

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001769

RECEIVED

OCT 15 2015

THE STATE,

v.

APPELLANT **S.C. Supreme Court**

CALVIN JERMAINE POMPEY,

RESPONDENT.

RECORD ON APPEAL

ALAN WILSON
Attorney General

ROBERT M. DUDEK
Appellate Defender

JOHN W. McINTOSH
Chief Deputy Attorney General

SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1330

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ATTORNEY FOR RESPONDENT

ALPHONSO SIMON, JR.
Assistant Attorney General
South Carolina Attorney General's Office
PO Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

E. L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit
MSC-Q/County Complex
180 N. Irby Street, Room 1101
Florence, South Carolina 29501-3431

ATTORNEYS FOR APPELLANT

INDEX

INDEX	i
Transcript of Hearing on Motion held August 13 and August 15, 2013 [pages 1-95]	1
True Billed Indictment.....	96
Motion to Dismiss Indictment – Indictment No. 2012-GS-33-0301	98
Certificate of Counsel.....	100

This page is intentionally left blank

STATE OF SOUTH CAROLINA)
COUNTY OF MARION

} GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
12-GS-33-301

CALVIN J. POMPEY,)

DEFENDANT.)

August 13, 2013
August 15, 2013
Marion, South Carolina

BEFORE :

THE HONORABLE D. CRAIG BROWN, JUDGE

APPEARANCES:

E. L. CLEMENTS, III, ESQ.
Solicitor

VICK MEETZE, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

INDEX

	Page
Kadeem Kelley:	
Direct examination by Mr. Meetze	4
Cross-examination by Mr. Clements	10
Rodrick McRae:	
Direct examination by Mr. Meetze	30
Cross-examination by Mr. Clements	40
Calvin Jermaine Pompey:	
Direct examination by Mr. Meetze	50
Cross-examination by Mr. Clements	57
Milton Wheeler:	
Direct examination by Clements	66
Cross-examination by Mr. Meetze	77
Redirect examination by Mr. Clements	78
Ruling of the Court	85

(There were no exhibits marked.)

1 MR. CLEMENTS: If it please the Court,
2 Your Honor, we're here on indictment 12-GS-33-301.
3 This is the State versus Calvin Jermaine Pompey. He
4 is charged with murder, Your Honor. He's
5 represented by Mr. Vick Meetze of the Public
6 Defender's Office. The murder is alleged to have
7 occurred, and alleged to have been a murder, on the
8 18th of March, 2012, at Club Fusion which is on East
9 Godbolt Street in Marion. Your Honor, we have
10 several witnesses here, several family members here.
11 What we're here for today is, pursuant to the Castle
12 Doctrine Mr. Meetze has raised that issue, and we're
13 here for a hearing regarding the Castle Doctrine and
14 I'll defer to him.

15 But that's what we're here for, correct,
16 Mr. Meetze?

17 MR. MEETZE: That is correct, Your Honor.

18 THE COURT: All right, Mr. Meetze, I'll be
19 happy to hear from you, sir.

20 MR. MEETZE: Thank you, Your Honor. Your
21 Honor, as Mr. Clements indicated we are here
22 pursuant to a motion that I filed a while back
23 asking for a hearing pursuant to the Castle Doctrine
24 which is codified 16-11-410 which is the protection
25 of persons and properties act. We do have witnesses

1 here, and we would ask the Court to hear evidence in
2 regards to that and at the appropriate time we will
3 be making a motion pursuant to this act.

4 THE COURT: All right, call your first
5 witness.

6 MR. MEETZE: Thank you, Your Honor. Your
7 Honor, at this time we would call Kadeem Kelley.

8 THE CLERK OF COURT: Mr. Kelley, here,
9 place your left hand on the Bible, raise your right
10 hand.

11 WHEREUPON,

12 **KADEEM KELLEY,**
13 having been duly sworn by the Clerk of Court,
14 testified as follows:

15 MR. MEETZE: Mr. Kelley, I'm gonna ask you
16 to speak up so everybody can hear you just like you
17 and I are having a conversation. I'm gonna ask you
18 to spell your name for us if you would.

19 THE WITNESS: Kadeem Kelly, K-A-D-E-E-M
20 K-E-L-L-E-Y.

21 **DIRECT EXAMINATION**

22 BY MR. MEETZE:

23 Q Mr. Kelley, were you — what were you doing on
24 March the 18th of 2012?

25 A I was out partying.

- 1 Q With, who were you with?
- 2 A Calvin.
- 3 Q Anybody else?
- 4 A Joshua Ward.
- 5 Q Okay. And where did y'all go?
- 6 A Club Fusion.
- 7 Q Do you remember what time y'all got to Club
- 8 Fusion?
- 9 A No.
- 10 Q Do you remember when you left Club Fusion?
- 11 A Not the time, but I know about when we left.
- 12 Q I need you to speak up a little bit.
- 13 A Not the time but I know when we left.
- 14 Q Was it before midnight, after midnight?
- 15 A After midnight.
- 16 Q And why did you leave?
- 17 A 'Cause there was altercation that happened.
- 18 Q Now did you see anything happen in the club?
- 19 A No, sir.
- 20 Q What alerted you, if anything, that you needed to
- 21 leave?
- 22 A When somebody told me that my brother-in-law was
- 23 being thrown out the club.
- 24 Q And when you say your brother-in-law who are you
- 25 referring to?

1 A Calvin.

2 Q And you are married to his sister?

3 A Yes.

4 Q Okay. And when you left the building what
5 happened then?

6 A We was heading to the car.

7 Q When you say "we were heading to the car," who
8 were you referring to?

9 A Me, Calvin, and Josh was headed to the car to
10 leave.

11 Q And what happened then?

12 A Mr. McRae, he came. I don't know who all was
13 with who, but I know it wasn't anybody else with us.

14 And they was coming to the car. One guy had his
15 hand under his shirt as if he had something, you
16 know. He was getting ---

17 Q I don't mean to interrupt you, let me stop you
18 there. You testified a little bit ago that y'all
19 were going to the car ---

20 A Yeah.

21 Q Did y'all meet ---

22 A We made it to the car. We made it in. I was in
23 the process of getting in.

24 Q Okay. Where was everybody else when you were in
25 the process of getting in?

1 A Behind we was coming towards —

2 Q No, I'm talking about everybody you were with.

3 A Oh, at the car.

4 Q When was everybody — did everybody get into the
5 car?

6 A Josh had the key to unlock the door. So after
7 Josh unlocked the door which it wasn't — the device
8 wouldn't unlock. He had to manually do it. After
9 Josh unlocked the door that when everybody proceeded
10 to get in the car.

11 Q Okay. Once everybody was in the car what did you
12 see?

13 A See Calvin leaning back and then let off a shot
14 and then everybody left after that.

15 Q And I'm gonna ask you to back up. You were about
16 to say something a little bit ago and I interrupted
17 you when you referred to some other people that you
18 saw. Tell me what you saw.

19 A I saw people coming to the car that wasn't with
20 us, didn't know them, never seen them before. One
21 guy was running up with his hand under his shirt as
22 if he had something.

23 Q A d when you say under his shirt you mean under
24 — was it under the front of his shirt —

25 A Front.

1 Q Front of his shirt. And he was, you indicated in
2 your testimony he was running towards the car?

3 A Yes, sir.

4 Q What part of the car was he running towards?

5 A Passenger side.

6 Q And who was in the passenger side?

7 A Calvin.

8 Q ALL right. How close to the car did he get?

9 A In the car, inside.

10 Q Inside the car?

11 A Like reaching inside.

12 Q Do you recall him saying anything or doing
13 anything when he got to the car?

14 A No, sir.

15 Q And what happened once he got into the car?

16 A One shot was let out, left.

17 Q And you testified here for a few minutes but how
18 fast did all this happen?

19 A It happened in a matter under a minute,
20 everything.

21 Q So everything happened very fast?

22 A Yes, sir.

23 Q And you had never seen these folks before or this
24 individual before?

25 A No, sir.

1 Q And your testimony is that one shot was fired?

2 A Yes, sir.

3 Q Where were you sitting in the car?

4 A In the driver's side in the back.

5 Q And did you at any time see Calvin become armed?

6 A No, sir, it happened too fast. I honestly
7 thought everybody was inside the car until I seen
8 him leaning back.

9 Q And when y'all were going to the car what was
10 y'all's plan?

11 A To go home.

12 Q All right. And y'all just didn't have time for
13 that to happen?

14 A No, sir.

15 Q After you heard the shot your testimony is that
16 y'all did leave at that time?

17 A Yes, sir.

18 Q Did y'all leave immediately?

19 A Immediately.

20 Q Okay. As far as anything that went on inside the
21 club that led to folks being thrown out of the club,
22 you did not see any of that? You ---

23 A No, sir, I really didn't had anything to do with
24 anybody 'cause it was -- we was having a good night.

25 MR. MEETZE: I don't have any further

1 questions for this witness, Your Honor.

2 THE COURT: Cross-examination.

3 **CROSS-EXAMINATION**

4 BY MR. CLEMENTS:

5 Q Mr. Kelley, how old are you?

6 A Twenty-four.

7 Q And you are — you are Calvin Pompey's
8 brother-in-law?

9 A Yes, sir.

10 Q All right. And you're married to his sister?

11 A Yes, sir.

12 Q Okay. Real good friend of his?

13 A Yes, sir.

14 Q Y'all are real close?

15 A Yes, sir.

16 Q You'd do anything you could to help him, correct?

17 A I would do anything that's the truth.

18 Q Okay. Now let me ask you about being inside the
19 club. Do you recall about what time you got there?

20 A No, sir.

21 Q How long were you there?

22 A I'm not sure.

23 Q Hour, hour-and-a-half, two hours?

24 A I'm not sure.

25 Q Five minutes?

1 A I'm not sure. It was longer than five minutes.

2 Q Was it around an hour, longer than an hour,
3 shorter than an hour?

4 A I'm not sure if it was — I'm not sure.

5 Q Now you said you didn't know anything about any
6 altercation in the club from you seeing anything or
7 hearing anything?

