, or in the room when the stabbing  
20 occurs, and they don't put those witnesses up. And I think  
21 it's indicative of the way that the facts inside that room  
22 don't fit their theory. Because you heard Jasmine up there,  
23 even with the leading questions: Wasn't he up on her  
24 pushing her? And she was kind of shaking her head: No, not  
25 really. No, I didn't see that.

1           She was right there. She was six feet away in the  
2 doorway from where he was stabbed. Her testimony was very  
3 clear that he was not pushing her. He was not striking her.  
4 He was not hitting her in any way, that she had a knife  
5 concealed on her, according to her own statement, and she  
6 pulled it, and she stabbed him in the heart and she killed  
7 him.

8           The law of self-defense is what we need to analyze,  
9 given the posture that we are in under Subsection C of  
10 16-11-440. And I'm not saying that we should be there, but  
11 being there, we have to look at the law of self-defense.  
12 And unlike Sections A and B of 16-11-440, we don't have the  
13 presumption that she's entitled to use deadly force. So it  
14 comes back to whether her level of force that she did use is  
15 reasonable.

16           Now, I think that should be a jury question. But  
17 for the purposes of the hearing, you are only allowed in  
18 self-defense to use the level of force necessary to dispel a  
19 threat.

20           THE COURT: I thought it was presumption of  
21 reasonable fear of imminent death or harm, not use of deadly  
22 force. You said presumption of use of deadly force.  
23 Presumption is the fear, imminent fear, not the use of  
24 deadly force. It says -- puts you in position of reasonable  
25 fear of imminent death and great bodily harm. You said it's

1 presumption to use deadly force. I don't think the statute  
2 says that.

3 MR. KIDD: I misstated. I think the presumption  
4 that they are in imminent fear only applies to A and B, and  
5 not to C.

6 THE COURT: That's fine. I agree with that, but  
7 that's not what you said.

8 MR. KIDD: I apologize. I might have misstated it.  
9 So I don't think under Subsection C, that she's entitled to  
10 the presumption of being in imminent fear of death or  
11 greatly bodily injury.

12 So without that presumption, we then look to the  
13 law of self-defense, which is a reasonable standard. And  
14 under that reasonableness standard, you only are entitled to  
15 use the level of force that a reasonable person would think  
16 necessary to dispel whatever threat.

17 Now, we have Ms. Jones here with two of her friends  
18 in a very close proximity and a very heated argument with  
19 her boyfriend, live-in boyfriend. Now, I know all  
20 situations are different and gender roles are different, but  
21 I don't think with the situation be reversed we would be  
22 having the same argument if the victim were a female and the  
23 defendant a male. I think that she has no duty to retreat,  
24 but she still has a duty to only use the force necessary to  
25 dispel any threat. And I think when looking at the level of

1 threat as described by the best witness available to the  
2 Court today --

3 THE COURT: What about the threat 45 minutes prior?

4 MR. KIDD: Judge, that threat had been dispelled  
5 And obviously, wasn't so great that she wouldn't come back  
6 to the house alone, knock on the door, enter the residence,  
7 talk to the victim. He then gave her a cell phone to call  
8 her friends to help get her stuff. Even according to her  
9 statement, what he kept saying was, get the F out. He was  
10 taking her key off the key ring, moving her stuff out the  
11 door: Get out. I want you gone. That's not kidnapping.  
12 That's throwing somebody out.

13 And, you know, for the defense to argue that just  
14 because he's saying get out, he doesn't mean it, well, to  
15 me, that's like her saying in the statute that, you know,  
16 any other place means dwelling. You don't just get to  
17 substitute meanings for words that you want. When he's  
18 saying get out, give me your key back, throwing your stuff  
19 out the door, that's because he wants you gone. She's  
20 making multiple trips to the car with her stuff. Could  
21 leave any time. She doesn't have a duty to retreat, but  
22 she's not being held against her will.

23 And like I said, under the preponderance of the  
24 evidence standard, the best witness, Jasmine Taylor, in the  
25 room, no physical contact, no hitting, no grabbing, no

1 shaking. And, granted, Ms. Jones says all these things in  
2 her statement. But I think that, you know, at the time that  
3 Ms. Jones is giving her statement, it's clear that she's  
4 trying to protect herself because she knows what's happened.

5 When Ms. Taylor gives her statement, she doesn't  
6 know that Mr. Lee is deceased yet. And I think that's very  
7 telling on how honest she is at the time, because it's not a  
8 "protect Ms. Jones" situation. It's an "I'm going to tell  
9 the police what I know because it's not that big of a deal  
10 yet."

11 And when you look at what Jasmine Taylor says in  
12 her statement, she ran out of the house laughing, laughing.  
13 When you punch a knife into someone's chest and you are  
14 laughing about it, that's not indicative of fear, of being  
15 scared for your life. That's indicative of the Whitlee  
16 Jones I described when I started, the Whitlee Jones that was  
17 going to be in control and was going to end this  
18 relationship on her own terms.

19 And, you know, I think, Judge, that under the  
20 preponderance of the evidence standard, when looking at the  
21 the elements of self-defense, it was not reasonable for her  
22 to be in fear of her life. She used an unnecessarily high  
23 level of violence, and an unprovoked level of violence  
24 attacking Mr. Lee. And I think the credible witness on  
25 scene supports that the facts are not sufficient to support

1 a finding of self-defense, at least by a preponderance of  
2 the evidence. And it would at least create a jury question  
3 for it to be resolved later at trial, as opposed to granting  
4 of immunity under a domestic dispute of this sort.