8 A No, sir, I didn't know anything.

9 Q You didn't hear anybody do anything?

10 A I mean, I seen some people fighting, but I didn't
11 think it had anything to do with nobody that was
12 with me.

13 Q All right, who did you see fighting?

14 A Bunch of people that I didn't, didn't really
15 know.

16 Q All right. Did you see Calvin fighting?

17 A No, sir.

18 Q Was Calvin with you the whole time?

19 A Until whatever scuffle happened in the club, and
20 he was with me up until then. We ain't never been
21 like when something happen in the club everybody
22 scared, everybody go their own way. So the best of
23 me trying to find out where everybody else at.
24 Somebody tell me that he being taken out the club,
25 and that's when I went outside to see what was going

- 1 on with him.
- 2 Q So he was with you until the scuffle started, he
- 3 wasn't with you then?
- 4 A No, sir.
- 5 Q How light or how dark was it in that club?
- 6 A It was dark in the club. They turned on the
- 7 lights.
- 8 Q All right. So he could have been fighting and
- 9 you not know anything about it? He wasn't with you
- 10 at that time, right?
- 11 A Yes, sir.
- 12 Q So you didn't see him at that time?
- 13 A No, sir.
- 14 Q He wasn't with you at that time?
- 15 A No, sir.
- 16 Q And he could have been involved in that fight;
- 17 could he not?
- 18 A I highly doubt it, but yes, sir.
- 19 Q All right. But he could have?
- 20 A Yes, sir.
- 21 Q All right. So you began to look for everybody
- 22 that was with you?
- 23 A Yes, sir.
- 24 Q How many people were that?
- 25 A Calvin and Josh.

- 1 Q Did you find Josh?
- 2 A Yes, sir.
- 3 Q Where did you find Josh?
- 4 A A few steps away from me.
- 5 Q All right. And you didn't find Calvin, did you?
- 6 A Not until somebody tell me he was being taken out
- 7 the club.
- 8 Q Now that club, they don't just take people out
- 9 just for the heck of it, do they?
- 10 A No, sir.
- 11 Q They had to be doing something wrong to get taken
- 12 out the club, right?
- 13 A Or they could have just seen the crowd and figure
- 14 he had something to do with it and take him out.
- 15 Q Excuse me, say that one more time.
- 16 A Or they could have seen the crowd and figure he
- 17 had something to do with it and took him out, but
- 18 I'm not sure.
- 19 Q Okay. So you don't know why they're taking him
- 20 out?
- 21 A No, sir.
- 22 Q He could have been in a fight, and that's why
- 23 they were taking him out, right?
- 24 A Yes, sir.
- 25 Q You didn't see that so you can't tell us that?

- 1 A No, sir.
- 2 Q All right. And you said y'all went to the car?
- 3 A Yes, sir.
- 4 Q You and Josh or you, Josh, and Calvin?
- 5 A After we got Calvin, me and Josh and Calvin.
- 6 Q Where did you get Calvin from?
- 7 A Outside the club.
- 8 Q Who was with him?
- 9 A He was by hisself until I got there.
- 10 Q He was by himself?
- 11 A Yeah.
- 12 Q All right. How much time past between the
- 13 scuffle until you found him outside? A minute, two
- 14 minutes?
- 15 A Not long, like two minutes at the top.
- 16 Q Two minute tops?
- 17 A Yeah.
- 18 Q You got him, did you ask him what was going on?
- 19 A No, he was went to the car.
- 20 Q All right. How far did you have to go to get
- 21 from the door of the club — and that's where you
- 22 found him, right outside the door, right?
- 23 A Yeah.
- 24 Q You didn't see anybody at the club, Mr. McRae or
- 25 anybody like that with him?

- 1 A No, sir.
- 2 Q He was just standing there by himself?
- 3 A No. Like, it was a lot of people outside but I
- 4 only went for him. That was my reason for leaving
- 5 out the club.
- 6 Q All right. Did he appear to be with anybody?
- 7 A No, sir.
- 8 Q Was his clothes messed up?
- 9 A No, sir.
- 10 Q Was he scratched up?
- 11 A No, sir.
- 12 Q Did he look at all like he had been in a fight or
- 13 anything?
- 14 A No, sir.
- 15 Q Did he look like he was scared?
- 16 A No, sir.
- 17 Q So he wasn't scared at all?
- 18 A I don't know if he was scared, but he didn't
- 19 appear to be scared 'cause he done got took out the
- 20 club.
- 21 Q He didn't say anything about being scared?
- 22 A Huh-uh.
- 23 Q Didn't say anything about anybody trying to get
- 24 him, did he?
- 25 A Not sure, he didn't have nothing.

- 1 Q Didn't have nothing to say?
- 2 A He just said, let's go.
- 3 Q All right. And if somebody was after him he'd
- 4 probably said somebody is after me, let's go,
- 5 wouldn't he?
- 6 A More than likely.
- 7 Q But he didn't say that, did he?
- 8 A No, sir.
- 9 Q All right. So from the door to where your car
- 10 was, how far did y'all have to go? I mean, from
- 11 this corner to this corner or further than that?
- 12 A Probably from this door to the entrance.
- 13 Q Okay. And that'd be about how many feet you
- 14 think?
- 15 A I'm not sure.
- 16 Q Was there a lot of cars there or just a few cars?
- 17 A A lot of cars.
- 18 Q Did you have to go around anything or over
- 19 anything or anything to get to your car?
- 20 A I mean, beside the car that was parked, just
- 21 straight to the car.
- 22 Q Just straight to the car. And you said you got
- 23 in the driver's side on the back?
- 24 A Yes, sir.
- 25 Q Whose car was it?

- 1 A My wife.
- 2 Q Okay. And who was driving?
- 3 A Josh.
- 4 Q Why weren't you driving?
- 5 A 'Cause I didn't want to drive.
- 6 Q Were you drinking?
- 7 A Sir?
- 8 Q Were you drinking?
- 9 A We was at a bar.
- 10 Q Well, that was a good decision not to drive then.
- 11 How about Josh, was he drinking?
- 12 A Yes, sir.
- 13 Q All right, how about Calvin, was he drinking?
- 14 A No, sir.
- 15 Q How do you know, he wasn't with you the whole
- 16 time.
- 17 A Well, I didn't give him any drinks.
- 18 Q Okay, all right. And you went to the driver's
- 19 back side as I understand. Josh went to the
- 20 driver's —
- 21 A Driver's side.
- 22 Q —front side —
- 23 A Yes, sir.
- 24 Q —got behind the wheel?
- 25 A Yes, sir.

- 1 Q And you got in the car?
- 2 A Yes, sir.
- 3 Q And where was Calvin?
- 4 A In the passenger seat leaning back.
- 5 Q He was in the passenger seat in the back?
- 6 A Passenger seat leaning back.
- 7 Q Leaning back. So it had one of those reclining
- 8 seats?
- 9 A Sir?
- 10 Q Does the seat recline?
- 11 A His foot didn't even get a chance to get in the
- 12 car. He was leaning back on the passenger side like
- 13 this (indicating).
- 14 Q Leaning back in the passenger seat with his feet
- 15 sticking out of the car?
- 16 A Yes, sir.
- 17 Q Okay. Well, hat happened then?
- 18 A A shot was let off.
- 19 Q A shot was let off?
- 20 A Yes, sir.
- 21 Q From where?
- 22 A Inside the car.
- 23 Q All right. And who did that?
- 24 A Calvin.
- 25 Q Did you know he had a gun?

- 1 A Yes, sir.
- 2 Q He had a gun prior to that? You knew when y'all,
3 before y'all went to the club, you knew he had a
4 gun?
- 5 A Yes, sir.
- 6 Q All right. And where was he carrying that gun?
7 On him or in the car?
- 8 A In the car.
- 9 Q In the car. He didn't carry it in the club?
- 10 A No, sir..
- 11 Q Why not?
- 12 A You can't get a gun in the club. I don't know.
- 13 Q Where was it in the car?
- 14 A In the car, I'm not sure where in the car. It
15 was in the car.
- 16 Q But it was in the front seat, back seat, under
17 the seat, where, glove box?
- 18 A I'm not sure.
- 19 Q Not sure? So how'd you know he had a gun? You
20 saw it beforehand?
- 21 A Yes, sir.
- 22 Q Where did he have it when you saw it beforehand?
- 23 A It was at his momma's house before.
- 24 Q At his momma's house?
- 25 A Yes, sir.

1 Q So you saw him take it from his mom's house and
2 get in the car with it?

3 A Yes, sir.

4 Q Where did he put it in the car then when you got
5 in?

6 A Not sure.

7 Q You're not sure?

8 A I wasn't looking to see where he put it to.

9 Q All right. Why would he carry a gun?

10 A 'Cause of prior things that happened to him.

11 Q All right. Prior things with anybody at that
12 club?

13 A No, sir.

14 Q All right. You said you saw somebody coming to
15 the car. You said they were coming to the car. Who
16 is they?

17 A Whoever wasn't with us —

18 UNIDENTIFIED PERSON: (Inaudible.)

19 THE COURT: Ma'am, you need to hold it
20 down.

21 MR. CLEMENTS: Who —

22 THE COURT: I'm sorry, ask that question
23 again, Mr. Clements.

24 THE COURT REPORTER: Yeah.

25 BY MR. CLEMENTS:

- 1 Q Who was "they" that were coming to the car?
- 2 A Whoever wasn't with us.
- 3 Q How many?
- 4 A I'm not sure.
- 5 Q One?
- 6 A I'm not sure.
- 7 Q Two?
- 8 A I'm not sure.
- 9 Q You know if there was more -- you know there was
- 10 more than one, right?
- 11 A It was more than one.
- 12 Q More than one?
- 13 A Whoever -- it was more than one person that was
- 14 not with me.
- 15 Q Okay. And how were they coming to the car?
- 16 A Fast, running.
- 17 Q Running?
- 18 A Yes, sir.
- 19 Q Were they saying anything?
- 20 A No, sir.
- 21 Q They weren't saying anything?
- 22 A No, sir.
- 23 Q Just running towards your car?
- 24 A Running towards our way, yes, sir.
- 25 Q And you didn't know who they were at all?

1 A No, sir.

2 Q You didn't say anything to them like, hey, why
3 you running to your car for?

4 A No, sir.

5 Q All right. And did they do any-- they didn't say
6 anything threatening, did they?

7 A Not to me, but then again they didn't have --

8 Q Did they say anything to anybody in the car with
9 you?

10 A I'm not sure. I was in the motion of getting in
11 the car to get out to leave to go home.

12 Q All right. They didn't do anything threatening,
13 did they?

14 A Sir?

15 Q They didn't do any acts threatening, did they?

16 A Besides running up with his hand under his shirt?

17 Q Can I ask you please, if the Court allows, will
18 you stand up?

19 A Yes, sir.

20 Q Can you show me how, what you meant when you say
21 they were coming with their hand under their shirt,
22 can you show me?

23 A Well, my shirt is tucked in. You want me to
24 untuck it?

25 Q If you don't mind, if that's okay with the Court.

- 1 A Running up (indicating).
- 2 Q Like that? And you could see that?
- 3 A Yes, sir.
- 4 Q Now you were getting in the car, right?
- 5 A Yes, sir.
- 6 Q And they were not on the same side of the car
- 7 with you, was they? They were on the passenger
- 8 side, right?
- 9 A Yes, sir.
- 10 Q And you were in the motion of getting in and they
- 11 on the other side of the car, how could you see
- 12 that?
- 13 A When you running and you looking back, you pay
- 14 attention.
- 15 Q You were running to the car?
- 16 A Yes, sir.
- 17 Q Okay. And you were looking back and they were
- 18 chasing you to the car?
- 19 A They wasn't chasing me because I had nothing to
- 20 do with anything that happened so I did not feel
- 21 like I was threatened. But on the other hand,
- 22 Calvin was getting taken out the club so I knew it
- 23 wasn't me they were coming for me. They wasn't
- 24 coming for Josh 'cause Josh with me so ---
- 25 Q So why were you running?

1 A Why was I running? To go home, get out. I had
2 prior —

3 Q Well, you weren't threatened though, were you?

4 A I had prior event happen to me before so I know
5 when something like that happen I go straight home.

6 Q Okay. So because it was an altercation in the
7 club with some people you didn't know —

8 A Yes, sir.

9 Q —you decided, I'm gonna get home quick as I
10 could?

11 A Yes, sir.

12 Q And did Josh act the same way as you?

13 A Yes, sir.

14 Q Did y'all talk about it?

15 A No, sir.

16 Q Did Calvin act the same way?

17 A Yes, sir.

18 Q Y'all didn't talk about it, like, hey, hurry this
19 is bad scene, let's go home? Nobody said anything
20 like that?

21 A No, sir, we just know to go get in the car and go
22 home.

23 Q All right. Well, you're getting in — say this
24 is the driver right here, and you're getting in back
25 here. You lean your head in or how did you get in

1 the car? How could you see over on the other side
2 of the car somebody running with their hand under
3 their shirt?

4 A Because we have a small car.

5 Q What kind of car was it?

6 A A Mitsubishi Gallant 2001.

7 Q Okay. And did you see through the windows as you
8 were getting in, or did you see over the top of the
9 car?

10 A Over the top.

11 Q Okay, all right. And when you were getting in
12 the car and you looked over the top and you saw this
13 person running with his hand under his shirt, how
14 did that make you feel?

15 A To get out of there.

16 Q All right. But you didn't think they were
17 chasing you, did you?

18 A No, sir, not me.

19 Q Where did they come to when they were running?
20 Where did they come to? Did you ever see them —
21 well, let me ask this other question first. Did you
22 ever see them pull their hand out from under their
23 shirt?

24 A No, sir.

25 Q So it was under their shirt the whole time?

- 1 A From what I could see, yes, sir.
- 2 Q Did you ever see them have anything in their
- 3 hand, or did it look like there was something, some
- 4 bulge under their shirt?
- 5 A I didn't look for that.
- 6 Q You didn't look for that; you didn't see that?
- 7 A No.
- 8 Q So you can't say that?
- 9 A Can't say what?
- 10 Q Whether there was or there wasn't?
- 11 A No, sir.
- 12 Q All right. And you didn't see him pull his hand
- 13 out from under the shirt?
- 14 A No, sir.
- 15 Q What'd they do, how close to the car did they
- 16 get? Tell me, like you're sitting in the car, tell
- 17 me when I'm as close to you as they got to the car.
- 18 A To me or to Calvin?
- 19 Q To the side of the car Calvin was on?
- 20 A They got inside the car leaning in, ---
- 21 Q They got ---
- 22 A Leaning in.
- 23 Q Leaning in the car.
- 24 A Leaning in the car.
- 25 Q So he was leaning back with his feet out?

- 1 A Yes, sir.
- 2 Q And they were leaning in the car?
- 3 A Yes, sir.
- 4 Q So they almost right on top of him?
- 5 A They were leaning to him. Whatever happened it
- 6 happened.
- 7 Q Now I don't want to know what it could be. I
- 8 want to know what you saw and what you know.
- 9 A They was inside the club.
- 10 Q So he was this close to him getting in the car?
- 11 A Yes, sir. Leaning in enough so whenever the gun
- 12 shot let off there was blood in the car.
- 13 Q Okay. And you never saw that person with
- 14 anything in their hand?
- 15 A No, sir.
- 16 Q You never heard that person say anything
- 17 threatening?
- 18 A I ain't hear nobody say anything, sir.
- 19 Q And you didn't know that fella at all?
- 20 A Never seen him before in my life.
- 21 Q After the shot went off what was said?
- 22 A Nothing.
- 23 Q Nobody said anything?
- 24 A No. Told them let's go.
- 25 Q And y'all took off?

- 1 A Yes, sir.
- 2 Q Okay. What did y'all do after y'all took off?
- 3 A We left.
- 4 Q Where'd y'all go?
- 5 A To get Calvin home.
- 6 Q All right. And why did you want to get him home,
- 7 'cause he shot somebody?
- 8 A Wanting to get from him out of the environment we
- 9 was in.
- 10 Q All right. What did you do after that?
- 11 A Find out what happened and start proceeding to go
- 12 home till we got ready to take him to the police
- 13 department --
- 14 Q Y'all took him to the police department?
- 15 A In the morning, that morning.
- 16 Q Why?
- 17 A Sir?
- 18 Q Why did y'all take him to the police department
- 19 that morning?
- 20 A Because he wanted to go. Because he wanted to
- 21 go.
- 22 Q Did you talk to law enforcement?
- 23 A Sir?
- 24 Q Did you talk to law enforcement?
- 25 A That morning, yes, sir.

- 1 Q Who did you talk with?
- 2 A The guy in the red shirt.
- 3 Q This fella right here?
- 4 A Yes, sir, and it's another one. I don't know his
- 5 name. You can help me out?
- 6 Q Yes, sir. Chris Smith, Officer Chris Smith?
- 7 A Yes, sir.
- 8 Q All right. And that man right there with the
- 9 goatee?
- 10 A Yes, sir.
- 11 Q Tony Flowers?
- 12 A Yes, sir.
- 13 Q You talked to them?
- 14 A Yes, sir.
- 15 Q Did you tell them the truth?
- 16 A Yes, sir.
- 17 Q You tell them anything different than what you're
- 18 telling us today?
- 19 A No, sir.
- 20 Q Mr. Kelley?
- 21 A Yes, sir.
- 22 Q You got any kind of criminal record for anything?
- 23 A No, sir.
- 24 Q Okay. Never been in any trouble before?
- 25 A No, sir.

1 Q That's all the questions I have. Thank you.

2 THE COURT: Any redirect?

3 MR. MEETZE: No, Your Honor.

4 THE COURT: Sir, you may step down. Thank
5 you.

6 MR. MEETZE: Your Honor, we would call
7 Rodrick McRae.

8 THE CLERK OF COURT: Mr. McRae, place your
9 left hand on the Bible, raise your right hand.
10 WHEREUPON,

11 **RODRICK MCRAE,**
12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. MEETZE:

16 Q Mr. McRae, I'm gonna ask you to speak loud enough
17 so everybody can hear you. I'm gonna get you to
18 state your name and spell your name for us if you
19 would.

20 A Rodrick McRae, R-O-D-R-I-C-K M-C-R-A-E.

21 Q And Mr. McRae, where do you live town wise?

22 A Latta.

23 Q And is that Latta in Dillon County or Marion
24 County?

25 A Well, it's — I have a Dillon County address.

1 Q And where do you work?

2 A I own Fusion Sports Bar.

3 Q And how long have you owned that?

4 A Two years.

5 Q Two years. Were you there on the evening of
6 March the 18th, 2012?

7 A Yes, sir.

8 Q Do you recall what time you got there?

9 A Closer towards the end of the night, maybe about
10 between 3 and 3:30.

11 Q And what was going on when you got there?

12 A Regular night, I was walking through the parking
13 lot make sure everything was fine. I hadn't got a
14 chance to get inside, and then my door flew open and
15 people came out. I saw — I never saw this guy or
16 Mr. Kelley.