5           You know, it might not seem as relevant, but it has  
6 to carry some weight that it's, you know, three on one at  
7 this point, that it's her and her two friends against  
8 Mr. Lee. And as Jasmine said -- Ms. Taylor, excuse me, had  
9 he gotten violent with her, she would have gone in there and  
10 kicked his butt, and that they all would. And maybe he  
11 deserved to get his butt kicked if that's what was going on,  
12 if he did get violent with her. But that's certainly a far  
13 cry from escalating the situation to a deadly one, by  
14 introducing a deadly weapon into an otherwise fist fight or  
15 an otherwise domestic situation that is, while troubling,  
16 while not okay, understandable in that I think we've all  
17 been in heated arguments and discussions with our loved ones  
18 and the people we care about, and sometimes we tow the line,  
19 and sometimes things get a little bit out of control.

20           But when you bring a deadly weapon and when you  
21 escalate the situation to the way Ms. Jones did, that's what  
22 turns it into a tragedy. And that's what removes it from  
23 self-defense, that escalation of a situation that, by all  
24 accounts, had been dispelled by an earlier fracas that  
25 Ms. Jones had departed from, that her friends had come in

1 and the situation had quelled. But she brought it back and  
2 she escalated it well outside of lawful bounds. And, Judge,  
3 that's what keeps this from being a case of self-defense.  
4 And at least it's sufficient to send the issue to a jury.

5 THE COURT: Okay.

6 Very briefly rebuttal.

7 MS. FORD: Yes, sir. First of all, I think  
8 victim's behavior is founded from the recordings.

9 THE COURT: I'm sorry, what?

10 MS. FORD: I think the victim's behavior -- the  
11 State acted like we were just throwing that out there. I  
12 think the recordings speak for themselves of how  
13 intimidating and controlling and possessive and dominating  
14 he was, that evening in particular, Your Honor.

15 I don't agree that -- we all saw the video from the  
16 patrol car where Ms. Jones is so upset that she passes out,  
17 Your Honor. To suggest that she's just being some  
18 hysterical female, is just completely, I think, out of line.  
19 But, obviously, that's his opinion.

20 You know, she was screaming for help outside  
21 earlier, begging, and no one helped her. You know, anyway,  
22 I think you can see, of course there are times where she  
23 would be more emotional after Mr. Lee -- you know, when she  
24 was at the hospital, because she did love him. So she was  
25 emotional. Yeah, when she was on the street begging for

1 someone to help her, she was emotional. But it's not an  
2 act.

3 And, you know, I think you weren't able to watch  
4 the whole video of her testimony, and that's one reason it  
5 was important, because you can see -- I don't think that's  
6 an act. I don't think that comes off as an act. She's very  
7 depressed and in despair at that moment, Your Honor. People  
8 have different emotions. It doesn't mean they are  
9 attention-seeking.

10 Your Honor, as far as Jasmine, the State goes on  
11 about how credible she is. Your Honor, they had to lead her  
12 the whole entire time. Even when they pointed out things in  
13 her statement that were there with the police being there,  
14 and she saw it in black and white, and she's like, yeah,  
15 that's my writing. She's like, no, I don't think we were  
16 there.

17 So, I mean, quite frankly, she just didn't --  
18 didn't seem like she wanted to be here. She doesn't seem  
19 like she really remembers things. But she did say that she  
20 saw him put her (sic) hands on her, Whitlee. First she  
21 didn't, but I reminded her what she told my investigator,  
22 and she's like, oh, yeah. So she did say those things, Your  
23 Honor.

24 And Ms. Jones, she did not testify because she gave  
25 two statements. She gave the recorded statement and a

1 written statement. And, quite frankly, obviously, if this  
2 does go to trial, we are trying to protect her for that,  
3 Your Honor. And it's extremely emotional for her as well.  
4 But I don't think that's indicative that it wasn't  
5 self-defense merely because she chose not to testify.

6           Your Honor, again, as far as her going back to the  
7 house, again, I just think that goes to if anybody has the  
8 smallest understanding of domestic abuse in those  
9 situations, and she says in her statement she went back and  
10 she thought things had calmed down because, quite frankly,  
11 things hadn't gotten bad before. So I don't think it means  
12 that she wasn't afraid. She was leaving. Her intention was  
13 to go back and leave. At that point, he had taken her  
14 phone. Again, he had taken her life line. She didn't have  
15 any way to call anybody for help. She had to go home. And  
16 obviously, the neighbor called.

17           And as far as the leaving the house laughing,  
18 again, that's from Jasmine. And the State -- they put it  
19 into evidence, but it wasn't played, but her recorded  
20 statement -- in the statement, she's talking about she  
21 herself is laughing. And on the stand, she wasn't meaning  
22 like, ha, ha. It was just more of like a relief, we got  
23 away.

24           So in order to say, like, Whitlee was laughing and  
25 happy about it, I don't think see how anyone can come to

1 that conclusion based on Jasmine's testimony or Erica's  
2 testimony, but especially the video that you see at the  
3 hospital, you know, minutes after the incident. Obviously,  
4 it's not something she took lightly or anything that she  
5 thought was funny, Your Honor.

6           Anyway, Your Honor, we just feel that some violent  
7 things had been perpetrated against Ms. Jones that evening.  
8 And I don't see how anyone can say that the acts of pulling  
9 a woman by her hair outside, in public especially, is not a  
10 violent act. And he was trying to leave her. That's her  
11 statement.

12           The other witnesses, they were not there at the  
13 moment. They were outside. Both of them said, we did not  
14 see the actual altercation. Jasmine, who was closer to the  
15 door, she says she was talking to Erica. She didn't see  
16 things, how they went down. So she was not there. The only  
17 witness, quite frankly, is Ms. Jones. And Ms. Jones gives  
18 the statements. And so that's the bulk of the testimony,  
19 Your Honor. Thank you.

20           THE COURT: Will you hand me her statement please?

21           MR. KIDD: Ms. Jones or Mrs. Taylor's?

22           MS. FORD: Ms. Jones.

23           THE COURT: First of all, I would say this,  
24 16-11-440A and B applies to presumption of reasonable fear  
25 of imminent peril.