17 Q When you say "this guy," are you referring to my
18 client?

19 A Yes.

20 Q Calvin?

21 A Yes, sir. I never saw him, never saw him. I
22 happened to see the deceased, and I saw another guy
23 with him and they were kind of erratic so I could
24 tell with the door coming open they had been into
25 some kind of altercation.

1 Q And when you say you refer to the deceased, you
2 saw him before any of that took place, correct?

3 A Say again?

4 Q You saw it was Rondell McEachin --

5 A Right, I saw him come out the door.

6 Q Come out the door, okay.

7 A Right.

8 Q And what was his demeanor?

9 A He was kind of erratic, kind of like riled up a
10 little bit so I went to him like I do all the time.
11 I was just talking to him, like, asking what's
12 wrong. He was, like, nothing, I'm all right, I'm
13 good. And the other guy was still kind of springy
14 and, you know, derailed a little bit. He was kind
15 of still riled up, the other guy. I talked to
16 Mr. Rondell. I was, like, it's not worth it. I had
17 got my hands on him, and I was like, whatever
18 trouble you trying to get into, man, just go home,
19 it's not worth it. He responded. He calmed down
20 from that state. He was like, I'm going home, man,
21 I'm going home.

22 Q When you saw them come out of the bar in their --
23 and don't let me put words in your mouth. If I say
24 something that you don't agree with let me know.
25 But when you saw them come out and they were in an

1 agitated state, —
2 A Yes.
3 Q —at that point in time did you know that
4 anything had gone on in the bar?
5 A No. No, sir, I hadn't.
6 Q Did you find out that there had been?
7 A Yes, sir, I did.
8 Q Okay. And were you made aware at all whether or
9 not Mr. McEachin and the other gentleman he was with
10 were involved in that?
11 A No, I just — I just know that they said he was
12 involved but they never said with whom.
13 Q But did you get any impression when talking to
14 them as to whether or not they were involved?
15 A Yes, you could tell they had been aggravated, you
16 know. And I was walking toward, I assume what would
17 be his car. He said he was going to go home. And I
18 was talking to him. The other guy was maybe from
19 here to your seat away from me, and he was still
20 agitated. I calmed him down. I got my hand on him.
21 And I'm telling the other guy, just calm down, just
22 calm down and he just, he wouldn't calm down.
23 Q And you say you were walking them towards the car
24 that you thought —
25 A I assumed.

1 Q —was their car?

2 A Exactly.

3 Q You assumed?

4 A They was fixing to go home so I assumed —

5 Q And you just sort of let — you had your hand on
6 him. Or you just sort of letting him lead to you
7 towards —

8 A Yeah, after I calmed down I proceeded to let the
9 other — get my hands on the other guy and say,
10 look, man, whatever it is, you know. But you know,
11 I treated — and I assumed they were going home. He
12 was just mad. He was going to his car.

13 Q Okay. And what happened?

14 A Mr. Rondell, like I said, he calmed down. And
15 the other guy, he just kept insisting with being
16 irate. And I took my eyes off Mr. Rondell; and
17 before I knew it he hopped a pillar about as high as
18 the middle of my leg, and he fell face first so I
19 knew he was intoxicated. He popped up. And when he
20 popped up off the ground, the car was in my sight
21 and I saw him. I said, man, I still — I put my
22 hand on the pillar. I was like, don't go over
23 there, don't go over there. He went straight to the
24 car.

25 Q Running?

1 A In a lot, not so much running but in a hurried
2 motion.

3 Q Straight towards that car?

4 A Straight towards the car.

5 Q And so at that point in time what was your point
6 of view of him?

7 A I saw his back. I never saw ---

8 THE COURT: Hold on a minute, Mr. Meetze.

9 Would you remove her from the courtroom
10 please. I don't know what she keeps saying over
11 there. I'm not going to allow her to disturb the
12 court room.

13 I'm sorry, Mr. Meetze, you may continue.

14 (Unidentified woman was removed from the courtroom.)

15 THE COURT: I'm sorry, Mr. Meetze, you may
16 proceed.

17 BY MR. MEETZE:

18 Q Your point of view with regards to the gentleman
19 running towards the car was what?

20 A That he was going -- when I looked, when I saw
21 the car and I saw him sitting in it, I assumed that
22 that was the other party. And I was like, don't go
23 over there, don't go over there. He proceeded.

24 Q And you were looking at his back at that point

25 ---

- 1 A Right.
- 2 Q --when he was heading towards the car?
- 3 A Right.
- 4 Q So you didn't see if anything was going on in
5 front of him at that time?
- 6 A No, no, I didn't see that.
- 7 Q And your vision, it was bright enough to be able
8 to see things clearly?
- 9 A Oh, yeah, yeah.
- 10 Q And how, you were saying, how far were you from
11 the incident?
- 12 A The actual -- probably here to the door, maybe a
13 little bit closer.
- 14 Q All right. How many gunshots did you hear?
- 15 A Just one.
- 16 Q And the deceased, where was he in relationship to
17 the vehicle when the shot went off?
- 18 A The door was open. He was sitting with his feet
19 on the ground; he was leaning back. And Mr. Rondell
20 got to the car, a shot went off.
- 21 Q And Mr. Rondell was at and leaning into the car?
- 22 A Yes.
- 23 Q Okay. I just want to -- again, I don't want put
24 words in your mouth.
- 25 A Right, right.

1 Q We do want to make all the evidence clear for the
2 Court. So he was leaning into the car?

3 A Right.

4 Q You weren't able to hear any words exchanged or
5 anything like that?

6 A (No verbal response.)

7 Q And you say at the very least he went over there.
8 Whether he was running or not is up for debate, but
9 he certainly went over there at risk pace?

10 A Right, yeah.

11 Q With a purpose?

12 A Yeah, he jumped the pillar and he fell face first
13 so he was kind of in a hurried motion and then —

14 Q That didn't deter him though?

15 A No. He got up on his feet, and I couldn't grab
16 him because he was too far away from me 'cause when
17 I saw him — when he was on the ground getting up I
18 happened to go past him and I saw the car. I never
19 saw Mr. Kelley or another guy; I just saw him.

20 Q There was — you had mentioned there was one
21 other individual that you were with trying to calm
22 down —

23 A Right.

24 Q —that was there with Mr. McEachin?

25 A Yes, he — he went to the rear. He was going

- 1 towards the rear of the car.
- 2 Q But he was also going towards the car?
- 3 A Right.
- 4 Q And you didn't see — you had just gotten there
- 5 when all this happened?
- 6 A Right.
- 7 Q Had not even been in that club?
- 8 A I hadn't even got a chance to go inside.
- 9 Q So from your personal knowledge you aren't aware
- 10 of anything —
- 11 A No, sir.
- 12 Q —that went on in the club that led to folks
- 13 leaving? You did say when you got there folks were
- 14 leaving the club?
- 15 A Well, no, I had got there and was like walking
- 16 around greeting people and the door flew open. And
- 17 one guy, I did see one guy. He walked by me. I was
- 18 like, what happened. He was like, they fighting.
- 19 Q Okay. You did not speak — prior to the incident
- 20 you did not speak to any of the individuals that
- 21 were in the car that was there?
- 22 A I'm sorry?
- 23 Q Your focus was on just to keep —
- 24 A Just calm the situation.
- 25 Q Trying to calm them down?

1 A Yeah.

2 Q And you had gotten the impression that you were
3 helping —

4 A Yeah. Not impression. He was settled. You
5 know, I settled enough to know when, you know, to
6 leave him and go to the next person. And he was
7 settled. The other guy just kept, kept going with
8 it.

9 Q And he became unsettled again?

10 A Almost like -- yeah, he just, yeah.

11 MR. MEETZE: I don't have any further
12 questions for this witness, Your Honor.

13 THE COURT: Cross-examination.

14 BY MR. MEETZE:

15 Q I'm sorry. Well, I was just going to ask, do you
16 have metal detectors at your club?

17 A Yes.

18 Q And they were in place during that time?

19 A Yes.

20 Q And that's in place so that people don't carry
21 weapons and things like that?

22 A Exactly.

23 **CROSS-EXAMINATION**

24 BY MR. CLEMENTS:

25 Q Mr. McRae?

- 1 A Yes, sir.
- 2 Q You were just saying to Mr. Meetze it was almost
3 like he — and you didn't finish it— almost like he
4 was what?
- 5 A Which part?
- 6 Q You had just said that before Mr. Meetze asked
7 you about the metal detectors. He was asking you
8 about the man being settled, and you said it was
9 like he was — and then you didn't complete it.
10 Please tell us what you were thinking then?
- 11 A He just calm. It's like he just — the other guy
12 kind of triggered something but he was settled, you
13 know.
- 14 Q So I want to be sure I'm understanding you. You
15 talked to the deceased?
- 16 A The deceased, yes, sir.
- 17 Q The deceased?
- 18 A Right.
- 19 Q Mr. McEachin?
- 20 A Right.
- 21 Q You had your hands on him, patting him, talking
22 to him, you called him down, and he — and he was
23 settled and you felt like it was safe to leave
24 him —
- 25 A Right.

- 1 Q ---and turn your attention to the other guy?
- 2 A Exactly.
- 3 Q All right. And the other guy, who -- what was
- 4 his name?
- 5 A I have no idea.
- 6 Q Was his name Wheeler, Milton Wheeler, do you
- 7 know?
- 8 A No, sir.
- 9 Q But it was clear he was with Mr. McEachin?
- 10 A Right.
- 11 Q And he was going off. He wasn't settled at all?
- 12 A Yeah, he was -- right, he was still irate going.
- 13 Q And talking a bunch of junk?
- 14 A Right.
- 15 Q What was he saying?
- 16 A Just, you know, I can't remember exact words, but
- 17 he was just loud and --
- 18 Q Okay. How about McEachin, was he loud, was he
- 19 saying anything?
- 20 A No, he was just --
- 21 Q He didn't say anything?
- 22 A When he came out he -- I grabbed him and he was,
- 23 he had just, was peaceful.
- 24 Q So he wouldn't have threatened anybody?
- 25 A Well, not -- not the impression he gave me that

- 1 he wasn't, he was settled. Then he broke away.
2 When I looked towards the other guy he broke away
3 and jumped the pillar.
4 Q Okay. Well, you were close enough to him. Did
5 he smell like alcohol?
6 A I, I can't remember. I didn't -- sir, I can't
7 say that I smelled alcohol.
8 Q You can't say you didn't?
9 A Right.
10 Q Either way?
11 A Either way.
12 Q So the pillar you're talking about, how tall was
13 that?
14 A Maybe middle ways.
15 Q Like this?
16 A A little higher.
17 Q About like right there.
18 A Right here.
19 Q A pillar, is that like bricks?
20 A Brick pillar, yes, sir. A scenic pillar that
21 runs the parking lot, from the parking lot.
22 Q And to get to that car he had to go either go
23 around it or go over it?
24 A Right.
25 Q And he would hop over it and trip?

- 1 A Right.
- 2 Q Fell on his face?
- 3 A Fell flat.
- 4 Q And the guy, you saw the guys in the car —
- 5 A Say again.
- 6 Q —right? You saw the guy -- when he fell, you
- 7 said you saw the guy in the car.
- 8 A When he fell he fell like, I'm diagonal to the
- 9 car this way. So when he fell I just thought maybe
- 10 he's -- you know, my assumption was he was drunk but
- 11 then when I looked past him I seen him. And
- 12 instantly I know that's where he supposed to going.
- 13 Q And did they wait on him to get there or did they
- 14 try to get away?
- 15 A Well, I just saw him in the car, like, he was
- 16 setting in the car feet flat on the ground and the
- 17 closer ---
- 18 Q When you say feet flat on the ground, inside the
- 19 car or outside the car?
- 20 A Outside the car with the door open and almost in
- 21 a defensive posture. And I see the closer
- 22 Mr. Rondell gets, he leans further back in a split
- 23 second.
- 24 Q Was it take place in seconds or was there a time
- 25 period there?

1 A Oh, it's seconds.

2 Q Did they have time — they had time to get away;
3 didn't they?

4 A Like when I said, I didn't see anybody else in
5 the car. I just — I didn't see -- I didn't even
6 see them. I assumed that they were going to the
7 car. And so when he fell flat faced on the ground,
8 now he's halfway between me, the car, and where he
9 fell at. So when he pops up and I say, no, no,
10 don't go to that car, and that was it.

11 Q What kind of car was it?

12 A The Gallant, it's a — it was a Gallant, a small.

13 Q What color?

14 A I can't say I even remember.

15 Q All right. You gave a statement to law
16 enforcement at that time, didn't you, that night?

17 A Yes.

18 Q And did you write it out, they wrote it out for
19 you?

20 A I recall I think — I don't remember if I wrote
21 it or they wrote it; I can't remember.

22 Q If I show it to you you think that will refresh
23 your recollection?

24 A Yes, sir. Yes, sir. Yes, that's mine.

25 Q Okay, did you write it or did you tell it to

1 them?

2 A I wrote that. I wrote that.

3 Q You wrote it. Did you tell us then it was a
4 green Mitsubishi?

5 A Right, I just — yeah. Green, I mean, yeah. I
6 was about to say I can't even recall.

7 Q All right. And you saw Mr. McEachin go towards
8 the car and you said you were looking at his back?

9 A Yes, sir.

10 Q Could you see his arms?

11 A No, sir.

12 Q Couldn't see either arm?

13 A Couldn't see either arm.

14 Q Just his back?

15 A Just his back, he was going towards the car.

16 Q Okay. Fast or slow?

17 A Fast. Not I wouldn't say sprint or anything like
18 that, but he popped up. And like I said, before I
19 could hop across that pillar and grab him it was too
20 late.

21 Q What did the other fella do that was with him?

22 A He went around the pillar and he was going to
23 towards the back of the car.

24 Q Back of the Mitsubishi?

25 A Yes, sir.

1 Q All right. What — after Pompey shot McEachin
2 what did he do with the gun?

3 A He pointed it at the other guy. The other guy
4 pleaded for his life, then he pointed at me, and I
5 was like, you just messed your life up, man, why'd
6 you do that.

7 Q So he pointed it at the other fella with
8 McEachin?

9 A Right.

10 Q And that fella begged for his life?

11 A Yes, sir.

12 Q What did the say?

13 A Something along the lines, no man, please, please
14 don't shoot me, and he took off running. Then he
15 turned the gun on me and just pointed at me, and
16 then that's when I saw Mr. Kelley. He was like, no
17 man, what you doing, that's Ron, he ain't got
18 nothing to do with this, he the owner. He got in
19 the car.

20 Q So he was out of the car with the gun when he
21 pointed at the second fella?

22 A Exactly.

23 Q Was he out of the car with the gun when he shot

24 —

25 A No.

1 Q —McEachin?

2 A No, sir.

3 Q How close did McEachin get to him before you
4 heard the shot?

5 A He was on top of him.

6 Q Top of him?

7 A He was closer he got, the farther back he
8 leaned.

9 Q So when the shot went off he was right on top of
10 him or away from him?

11 A No, he was right on top of him. When I say not
12 literally on top of him but close to him in the car.

13 Q Tell me how close, best you recall, as I get to
14 you?

15 A Closer.

16 Q Closer.

17 A He was like in the car.

18 Q Uh-huh. Was McEachin saying anything?

19 A I can't remember. I just begged him not to go
20 there and that's — it was just...

21 Q Was Pompey saying anything like get away from me,
22 leave me alone, or anything like that?

23 A No, sir, I don't recall.

24 Q You recall there being any noise whatsoever?

25 A No, no, it was — it happened so fast, just, I

- 1 don't...
- 2 Q After he pointed the gun at you what did he do?
- 3 A He turned -- he put it away after Mr. Kelley told
- 4 him who I was or like, you know, what you doing, put
- 5 that down, and that was that.
- 6 Q All right. Beg the Court's indulgence a moment.
- 7 Mr. McRae, did you cooperate with law enforcement
- 8 when they came on scene?
- 9 A Yes, sir.
- 10 Q Did you give them a full statement?
- 11 A Yes, sir.
- 12 Q Tell them everything you knew?
- 13 A Yes, sir.
- 14 Q Said anything different than what you told today?
- 15 A No, sir.
- 16 Q Did you ever get any information about Pompey and
- 17 McEachin, either one being in a fight inside?
- 18 A They said they took --
- 19 Q Yes or no.
- 20 A Yes.
- 21 Q All right. How about McEachin, what did you get
- 22 about him being in a fight?
- 23 A Never said anything about him being in -- I
- 24 don't, they never, they said they didn't see him. I
- 25 was trying to describe them to them and they

1 couldn't remember.

2 Q What about Pompey?

3 A They said they put him out.

4 Q They say why they put him out?

5 A A fight.

6 Q Any details?

7 A No, sir.

8 Q When they put him out did they -- he him then any
9 trouble or did he go out?

10 A Like I said, when I saw him, when I saw the
11 deceased, he stopped out the door. I never saw, I
12 never saw him.

13 Q Okay. Until --

14 A Right --

15 Q Looked in car?

16 A See, I'm on the side of the exit entrance.

17 That's when the door came open from that side so I
18 never saw.

19 Q Okay, all right. That's all the questions.

20 Thank you.

21 THE COURT: Mr. Meetze, anything further?

22 MR. MEETZE: I don't have anything
23 further, Your Honor.

24 THE COURT: You may step down, sir.

25 MR. MEETZE: And don't have any objection

1 to Mr. McRae being excused.

2 THE COURT: Any objection?

3 MR. CLEMENTS: No, Your Honor.

4 THE COURT: You're free to leave. Thank
5 you for being here.

6 MR. MEETZE: Your Honor, we call Calvin
7 Jermaine Pompey.

8 WHEREUPON,

9 CALVIN JERMAINE POMPEY,
10 having been duly sworn by the Clerk of Court,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MEETZE:

14 Q Mr. Pompey, I'm gonna ask you to speak loud
15 enough so everybody can hear you. State your full
16 name for the and spell your name.

17 A Calvin Jermaine Pompey, C-A-L-V-I-N
18 J-E-R-M-A-I-N-E P-O-M-P-E-Y.

19 Q And you went to the Fusion Club back on March the
20 18th of 2012; is that correct?

21 A Yes.

22 Q And who were you with?

23 A I was with Day Day and Josh.

24 Q When you say Day ([ph] Day who do you mean?

25 A Kadeem.

1 Q And that is your brother-in-law?

2 A Yes.

3 Q Do you recall what time you got there?

4 A No.

5 Q That it was late?

6 A It was late.

7 Q Okay. And the three of y'all went in?

8 A Yeah.

9 Q Do you recall how long you were there?

10 A No, sir.

11 Q Were y'all all three together at, all the time

12 during the club, or did y'all get separated any

13 time?

14 A We was together most of the night. Like, people

15 walked through you might lose them and then you get

16 back with them.

17 Q Got you. It was pretty crowded?

18 A Yeah.

19 Q All right. Now at some point in time did you get

20 thrown out of the club?

21 A Correct.

22 Q And what happened for that to happen?

23 A There was a altercation in the club. The fight

24 was near me. I was trying to get them away from me

25 'cause I got to protect myself.