1           And B lays out some exceptions, excludes certain  
2 people. And it does exclude people in a lawful dwelling. A  
3 residence occupied would apply to the people in this case,  
4 to victim and the defendant.

5           The Court finds that Subsection C, a person who is  
6 not engaged in an unlawful activity and who is attacked in  
7 another place where he has a right to be, including, but not  
8 limited to, the Court finds that that only thing that  
9 section does was eliminate the presumption of imminent peril  
10 and leaves out the issues of self-defense.

11           If all the elements of self-defense are met and  
12 there's no factual question for a jury, the Court under this  
13 Subsection 3 could grant immunity as far as the statute is  
14 concerned, the case, and especially Supreme Court case of  
15 State vs. Curry -- I'm not going to address the Manning case  
16 because apparently Manning has been withdrawn.

17           I want to do a little research on self-defense. I  
18 will give you my opinion in the morning on the immunity. I  
19 want to do a little self-study on self-defense and the  
20 issue. That troubles me.

21           Mrs. Jones does say in her statement that: As he  
22 was getting ready to hit me again, I grabbed the knife out  
23 of my shirt and stabbed him and ran out the door.

24           Now, Ms. Taylor stated that she did not see any  
25 pushing and shoving. She didn't say that she saw him put

1 his hands on her. It was all verbal. So there's a real  
2 dispute there between Mrs. Taylor and the defendant,  
3 Mrs. Jones.

4 The issue without fault, the issue of excessive  
5 force under the circumstances that a reasonable person would  
6 exercise, is the issues that the Court would have to look  
7 at. And y'all want to come back in the morning and I will  
8 be happy to give you my decision in the morning. Thank you  
9 very much.

10 MS. FORD: Thank you, Your Honor.

11 MR. KIDD: Thank you, Your Honor.

12 Judge, I think the only place we erred, State's  
13 15 -- the court reporter seems to think that Ms. Jones's  
14 recorded interview was not admitted into evidence. I just  
15 want to make sure we are in agreement that it is part of the  
16 record and is entered into evidence.

17 MS. FORD: Yes.

18 THE COURT: All right.

19 (State's Exh. 15, Ms. Jones Recorded Interview, is  
20 moved into evidence.)

21 (End of transcript.)

22

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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter  
certified Realtime Reporter, and Notary Public for the State  
of South Carolina at Large, do hereby certify that the  
foregoing transcript is a true, accurate and complete  
Transcript of Record of the proceedings.

I further certify that I am neither related to nor  
counsel for any party to the cause pending or interested in  
the events thereof.

Witness my hand, I have hereunto affixed my official  
seal this 28th day of October, 2014, at Charleston,  
Charleston County, South Carolina.

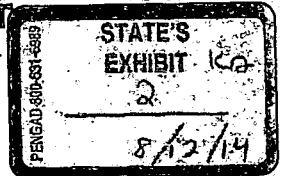
  
Karen V. Andersen  
Registered Merit Reporter  
Certified Realtime Reporter  
My Commission expires:  
September 14, 2016

①

20121039323

## NORTH CHARLESTON POLICE DEPARTMENT

## DEFENDANT STATEMENT



STATEMENT OF

Whitlee Jones

HOME ADDRESS

[REDACTED] Apt [REDACTED]

HOME PHONE

EMPLOYER

Hartland

BUSINESS ADDRESS

NCHS

BUS. PHONE

N/A

OCCUPATION

Dieting Aide

THIS STATEMENT IS GIVEN

11-2-2012

(DATE) AT

3:00 am

(TIME)

2010 City hall Lane

(LOCATION)

Me and Eric got into a argument because he went to get my phone and I wouldn't let him get it. He grabbed my phone from me so I went to get his phone. When I got his phone I went upstairs to get my pocketbook so I could leave. He began to fight me for his phone so I gave it to him and he gave me my phone back. I began to leave but as I went to the front door he wouldn't let me go out he began pushing me and punching me. So I ran out the back door. As I was walking from the back he saw me calling my ride so he began to fight me asking for his phone (which is was a phone he gave me it was just in his name) so I was running away he began to pull my hair and try to force me back in the house. I began screaming so a neighbor could hear or somebody could even help me. A neighbor came out and saw Eric fighting me and I asked him for help. He didn't. I was using the phone to call the police. Eric continue to try and force me into the house so I threw the phone so he would stop fighting me. He want to get the phone and I ran off. I ran to the back of some apts and I didn't

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS:

#1710

WITNESS:

223

SIGNATURE:

Whitlee Jones

2012 10 3 9323

Page Number

(2)

OCA #

2012059323

have a phone to call anyone so I cooled down and walked back home. I used the key to open the door and he was standing there. I noticed he was throwing my things around so I asked him for my phone to call a ride. I called my ride and as I started collecting my things he was yelling "It's over, bye, you made such a scene you know it's over now." He was rushing me to leave when I looked outside I noticed my ride was there. I was putting my things in the car and he was following me around the house making sure I didn't take any of his things. My cousin helped me put the rest of the things in the car. I went upstairs and made sure I didn't leave anything as I was getting my shoes I noticed the knife I grabbed it for protection. I went downstairs and he was getting the key off my dogchain. He started yelling and pushing me again telling me to get out. I was leaving when he grabbed me and asked me if I was mad and shake me saying "It's over it's your fault your fault" as he was getting ready to hit me again I grabbed the knife out my shirt and stabbed him and ran into the car to get away. I was scared he was really hurt and I told my friend to turn around. When we got back to the house he was lying on the floor at the door. I picked him up and carried him to the car rushed him to the hospital! I didn't want to kill him but to my defense I stabbed him to get away if I didn't he would of killed me.