- 1 Q When you say there was a fight you are trying to
2 get them, who is them?
- 3 A Whoever was fighting was near me. I was trying
4 to pull them away from me to protect myself.
- 5 Q So you were trying to break the fight up?
- 6 A Yes.
- 7 Q But you did not know the people involved in the
8 fight?
- 9 A No. Well, one of them was friend of Day Day's.
- 10 Q Okay. And what was that person's name?
- 11 A Jarod.
- 12 Q Okay. But other than that you did not know
13 anybody involved —
- 14 A Huh-uh.
- 15 Q —in the fight?
- 16 A No.
- 17 Q And so what happened when you started pulling
18 people off —
- 19 A The security came and grabbed me and took me out.
- 20 Q Okay. And did you go peacefully?
- 21 A Yes.
- 22 Q All right. And what did you do after security
23 took you out?
- 24 A I stood outside waiting on Kadeem and Josh.
- 25 Q Do you recall how long it was before they got

1 out?

2 A Yeah, it wasn't long.

3 Q When you say it wasn't long, a minute or two at
4 the most?

5 A Correct.

6 Q And what happened after they got out when they
7 came out?

8 A I told them, come on, let's go home.

9 Q And is that what y'all did?

10 A Yes, we went to the car.

11 Q All right. At that point in time when you saw
12 Kadeem and Josh when they first came out and you say
13 come on, let's go, did you have any idea that
14 somebody might be after you?

15 A No, sir.

16 Q All right. What happened when y'all went to the
17 car?

18 A We started to get in the car. When I got in the
19 car I seen him running to the car with his hand
20 under his shirt.

21 Q And when you say "him," you're referring to
22 Rondell McEachin?

23 A Correct.

24 Q Okay. When you saw him with his hand under his
25 shirt what were you thinking?

1 A He's coming to harm me. Anybody comes to your
2 vehicle after altercation, they coming to harm you.

3 Q Okay. And you say you were in the car when you
4 saw him coming?

5 A Yes.

6 Q Okay, and tell us what happened.

7 A I started — I was in the car. Well, we was —
8 they put us out the club. We started going to the
9 car. As we was going to the car I say to them come
10 on. And as I started to get in the car, it took him
11 a while to unlock the door. So when I got in the
12 car I was sitting down, I seen him coming. And when
13 he started coming he started to reach in. It really
14 look like he was running -- everything was happening
15 so fast -- with his hand under his shirt.

16 Q All right. And did you bring a gun with you that
17 evening?

18 A Correct.

19 Q Where was that?

20 A In the glove.

21 Q All right. And at what point did you grab the
22 gun, get the gun?

23 A When he got to the car.

24 Q Okay, and what happened then?

25 A I shot.

- 1 Q And how close was he when that happened?
- 2 A On top of me, close enough for blood in the car
- 3 and on my clothes.
- 4 Q And you were sitting down in the passenger, front
- 5 passenger seat?
- 6 A Correct.
- 7 Q And you were, as he was coming towards you you
- 8 were leaning back?
- 9 A Yeah.
- 10 Q All right. And one, you fired one shot?
- 11 A Correct.
- 12 Q And what happened after that?
- 13 A We left. Well, I put — well, when he was coming
- 14 to the car there was two more people coming. There
- 15 was two more people so.
- 16 Q Right.
- 17 A I ain't know it was him or the other one. I just
- 18 knew they was running. I thought it was him.
- 19 Q Okay.
- 20 A So I'm thinking I got to protect myself.
- 21 Q And that's what you did?
- 22 A Correct.
- 23 Q No other shots were fired or anything like that?
- 24 A No.
- 25 Q And at some point in time you realized that it

1 was safe to leave?

2 A Yeah.

3 Q And is that what y'all did?

4 A Yes.

5 Q Okay. Did you eventually turn yourself in in
6 this matter?

7 A Yes, sir.

8 Q When did that happen?

9 A The following day.

10 Q Was it really the same day, just once it was
11 daylight?

12 A Yeah, it was the same day.

13 Q Okay. And you were cooperative with law
14 enforcement?

15 A Correct.

16 Q Y'all brought them the car that was involved —

17 A Yes.

18 Q —that y'all were in for them to be able to
19 process and gather evidence?

20 A Yes.

21 Q You brought the handgun —

22 A Yes.

23 Q —for them to be able to have and process for
24 evidence? The — have you ever been involved in any
25 kind of an assault and battery before?

1 A No. Well as in me and my ---

2 Q As a victim or otherwise?

3 A A victim.

4 Q How long ago did that happen?

5 A I'd say about five years.

6 Q And what happened in that incident?

7 A I had got jumped by nine people, had surgery. I
8 had plates in my face all in the right side. They
9 knocked two feet out, jaw broke.

10 Q And that's something that's -- you don't forget?

11 A No, sir.

12 Q All right. Is what you've testified to here
13 today the truth?

14 A Yes, sir.

15 Q Okay.

16 MR. MEETZE: I don't have any further
17 questions, Your Honor.

18 MR. CLEMENTS: Cross-examination.

19 **CROSS-EXAMINATION**

20 BY MR. CLEMENTS:

21 Q Mr. Pompey, were you drinking that night?

22 A No, sir.

23 Q Not at all?

24 A Huh-uh.

25 Q Why not? Isn't that what people do when they go

1 to clubs mostly?

2 A I'm saying you don't have to drink when you go
3 out.

4 Q So you had nothing to drink that evening?

5 A No.

6 Q How about Kadeem Kelly?

7 A No.

8 Q How about Josh Moore?

9 A No.

10 Q Now tell me about this altercation. It started
11 in Club Fusion. It had just happened — you just
12 happened to be in the wrong place at the wrong time
13 or what?

14 A Wrong place at the wrong time.

15 Q And they started fighting and they started
16 fighting you?

17 A The fight was right beside me.

18 Q Well why didn't you just walk away?

19 A How can you walk away in a club so crowded.

20 Q You can push away through people, right?

21 A It's hard when you're shoulder to shoulder.

22 Q Did you see —

23 A Doesn't have room to move.

24 Q Did you see McEachin in there during that time
25 during that altercation?

1 A It's hard to see whoever in there.

2 Q I understand that, but did you see him, yes or
3 no?

4 A Not that I, not that I recall.

5 Q So he didn't become hostile to you during that
6 altercation?

7 A I'm saying it was dark. You can't tell who's who
8 unless you go with them.

9 Q But didn't you tell police that he became hostile
10 with you during that fight when you were trying to
11 break it up?

12 A I can't say.

13 Q You don't remember telling Chris Smith here that
14 McEachin and one of his friends were about to fight
15 and you tried to break it up and that's when
16 McEachin became hostile towards you?

17 A I was trying to break the fight up. I don't know
18 who it was.

19 Q You don't remember telling Chris Smith it was
20 McEachin?

21 A (There was no response.)

22 Q Now why did they throw you out the club?

23 A They assumed I was in it.

24 Q Did you tell them differently.

25 A I'm saying how could he have time when everything

1 like that is going on. If they tell you to leave
2 the best thing for you to do is leave so I left.

3 Q All right. And you went to your car?

4 A Correct.

5 Q Nobody is behind you?

6 A No. When I looked behind my back I'm just trying
7 get into to the vehicle and get home.

8 Q You didn't think anybody was coming after you?

9 A No.

10 Q You didn't think anybody was coming after Kadeem?

11 A No.

12 Q You didn't think anybody was coming after Josh?

13 A No.

14 Q So you're not scared or alarmed or upset in any
15 way?

16 A Not at that point in time.

17 Q Okay. And then you got to your car?

18 A Correct.

19 Q And you were getting in?

20 A Yeah.

21 Q And then you turn and you see somebody running to
22 the car?

23 A No, I wasn't getting in, I was in the car.

24 Q Where were your feet?

25 A I was saying my feet was in the car.

1 Q You saying your feet was in the car?

2 A That's what I'm thinking.

3 Q And you heard other people say your feet were
4 outside the car?

5 A Correct.

6 Q Were they right or wrong?

7 A I think they was wrong.

8 Q All right. And you saw somebody running to your
9 car?

10 A Correct.

11 Q They didn't say anything to you, did they?

12 A I'm saying everything happened so fast you're not
13 listening to what people saying.

14 Q You don't listen to what people say if they're
15 hollering at you and making threats? So what you're
16 saying —

17 A I'm saying, all I'm saying I'm trying to hurry
18 and get home. I'm not trying to get in anymore
19 trouble or —

20 Q So you had already been in trouble and you were
21 just trying to get away?

22 A I'm in trouble with getting kicked out the club,
23 correct.

24 Q And you never heard anybody make any threats to
25 you?

1 A No.

2 Q And you never heard, and particular Rondell
3 McEachin make any threat to you, never utter a
4 threat?

5 A Not a threat but it's a threat if a person
6 running to your car with a hand in your shirt.

7 Q But then you never heard him say anything?

8 A No.

9 Q And you didn't see anything, any bulges, did you?

10 A If you put your hand under your shirt it's a
11 bulge.

12 Q But you never saw anything else other than his
13 hand under his shirt, right?

14 A No.

15 Q Now what's the style in wearing pants these days?

16 A They wear them sagging.

17 Q They wear them sagging. McEachin is wearing his
18 sagging, right?

19 A I don't — I ain't looked.

20 Q And he tripped over that pillar and he gets up
21 and he's holding — he's got his hand here 'cause
22 he's holding his waistband, isn't he, so his
23 britches don't fall off, right?

24 A That's what you're saying.

25 Q Isn't that where you saw his hand is the

1 waistband?

2 A Where you keep a gun at, at your waistband.

3 Q Back here; don't you?

4 A You can keep it anywhere you can hold it.

5 Q But he's falling down over that pillar, falling
6 on his face, and he's getting up and he's holding
7 his pants right here. Didn't he?

8 A That's what you saying. I can't stay that; I'm
9 not him.

10 Q You can't say he had a weapon 'cause you never
11 saw one. Did you?

12 A No.

13 Q You got a fella that fell on his face, gets up,
14 aggravated with you and he's holding his britches up
15 so they don't fall down, and you shoot, right?

16 A Correct.

17 Q And you could have just said back off?

18 A I could have, but what would you expect if
19 somebody comes to your car standing on top of you.

20 Q Holding his britches up so they don't fall down?

21 A In a running maditude, yeah.

22 Q In a hurry maditude 'cause he's upset with you.
23 You in the car. You couldn't shut the door before
24 he got there? You could have; couldn't you?

25 A It was happening so fast I don't know.

1 Q But you could have —

2 A By the time I got there, by the time I got to the
3 car he was —

4 Q You were already in the car. You said they were
5 wrong, your feet were in the car. You could have
6 shut that door; couldn't you?

7 A Me? I could have. I'm saying everybody else
8 getting in the car. I'm sitting there. I'm waiting
9 on them to leave.

10 Q But he's not going to say anything to them, is
11 he?

12 A No.

13 Q He's not going after them, is he?

14 A No.

15 Q And you in there with your feet inside the car.
16 You could have shut the door, and you could have
17 showed him the gun. You didn't have to shoot him,
18 did you?

19 A I was protecting myself.

20 Q You didn't have to shoot him, did you?

21 A If I would have closed the door he could have
22 opened the door.

23 Q Got a lock on it; doesn't it?

24 A Yeah.

25 Q If you shut the door and lock it and the door is

1 between you and him and you show him that gun, you
2 don't think that's enough to back him off and that
3 protects you very well? It does, doesn't it?

4 A It could have.

5 Q And you could have shut that door; couldn't you?

6 A I could have.

7 Q You didn't have to shoot him, did you?

8 A You said I didn't have to?

9 Q You didn't have to, did you?

10 A I felt threatened at that time so.

11 Q I didn't ask if you felt threatened. I
12 understand that. I'm asking you, you didn't have to
13 shoot —

14 MR. MEETZE: Your Honor, he's answered the
15 question in my opinion.

16 THE COURT: Go ahead, Mr. Clements.

17 BY MR. CLEMENTS:

18 Q You didn't have to shoot him, did you? Yes or
19 no.

20 A Yes, I felt threatened.

21 Q All right, well let me back up a minute. Did you
22 feel threatened?

23 A Yes, I felt threatened.

24 Q But you didn't have to shoot him though, did you?

25 A If I felt, I felt my life was in danger.

1 Q So is that a yes, you had to shoot him?

2 A Yeah.

3 Q You're telling this Court you had to shoot him?

4 A I feel like I did nothing wrong. I put it like
5 that.

6 Q All right. Well, I didn't ask you about that. I
7 asked you if you had to shoot him. Yes or no?

8 MR. MEETZE: Your Honor, again, I'm gonna
9 say that question's been asked and it's been
10 answered.

11 THE COURT: Answer the question one more
12 time if you can, sir.

13 THE WITNESS: I felt threatened, yeah.

14 BY MR. CLEMENTS:

15 Q Well, again, I didn't ask you if you were
16 threatened but I'll stop at that point. Beg the
17 Court's indulgence. Now the next day you said you
18 talked to law enforcement; you went and turned
19 yourself in?

20 A Correct.

21 Q And that was several hours later, right?

22 A I assume.

23 Q Still the same day but it was daylight, right?

24 A Correct, yeah.

25 Q And this happened about 3 so it'd have to be, you

1 know, 4 or 5 hours, correct?

2 A Correct.

3 Q And you had talked with Kadeem and you had talked
4 with other people before you came and talked to law
5 enforcement; is that right?

6 A Well, we was all together, yeah.

7 Q So you talked with all them and y'all talked out
8 everything, talked it all out before you went and
9 talked to law enforcement, correct?

10 A No.

11 Q You didn't?

12 A We just stayed at the house and then I went to go
13 turn myself in.

14 Q Okay. Didn't talk to anybody about anything?

15 A No.

16 Q Didn't tell Ms. Womack what you had done?

17 A Oh, well, I told her that, yeah.

18 Q Talked it all out with her before you turned
19 yourself in, right? Okay.

20 MR. CLEMENTS: No further questions.

21 THE COURT: Any redirect?

22 MR. MEETZE: No, Your Honor.

23 THE COURT: Sir, you may step down. Thank
24 you.

25 MR. MEETZE: Your Honor, that would be all

1 of our witnesses on this matter.

2 THE COURT: All right. Thank you.

3 Mr. Clements, anything?

4 MR. CLEMENTS: Yes, sir, Your Honor. We'd
5 like to call Milton Wheeler.

6 CLERK OF COURT: Place your left hand on
7 the Bible, raise your right hand.

8 WHEREUPON,

9 **MILTON WHEELER,**
10 having been duly sworn by the Clerk of Court,
11 testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. CLEMENTS:

14 Q Could you please state your name for the record
15 and spell it for the court reporter please?

16 A Milton Wheeler, M-I-L-T-O-N W-H-E-E-L-E-R.

17 Q And I will ask you if you can speak up loudly for
18 us, okay?

19 A Yes, sir.

20 Q All right. Mr. Wheeler, did you know Rondell
21 McEachin?

22 A Yes, sir.

23 Q Were you with him on the 18th of March, 2012?

24 A Yes, sir.

25 Q How long were you with him that evening?

1 A All that day.

2 Q All that day?

3 A Yes, sir.

4 Q Where'd y'all go that evening?

5 A Well, first we had a cook out at his house. We
6 was at the car wash leaving, and that other man,
7 that man right there.

8 Q All right. And you say that man, you're talking
9 about Calvin Pompey?

10 A Yeah.

11 Q Where did you see him at?

12 A At the car wash.

13 Q At the car wash?

14 A Yes, sir.

15 Q And did y'all have any conversation or anything
16 at the car wash?

17 A Just guy talk, like talk.

18 Q So just talking, small talk?

19 A Yes, sir.

20 Q Nothing out of the ordinary, nothing?

21 A No, sir.

22 Q Just regular little small talk?

23 A Yes, sir.

24 Q Any disagreements or anything or not?

25 A No, sir.

- 1 Q Okay. Where did you go after the car wash?
- 2 A Liquor store, the liquor store.
- 3 Q The liquor store? Okay, what'd you buy?
- 4 A A gallon of gin.
- 5 Q Gallon of gin?
- 6 A Yes, sir.
- 7 Q Did you drink a lot of it?
- 8 A Yes, sir.
- 9 Q Did Calvin drink a lot of it?
- 10 A No, he didn't go with us. It was just me and
- 11 Rondell.
- 12 Q You and Rondell?
- 13 A Yes, sir.
- 14 Q Okay, all right. Did Rondell drink a lot of it
- 15 though?
- 16 A Not so much.
- 17 Q All right. Where did y'all go after the liquor
- 18 store?
- 19 A To his house. He had a little cookout.
- 20 Q Okay. After the cookout where'd y'all go?
- 21 A To the hospital.
- 22 Q To the hospital?
- 23 A Yes, sir.
- 24 Q For what?
- 25 A To see our best friend Regional Brown.

1 Q Reginald Brown?

2 A Yes, sir.

3 Q Okay.

4 A He had died in a car wreck in the emergency room.

5 Q Okay. And after y'all went to see him where'd
6 y'all go?

7 A Club Fusion.

8 Q Club Fusion? Tell us what happened when you got
9 to Club Fusion.

10 A We got there. When the altercation happened I
11 was at the bar getting drinks.

12 Q All right. So you were at the bar getting drinks
13 and the altercation happened. Did you see what
14 happened?

15 A No, sir.

16 Q Did you see who was involved?

17 A No, sir.

18 Q So you don't know any-- you just know it was an
19 altercation?

20 A Yes, sir.

21 Q Okay. What happened after the altercation?

22 A We was put out the club.

23 Q Y'all were put out the club?

24 A Yes, sir.

25 Q You and who?

1 A Me and Rondell. Me and Rondell.

2 Q You and Rondell? Okay, why were y'all put out
3 the club if you weren't involved in the altercation?

4 A That part I don't know; but when I got there, the
5 guy was trying to calm me down after he calm Rondell
6 down.

7 Q Which guy was that?

8 A The guy with the beard.

9 Q Mr. McRae?

10 A Yes, sir.

11 Q Okay. And where were y'all when he was trying to
12 calm you down?

13 A Like close in the front of the building.

14 Q Outside?

15 A Yes, sir.

16 Q Okay. And what happened?

17 A Well, when they was heading over to the car I
18 don't know why he was running to the car, but when
19 he got there he check over everything. And then
20 when we made it to car everybody was saying, Pompey,
21 don't do it, don't do it, and next I heard a gunshot
22 and I took off running.