Next portion Q & A by Det Farman

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS:



WITNESS:



SIGNATURE:



Page Number

(3)

OCA # 2012039323

- ① Did you Really think that Eric was going to Kill you?
- ② I was scared of him
- ②Q Had ERIC Hit you before?
- A he had seen it before but he wasn't a bad person He just was controlling and would get mad but he would get over it.
- ③Q- Did you plan on stabbing him?
- A- NO, I was just going to scare him I was just gonna maybe stab him in the arm or leg but ~~you~~ I didn't want to Kill him.
- ④Q- where did you put the Knife?
- A- I Don't Remember - Everything happened so fast. It could be dropped in the house or maybe outside the house.
- ⑤Q- who's Knife was it?
- A- it was his.
- ⑥Q- why did he have it
- A- I Don't know

~~nothing further~~

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT.

WITNESS:

WITNESS:

SIGNATURE:

RULES: 60072

|                          |   |                                         |
|--------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF GENERAL                 |
| COUNTY OF CHARLESTON     | ) | SESSIONS                                |
|                          | ) |                                         |
|                          | ) | FOR THE NINTH JUDICIAL CIRCUIT          |
|                          | ) | Charge: Murder                          |
| State of South Carolina, | ) | Warrant No: 2012A1010202313             |
| v.                       | ) |                                         |
| WHITLEE JONES,           | ) | States memorandum in support of denying |
|                          | ) | defendant's plea for immunity           |
| DEFENDANT                | ) |                                         |

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On August 12, 2014 the Court heard the defense motion for immunity pursuant to S.C. Code Ann. §16-11-440 (C). At the conclusion of testimony the court requested both parties provide written briefs on the appropriate standard for the court to apply in order for it to reach its conclusion and what factual determinations it must make in order to resolve any disputed facts.

#### STATEMENT OF THE UNDISPUTED FACTS

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

Whitlee Jones and Eric Lee were in a romantic relationship and resided together at [REDACTED] Road in North Charleston, SC. The evening of November 2, 2012, the two were in a verbal argument over Mr. Lee wanting to take possession of Defendant's phone, a phone he had paid for but had given to her. This dispute escalated and became physical to some degree. During this altercation some of the Defendants hairweave was pulled out and later discovered on the ground in front of the residence.

Approximately forty-five minutes after this altercation, the Defendant returned to the home so that she could get her belongings and leave. After arriving back at the shared residence the Defendant borrowed a phone from Mr. Lee so that she could call her friends to come help her move her belongings out of the apartment. The Defendant's two friends Erica Grant and Jasmine Taylor showed up to help her gather her belongings and leave. 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 anticipation of an additional confrontation with Mr. Lee. Right before the Defendant left the residence she and Mr. Lee were standing face to face arguing when the Defendant grabbed the knife from her shirt and stabbed Mr. Lee one time in the heart.

Defendant then ran out of the house with her friends, but not long after leaving, asked to return to the house to check on Mr. Lee because she was concerned for him and had not known the extent of his injury. After arriving to the house, the Defendant saw Mr. Lee's condition and took him to the hospital with Taylor while Grant stayed at the house to wait for police.

## **DISCUSSION**

### **1. Is the Defendant entitled to seek immunity from prosecution under §16-11-440(C)?**

In June of 2006 our state Legislature enacted the Protection of Persons and Property Act. While highly touted by the NRA and individual rights activists across the state, little did they know that their attempt to increase the protections afforded to law abiding citizens would become the criminal contingent's best defense and ultimately a potential license to kill.

The intent of the statute is articulated by the General Assembly in §16-11-420. It states:

(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.

Under the plain language of the statute and understanding the goals of the legislature, this statute was designed to empower South Carolina residents to protect their homes, cars, and places of business from external and unknown threats. Understanding the intent to codify the common law Castle Doctrine first requires an understanding of what the common law Castle Doctrine was prior to the enactment of this statute. According to Black's Law Dictionary the Castle Doctrine is

[A]n exception to the retreat rule allowing the use of deadly force by a person who is protecting his or her home and its inhabitants from attack, esp. from a trespasser who intends to commit a felony or inflict serious bodily harm.

The duty to retreat does not necessarily exist during confrontations between two lawful residents. See State v. Grantham, 224 S.C. 41, 45-46 (1953). However, the absence of a duty to retreat is not the sole import of the Castle Doctrine as seen by the inclusion by our legislature of a presumption that one facing such attack be reasonable in their fear of death or great bodily harm. States such as West Virginia have more articulately defined the Castle Doctrine by requiring for one "to justify [using] deadly force resulting in death, the occupant must show that the assailant was an *intruder*." State v. Adkins, 232 W.Va. 677 (2013)(emphasis added). To conclude that the Castle Doctrine and therefore the Protections of Persons and Properties Act applies to disputes between two lawful residents of the same dwelling is not only in contradiction of the legislative intent and common law definition of the Castle Doctrine but it is also inconsistent with the plain wording and statutory construction of §16-11-440. This is due to the fact that this exact situation is specifically excluded from the statute by §16-11-440 (B)(1), which states that the reasonable fear of death or great bodily harm presumption is not applicable if the person

“against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling.” The inclusion of this language must be interpreted as applicable to the entire act. The intent consistent with that interpretation is further evidenced by the legislature’s use of the phrase “in another place” in §16-11-440(C). That section states that:

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.

Accordingly, “in another place” refers to a place other than one’s dwelling, residence, or occupied vehicle. State v. Manning, 2014 WL 1805319 (2014)(Opinion withdrawn).

**2. If §16-11-440(C) is applicable, what standard should apply and what findings must be made?**

Following State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), individuals charged with a crime are entitled to a pretrial evidentiary hearing in which they could obtain immunity from prosecution should they prove by a preponderance of the evidence the applicability of the Protection of Persons and Property Act. Our Supreme Court held that the “only way this statutorily granted right [to immunity] could be meaningfully enforced [is] for the defendant to be able to raise immunity in a *pre-trial* motion.” Duncan, 392 S.C. at 409. Additionally, “the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence.” *Id.* at 411. On appeal, the standard of review for such a determination is an abuse of discretion. State v. Curry, 406 S.C. 364, 370 (2013).

A similar situation was recently addressed by our Supreme Court in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013). In Curry the appellant and the victim were both social guests in a residence. They engaged in a physical fight that was broken up by witnesses at the residence. Ultimately the appellant retrieved his pistol and shot the victim under disputed factual

circumstances. The Court found that the analysis using the preponderance of the evidence standard under §16-11-440(C) required specific application as to each element of self-defense. Curry, 406 S.C. at 371.

Accordingly, the court must determine by a preponderance of the evidence that 1) the defendant was without fault in bringing on the difficulty, 2) that the defendant actually believed they were in imminent danger of death or great bodily injury, 3) that a reasonably prudent man of ordinary firmness and courage would have entertained that same belief, and 4) the defendant had no other probable means of avoiding the danger death or great bodily injury than to act as they did. *See Id.* If the Protections of Persons and Properties Act and the Castle Doctrine are found to be applicable the fourth element is excused. *Id.*<sup>1</sup>

However, without weighing in on the specific facts the Court in Curry declared that the “Appellant’s claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.” *Id.* at 372. In essence the court is saying that the reasonableness of ones beliefs and actions is not a finding appropriately made using the preponderance standard in granting immunity. Those elements of self-defense are specifically designed to be presented to a jury and are not the type appropriately resolved in a Duncan hearing. That analysis is consistent with statutory construction in that under Section (A) of the Act, the presumption of one being in fear of death or great bodily injury obviates the court from needing to make findings on those relevant elements of self-defense.

In the case at hand there was ample evidence presented for the court to conclude that 1) the defendant was not in fear for her life; and 2) even if she were, that fear was not of the sort

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<sup>1</sup> The Court in Curry reviewed the issue regarding the applicability of Duncan at the directed verdict stage because the trial court did not have the benefit of the Duncan opinion at the time of trial. They therefore used the evidence presented at trial the same as if it were the evidence presented in a motion in limine in order to preserve the issue for review.

that a reasonable person would feel that deadly force would be the only means of quelling that threat. "Only such a degree of force may be used in self-defense as is necessary, or is honestly and reasonably believed by the accused to be necessary, to defend oneself against an attack, and may not exceed that which appears necessary to a reasonable person under similar circumstances. The use of excessive force in light of the circumstances vitiates the defense." 6 Am. Jur. 2d Assault and Battery § 52.

The testimony and written statement of Taylor contradicts the written statement by the defendant in multiple ways. In the Defendant's statement she claims the victim was pushing and was shaking her immediately prior to the stabbing.<sup>2</sup> However, Taylor testified that she was present the entire time and kept an eye on the victim to ensure that he did not grab or hit the Defendant. She testified that she never saw the victim grab, strike, or touch the Defendant in any way and she was standing less than six feet away from him at the time of the stabbing. Furthermore, in her written statement,<sup>3</sup> Taylor indicated that when she and the defendant ran to the car, got in, and drove off they were "laughing." Laughing following fatally stabbing the victim in the heart is surely indicative of a lack of fear of death or great bodily injury. Moreover, Ms. Taylor testified that the victim was outnumbered 3 to 1 and that had he laid his hands on the Defendant they would have been able to overpower him physically.<sup>4</sup> Lastly, contrary to the defendant's written statement, in Officer Bridge's cruiser video, the defendant's response to Officer Bridges question, why did you stab him, was "he was trying to stop me from leaving." Officer Bridges then asked what was he doing to stop you and the Defendant answered "He was

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<sup>2</sup> In addition the defendant claims the victim was punching her and fighting her in the prior confrontation. However, the state entered the defendants mug shot from the night of the incident that shows her without any bruising or any other noticeable injury.

<sup>3</sup> The written statement of Jasmine Taylor was entered as a State's exhibit for purposes of this hearing.

<sup>4</sup> It is uncontroverted that the victim was unarmed throughout the confrontation.

standing in front of me.”<sup>5</sup> This response in the immediate aftermath of the stabbing is a clear indication of the circumstances at the time of the stabbing as the Defendant had not yet had time to formulate her self-defense theory and was speaking in more factual terms. This is evident by the consistency of the defendant’s initial description and that of Ms. Taylor.

In conclusion, despite the underlying gender differences, the unarmed victim was outnumbered 3 to 1, the defendant had no physical injuries, there is no credible evidence that the victim ever struck or attempted to strike the defendant prior to his demise, and the defendant was laughing immediately after stabbing the victim and fleeing the scene. There is insufficient evidence to conclude that the defendant was in fear for her life and even if the court relies on the defendant’s statement in order to reach that conclusion, such belief would be unreasonable to an ordinary person in the same circumstances.

### 3. Is §16-11-440 Constitutional?

The Supreme Court of the United States has held previously that:

We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta, wherein it was written, we will sell to no man, we will not deny or defer to any man either justice or right.

Klopfer v. State of N.C., 386 U.S. 213, 223 (1967). Additionally, the Court ruled that:

The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused. In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial, which exists separate from, and at times in opposition to, the interests of the accused.

Barker v. Wingo, 407 U.S. 514, 520 (1972). The Court further observed in Barker that violation of the speedy trial right “might work to the accused's advantage,” since it belongs to both the

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<sup>5</sup> Officer Bridges cruiser video was entered into evidence as a State’s exhibit

defendant and society. *Id.* at 521. It also noted that the right is “a more vague concept than other procedural rights” U.S. v. Ferebe, 332 F.3d 722, 735 (2003) (quoting Barker v. Wingo 407 U.S. 514).

The Court's opinion in Kloper v. North Carolina, 386 U.S. 213 (1967), established that the right to a speedy trial is ‘fundamental’ and is imposed by the Due Process Clause of the Fourteenth Amendment on the States. The Due process clause of the Fourteenth and Eighth Amendment apply to “legal persons” and not solely individuals. Therefore, these rights similar to the Sixth Amendment right to a speedy trial belong in large part to society as a whole. Denial of society’s right to have factual disputes in criminal proceedings presented to a jury is in essence a violation of the substantive due process right of our community. Such a violation is indicative of our legislature overstepping its bounds and authority by enacting §16-11-400.

Accordingly, the right to a jury trial guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and further guaranteed by the South Carolina Constitution, in Article I, § 14 is not a right solely enjoyed by the criminally accused. Therefore, a state statute such as §16-11-440 that removes dispositive factual disputes from the hands of a jury and places it into the hands of a judge is a violation of our society’s constitutionally guaranteed right to a jury trial and the equal protection clause. U.S. Const. amend. 14.

### CONCLUSION

In summary, §16-11-440(C) is inapplicable to a dispute between cohabitants of a residence when that altercation takes place in their shared residence because this scenario is specifically excluded by §16-11-440(B). Even if the court finds §16-11-440(C) applicable immunity should be denied because the defendant failed to prove by a preponderance of the evidence that she was in imminent fear of death or great bodily injury at the time she stabbed the

victim and she failed to prove that such belief if existing was reasonable under the circumstances. Lastly, even if the court were to find that §16-11-440(C) were applicable and that the defendant met her requisite burden of proof, immunity should be denied and the court should find §16-11-400 unconstitutional as being in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution.

Respectfully submitted,

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E. Culver Kidd  
Assistant Solicitor  
August 26, 2014

FILED

2014 SEP 16 PM 2:00

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS

JULIE A. STRONG  
CLERK OF COURT

COUNTY OF CHARLESTON ) FOR THE NINTH JUDICIAL CIRCUIT

) Charge: Murder

State of South Carolina, ) Warrant No: 2012A1010202313

v. )

WHITLEE JONES ) DEFENDANT'S SUPPLEMENTAL

) MEMORANDUM

DEFENDANT ) FOR DUNCAN HEARING

**I. THE STATE DOES NOT HAVE A SPECIFIC RIGHT TO TRIAL WHICH SHOULD BE CONSIDERED IN THE COURT'S CONSIDERATION OF IMMUNITY IN A DUNCAN HEARING, ESPECIALLY BECAUSE THE ACT IS IN FACT A TOOL FOR JUDGES TO BAR PROSECUTION.**

Jury trials are an important part of the American judicial system. The United States

Constitution sets out a criminal defendant's right to a jury trial in the Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The South Carolina Constitution, in Article I, § 14, sets out the right to a jury trial as well:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

In South Carolina, while Article I, § 14 has been found to apply to non-criminal matters, it stresses the importance of a jury trial for a person charged with a crime, a defendant. In addressing jury trial issues, the State is allowed to raise certain matters and the defendant is not allowed all decisions regarding fairness. For example, a defendant does not necessarily have a constitutional right to plead guilty. In *State v. Easler*, 322 S.C. 333, 360, 471 S.E.2d 745 (Ct. App. 1996), the circuit court was correct in refusing to accept a plea when the possible result would have been the State not being able to try the defendant for more serious charges due to possible Double Jeopardy issues. However, a defendant's rights are generally paramount. In *State v. Manning*, 329 S.C. 1, 8-9, 495 S.E.2d 191, 195 (1997), the supreme court analyzed the State's request for a change of venue and found that the trial judge erred in granting its motion due to its infringement on the defendant's trial rights: "[B]ecause a defendant's right to be tried in the county where the alleged offense occurred is defeated when the prosecution's request for a change of venue is granted, a court should exercise great care and deliberation when changing venue at the request of the prosecution, and the state's motion and evidence supporting its motion should be strictly scrutinized to ensure the defendant's right is not abused." A criminal defendant's rights are the focus in analyzing jury trial decisions.

Most importantly, the Act outright allows for and directs circuit court judges to grant immunity to a defendant if the circumstances warrant it. Nothing is set out in the Act to require the Court to weigh its consideration against the State's possible right to try a case or even general community concerns. On the contrary, the Act is intended, according to the General Assembly's express intent, to protect the individual citizens of South Carolina and is written to concentrate on the actual individual in question. In § 16-11-420(D), S.C. Code, "The General Assembly [held] that persons residing in or visiting this State have a right to expect to remain unmolested

and safe within their homes, businesses, and vehicles.” It further elaborated in (E), finding 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.” Everything about the Act can be read to look at an individual’s rights and not even necessarily the intent of the intruder or attacker. For example, it can be argued that many people who intrude into someone’s home or business have no intention of harming anyone but instead are looking for items to steal. Despite this likely lack of dangerous intent on behalf of the intruder, the General Assembly instructed that, “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 someone is unlawfully and forcefully entering someone’s home or vehicle. § 16-11-440(A). The General Assembly clearly intended for courts to focus on the individual who acted in self-defense.

The Act is a specific tool for the Court to take action, despite what the State may want: “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.” § 16-11-440 (B), S.C. Code. The Act and the possibility of immunity would not exist if the General Assembly wanted to rely on the State’s ability to decide whether or not to prosecute a case.

**II. DEFENDANT’S RETURN TO THE HOME DOES NOT PRECLUDE HER FROM ACTING OR CLAIMING SELF-DEFENSE BECAUSE SHE WAS FACED WITH A NEW THREAT, AND HER ASSESSMENT OF THE IMMEDIATE THREAT WAS ALLOWED TO BE BASED ON PRIOR EXPERIENCES WITH THE DECEASED.**

Under common law, self-defense does not preclude people from acting and protecting themselves against people with whom they have prior disputes. On the contrary, the law specifically allows for evidence of such history to be admitted into Evidence. 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. *State v. Day*, 341 S.C. 410, 419-20, 535 S.E.2d 431 (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. *State v. Stockman*, 82 S.C. 388, 64 S.E. 595 (1909). In *Stockman*, the defendant and victim had an altercation in the defendant's home. However, the victim then left the house. The defendant followed him outside and ultimately shot him while the victim was having an altercation with a third person. The trial court charged the following:

"Now, a man's house is his castle; he has the right to protect every member occupying it, or there with him, and he may take life if it is necessary to do so, in order for such protection, but the danger must be imminent, must be immediate; when the danger has passed, one has no right to follow up another who has invaded his home for the purpose of taking his life; he has no right to do that under the law; no such law anywhere making the taking of human life excusable unless there be a necessity for it. But one when danger is passed, is over, is not allowed under the law to follow up another and take his life. The danger must be imminent; it must be immediate."

*Id.* at 401. The supreme court found the charge to be appropriate in that self-defense does require an immediate threat. *Id.*

Nothing in *Stockman* warrants precluding Defendant from acting in self-defense. When she acted, she was not merely following up on the prior attack. Instead, there was a new threat and she acted on that. However, when she acted, she was assessing the threat based on Mr. Lee's

current and past actions against her, which she is allowed to do. Her return to the home did not mean she was not fearful of Mr. Lee at the time she stabbed him. She was very limited in what she could have done when she made the decision to go back to the house. It was the middle of the night. Neighbors had already declined to help her after she had been screaming for help. And the only reason she escaped Mr. Lee earlier was by surrendering her phone to him, despite it being the object that would have allowed her to seek a safer alternative, the object that would have negated her need to go back to the home. According to her statements, she went back because she did not have a phone on her and she believed, based on prior experience, that things had perhaps calmed down. When she returned, she discovered she was right in that he did give her back her phone and allowed her to call her friends for assistance. However, while she was packing her belongings to leave the residence and him, he became more hostile. The witness Ms. Taylor testified that he was walking very closely to Defendant in an intimidating manner and that he was cursing her using degrading names. He also made comments about being upset due to the police having arrived while she was gone.<sup>1</sup> Based on his behavior earlier that evening<sup>2</sup> and the testimony of both witnesses of his controlling nature, it is reasonable to believe that he worked himself up into getting physical with her again.

Many in the community and the General Assembly consider criminal domestic violence to be a serious issue. In August 2014, Charleston's The Post & Courier published a seven-part investigative series called, "Till Death Do Us Part," lamenting South Carolina being named first in the nation for domestic killings of women by men. Doug Pardue, et al, *Till Death Do Us Part*,

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<sup>1</sup> Before Defendant had returned home, there is no indication she had any knowledge of the police presence since they never spoke to her.

<sup>2</sup> He tried to prevent her from leaving the home, he followed her outside after she got away, he tried to get her back in the house by pulling her hair to the point he tore out her weave, and he did not allow her to get away until she gave him her phone.

The Post & Courier, August 20, 2014, at A1 . The series asked the question, "Why do women stay in- and return to- abusive relationships, even until their deaths," recognizing that "the fact that women do stay so often provides a convenient excuse to blame victims, rather than men who pull the trigger (or knives or fists)." *Id.* at Part Four. The article found that, "It's not a simple question to answer. Experts and survivors both describe an all-ensnaring web of hope, culture, dependence, fear, religion and even love that binds women to their abusers. But mostly it comes down to what he controls — which often is everything, even her life." *Id.*

Defendant's relationship with Mr. Lee was not unusual. While the State has suggested that her lack of communicating prior abuse to her friends means that such abuse did not occur, this would not be the case in many abusive relationships. In Part One of "Till Death Do Us Part," the series notes that "South Carolina is a state where the deck is stacked against women trapped in the cycle of abuse" and that "the problem essentially remains a silent epidemic, a private matter that is seldom discussed outside the home until someone is seriously hurt."

Also, South Carolina courts and the General Assembly have recognized certain protections in cases in which one acts against a batterer. For example, Section 17-23-170 of the South Carolina Code allows for testimony of an expert regarding Battered Spouse Syndrome, specifically directing that "battered spouse syndrome shall not be considered a new scientific technique the reliability of which is unproven." It does not make sense that lawmakers would wish to preclude Defendant or others in her position from protecting themselves based on their prior lack of action and perceived acceptance of abuse. To do so would be to indicate that they were at fault and therefore not allowed to act in self-defense.

When Defendant was packing her belongings and leaving the shared home, it was likely a trigger for another act of violence on the part of Mr. Lee. According to Part Four of "Till Death

Do Us Part," My Sister's House, a shelter for battered women, warns on its website, "The most dangerous time for a victim is when leaving the relationship. Fifty percent of injuries and 75 percent of domestic homicides occur after the relationship ends." Defendant had reason to fear Mr. Lee would perpetrate a violent crime against her and cause her great bodily injury, or even death, according to the requirements of § 16-11-440 (C) of the S.C. Code.

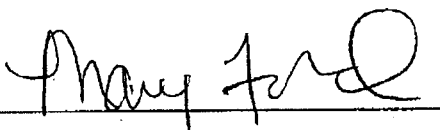
### CONCLUSION

Defendant should be granted immunity. The General Assembly and the South Carolina Supreme Court have authorized circuit court judges to grant immunity. If the Legislature had intended for the Court to weigh considerations for the State, it could have and would have expressed this intent in the statute setting out its intent. On the contrary, the whole point to a hearing based on *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), is to take away the prosecutorial decisions of the State.

Defendant's actions were not contrary to laws established in the Act and in case law, including *Stockman*. She acted when being faced with an immediate threat in her home. Her actions were not merely based on the prior incident, less than forty-five minutes beforehand. However, this prior incident was fresh in her mind and reasonably influenced her beliefs about the danger that Mr. Lee posed to her at the time she acted, when the immediate threat existed. Such consideration is allowed for by the law.

Defendant acted in self-defense and the Court should grant her immunity, as the law allows and requires.

Respectfully submitted,



Mary A. Ford

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August 25, 2014

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2014 SEP 16 PM 4:00  
JULIE A. HARRIS, CLERK OF COURT  
BY 

**FILED**

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON ) 2014 OCT -3 PM 2:53  
 JULIE J. ARMSTRONG )  
 CLERK OF COURT )  
 STATE OF SOUTH CAROLINA )  
 v. )  
 WHITLEE JONES, )  
 DEFENDANT. )

IN THE COURT OF GENERAL  
 SESSIONS FOR THE NINTH  
 JUDICIAL CIRCUIT

Charge: Murder

Warrant No: 2012A1010202313

**ORDER GRANTING IMMUNITY  
 FROM PROSECUTION TO  
 DEFENDANT**

**I.****INTRODUCTION**

After a hearing before this Court<sup>1</sup> 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

<sup>1</sup> 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 [REDACTED] 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.<sup>2</sup>

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).<sup>3</sup> 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

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

<sup>3</sup> 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.

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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.**

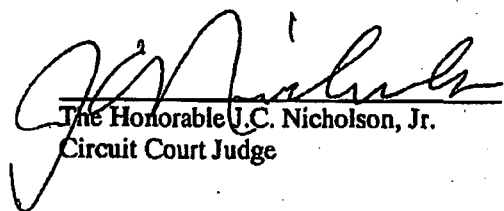
The Court does not agree with the State that the Act is unconstitutional in depriving society of its interest in a Speedy Trial. Judges are allowed to make decisions of law. Those decisions are at times necessarily based on certain decisions of fact. The Legislature created the crimes with which people 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**



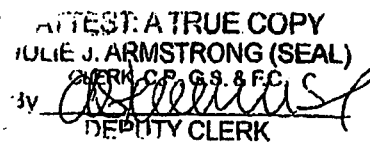
Whitlee Jones is granted immunity under § 16-11-450 of the S.C. Code. This Court finds that under § 16-11-440(C), the Defendant was not engaged in unlawful activity, was attacked in a place where she had a right to be, had no duty to retreat, and had the right to stand her ground and meet force with 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

**FILED**  
 2014 OCT -3 PM 2: 53  
 JULIE J. ARMSTRONG  
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ATTEST: A TRUE COPY  
 JULIE J. ARMSTRONG (SEAL)  
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Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 11. Offenses Against Property  
Article 6. Protection of Persons and Property Act

Code 1976 § 16-11-410

§ 16-11-410. Citation of article.

Currentness

This article may be cited as the "Protection of Persons and Property Act".

**Credits**

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

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Code 1976 § 16-11-410, SC ST § 16-11-410

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Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 11. Offenses Against Property  
Article 6. Protection of Persons and Property Act

## Code 1976 § 16-11-420

## § 16-11-420. Intent and findings of General Assembly.

## Currentness

(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.

**Credits**

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

Notes of Decisions (1)

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Code 1976 § 16-11-420, SC ST § 16-11-420

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Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 11. Offenses Against Property  
Article 6. Protection of Persons and Property Act

Code 1976 § 16-11-430

§ 16-11-430. Definitions.

Currentness

As used in this article, the term:

- (1) "Dwelling" means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.
- (2) "Great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.
- (3) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.
- (4) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

#### Credits

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

Notes of Decisions (2)

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Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 11. Offenses Against Property  
Article 6. Protection of Persons and Property Act

## Code 1976 § 16-11-440

§ 16-11-440. Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business.

## Currentness

(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.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

(2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

(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.

(E) A person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

#### Credits

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

Notes of Decisions (14)

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Code 1976 § 16-11-440, SC ST § 16-11-440

Current through Acts 1 and 3 of the 2015 session.

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Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 11. Offenses Against Property  
Article 6. Protection of Persons and Property Act

## Code 1976 § 16-11-450

§ 16-11-450. Immunity from criminal prosecution and civil actions; law enforcement officer exception; costs.

## Currentness

(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, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

(B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.

(C) The court shall award reasonable attorneys' fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).

**Credits**

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

Notes of Decisions (22)

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Code 1976 § 16-11-450, SC ST § 16-11-450

Current through Acts 1 and 3 of the 2015 session.

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CDD20121108114

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012039323

ARREST WARRANT NUMBER

2012A1010202313

DATE OF ARREST

November 2, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date:

FEB 05 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1000799

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

February Term 2013

THE STATE

vs.

WHITLEE RICHARDINE JONES

DOB: [REDACTED]

B/F

Indictment for

Murder

129

FILED

2/6/2013 2:36:30 PM  
JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

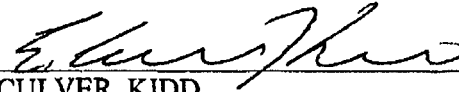
## INDICTMENT

At a Court of General Sessions, convened on February 4, 2013 the Grand Jurors of Charleston County present upon their oath:

**Murder**

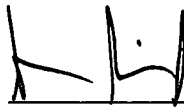
That in Charleston County on or about November 2, 2012, with malice aforethought, WHITLEE RICHARDINE JONES did kill and murder Eric Lee by means of stabbing the victim, and that Eric Lee did die in Charleston County as a proximate result thereof on November 2, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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

  
CULVER KIDD  
ASSISTANT SOLICITOR

## **CERTIFICATE OF COUNSEL FOR APPELLANT**

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007 and April 14, 2014, orders from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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Assistant Attorney General

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Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEYS FOR APPELLANT

September 21, 2015.