23 Q You took off running?

24 A Yes, sir. When I come back he was laying on the
25 ground and I was telling everybody call 9-1-1.

1 Q Okay. Did you see anybody or not point a gun at
2 you?

3 A Not that I recall.

4 Q Not that you recall?

5 A No, sir.

6 Q Had you had a pretty good bit to drink?

7 A Yeah, I had a lot to drink.

8 Q And why were you so hard to calm down?

9 A 'Cause I was drunk I guess.

10 Q You were drunk?

11 A Yes, sir.

12 Q Okay, all right. Did you ever see Rondell with
13 anything, any weapon, or anything in his pocket?

14 A No, sir.

15 Q Did you ever see him get in any kind of
16 altercation with Mr. Pompey or threaten Mr. Pompey
17 in any way?

18 A No, sir.

19 Q What, if anything, did you see in regards to
20 Rondell threatening Mr. Pompey?

21 A Not that I recall.

22 Q Not that you recall? All right, beg the Court's
23 indulgence. Did you hear gunshots, Mr. Wheeler?

24 A Yes, sir, one.

25 Q One?

- 1 A Yes, sir.
- 2 Q All right. Where was Mr. Pompey sitting when the
3 shots were fired?
- 4 A In the car.
- 5 Q In the car?
- 6 A Yes, sir.
- 7 Q And could you see where his feet were or not?
- 8 A Honestly, no, but he was in the car.
- 9 Q What, if anything, did you see Rondell do when he
10 went to the car with his hands?
- 11 A Run towards the door, go towards the door.
- 12 Q Go towards the door? Did you see him do anything
13 with his hands at all?
- 14 A No, sir, it all happened so fast.
- 15 Q You didn't see him raise his hand, move his hand,
16 do anything?
- 17 A No, sir.
- 18 Q Okay. And that is the best you can recall right
19 now?
- 20 A Yes, sir.
- 21 Q All right, did you — did you give a statement to
22 law enforcement?
- 23 A Yes, sir.
- 24 Q Who did you give that statement to?
- 25 A I don't remember.

- 1 Q Was it Captain Cindy Barr?
- 2 A I don't know.
- 3 Q Was it a male or female?
- 4 A Female.
- 5 Q Female? Okay. Did you write a statement for
- 6 them, or did you tell them the statement and they
- 7 wrote it for you?
- 8 A I believe I wrote it.
- 9 Q You believe you wrote it? All right. You sure
- 10 about that?
- 11 A Yes, sir.
- 12 Q All right. Let me show you something if I can.
- 13 Is that your signature right there?
- 14 A Yes, sir.
- 15 Q Read that last line right there to refresh your
- 16 recollection.
- 17 A (Complies.)
- 18 Q Okay. Did you write this statement or law
- 19 enforcement wrote that for you?
- 20 A They wrote it for me.
- 21 Q They wrote it for you? And you told them. Okay.
- 22 I'm gonna ask you to read this part right here and
- 23 see if that refreshes your recollection?
- 24 A Melvin heard ---
- 25 Q No, read it to yourself.

- 1 A (Complies.)
- 2 Q What is the date on this statement?
- 3 A 18th, March 18th, 2012?
- 4 Q 2012? The same day of the event? Okay, that's
- 5 right, when it happened you gave this statement,
- 6 right? What do you recall now after refreshing your
- 7 recollection, what do you recall, if anything, that
- 8 you saw Rondell do with his hand?
- 9 A Reach out, reach out.
- 10 Q Reach out? Okay. Anything else?
- 11 A No, sir.
- 12 Q When you say reach out now, do you recall that?
- 13 Do you remember that or you just recall what you
- 14 told law enforcement?
- 15 A I remember.
- 16 Q You remember? All right, can you move your hand
- 17 the way you saw Rondell move his hand?
- 18 A It came forward?
- 19 Q Like that?
- 20 A Yes, sir.
- 21 Q Was it right hand or left hand?
- 22 A Left-hand.
- 23 Q You don't know? Did you see him do anything else
- 24 with his other hand?
- 25 A No, sir.

1 Q Please answer any questions that Mr. Meetze may
2 have.

3 MR. MEETZE: Thank you, Your Honor. May
4 it please the Court.

5 **CROSS-EXAMINATION**

6 BY MR. MEETZE:

7 Q Mr. Wheeler, you were just given a copy of your
8 statement to look at to refresh your recollection as
9 to what that statement was.

10 A Yes, sir.

11 Q And your testimony after refreshing your
12 recollection was that he reached his hand out?

13 A Yes, sir.

14 Q Is that right? But that's not actually what the
15 statement said? Is it not true that your statement
16 actually says that you saw Rondell raise his hand at
17 Jermaine?

18 A Yes, sir.

19 Q That's what it says? Okay. Which is a little
20 different than —

21 A Like the same.

22 Q And that's —

23 A Like that same.

24 Q You're saying that reaching and raising your hand
25 at someone is the same thing?

1 A No, sir.

2 Q Okay. And the statement you gave Cathy Barr
3 right after this incident was that he raised — you
4 saw Rondell raise his hand at Jermaine, correct, and
5 that Jermaine was sitting in the car?

6 A Yes, sir.

7 Q Okay.

8 MR. MEETZE: I have no further questions,
9 Your Honor.

10 THE COURT: Mr. Clements, any redirect?

11 MR. CLEMENTS: Just one.

12 **REDIRECT EXAMINATION**

13 BY MR. CLEMENTS:

14 Q Mr. Meetze clarified for us, you saw him raise
15 his hand. Was anything in his hand or not?

16 A No, sir.

17 Q Nothing in his hand?

18 A No, sir.

19 Q All right, thank you.

20 MR. CLEMENTS: Nothing further, Your
21 Honor?

22 THE COURT: Mr. Meetze, anything else?

23 MR. MEETZE: No, Your Honor.

24 THE COURT: Sir, you may step down. Thank
25 you.

1 Call your next witness.

2 MR. CLEMENTS: Your Honor, we have law
3 enforcement officers present who investigated the
4 case and took these statements from people. Your
5 Honor, I don't think there's anything they can
6 testify to that would be, first, a lot of it would
7 be hearsay even though it might fit some of the
8 exceptions; but other than that, it's not —
9 wouldn't be anything new, nothing redundant.
10 Everything that the witnesses have testified to,
11 Your Honor, is the same thing they told law
12 enforcement so I don't feel necessary at this point
13 in time to call any of these witnesses.

14 THE COURT: All right. I'll be happy to
15 hear from you.

16 MR. CLEMENTS: But they're available if
17 Mr. Meetze needs them for anything.

18 THE COURT: Mr. Meetze, do you want to
19 call anybody else?

20 MR. MEETZE: I do not need to call anyone
21 else, Your Honor.

22 THE COURT: I'll be happy to hear you, Mr.
23 Meetze, by way of argument if you want to put forth
24 anything by way of argument.

25 MR. MEETZE: Your Honor, we would just say

1 that obviously the protection against person and
2 properties acts was established, and I think this is
3 a case that fits the statute perfectly. It first it
4 says that — the only real issue that's sort of been
5 raised here is, you know, whether or not
6 Mr. McEachin was coming in any kind of a threatening
7 way, did he have a gun, was he gonna hit him, did he
8 say anything threatening, and none of that according
9 to the statute would be relevant to the issue. It
10 says that —

11 THE COURT: For the record, reference what
12 part of the statute you're reading.

13 MR. MEETZE: Well, that's what I'm getting
14 ready to do. Your Honor, with regards to Section
15 16-11-440(c), excuse me, (d). It says a person who
16 unlawfully and by force enters or attempts to enter
17 a person's dwelling, residence, or occupied vehicle
18 is presumed to be doing so with the intent to commit
19 an unlawful act involving force or a violent crime
20 as defined in Section 16-1-60. So just the mere
21 entry of the vehicle, regardless of anything else,
22 the presumption is that person is entering to commit
23 a violent crime. As Mr. Clements indicated, law
24 enforcement's investigation doesn't differ in any
25 way from what the testimony has been. The three

1 folks who came in that Mitsubishi car, were going to
2 that car and getting in that car to leave, and they
3 weren't able to do that before this all happened.
4 Everybody's testimony is that this happened very
5 quick. I don't think anybody can testify and say
6 what they would have done in that situation if they
7 were in that situation. I think it's just a thing
8 where you have to be in that situation in order to
9 know what you would have done. But certainly this
10 law 16-11-440 indicates that a person is presumed to
11 have the reasonable fear of imminent peril or death
12 or great bodily injury to himself or another person
13 when using deadly force as intended or likely to
14 cause death or great bodily injury to another person
15 if the person against whom deadly force is used is
16 in the process of unlawfully and forcefully entering
17 or has unlawfully and forcibly entered a dwelling,
18 residence, or occupied vehicle or if he removes or
19 is attempting to remove another person against his
20 will from a dwelling, residence, or occupied
21 vehicle. And all of that fits.

22 The testimony has been from two different
23 sources and it hasn't been disputed, that the
24 individual was running with his hand under his shirt
25 which certainly can be perceived as being a weapon,

1 can be perceived a number of different ways and it's
2 — but it's certainly not unreasonable to fear that
3 that person is coming at you in the manner that that
4 person is coming at you. The testimony was he was
5 coming, one testimony running, one fast with a
6 purpose. It's certainly not unreasonable to believe
7 that that person may have a weapon. Based on the
8 statute it wouldn't matter whether he actually had a
9 weapon or not, the way I read the statute. None of
10 the evidence here is in dispute as to what happened.
11 We feel like the facts fit this statute. The
12 standard is by a preponderance of the evidence, but
13 I think that in this case the evidence presented
14 would sustain any standard of proof for a finding in
15 this case that Mr. Pompey is immune from prosecution
16 under the Castle doctrine based on what happened.
17 And again, nobody disputes the evidence, and I think
18 the evidence is clear in this matter.

19 THE COURT: Mr. Clements, anything by way
20 of argument?

21 MR. CLEMENTS: Your Honor, I don't think
22 there's anything that established by preponderance
23 of the evidence that Mr. McEachin forcibly entered
24 the car. He ran up to the car. Nobody — everybody
25 said he was close. There's — there is, and I

1 disagree with Mr. Meetze -- there is dispute of some
2 of the testimony 'cause Mr. Wheeler said he raised
3 his hand, reached his hand out, and he saw nothing
4 in it. Even Mr. Pompey himself could not say, all
5 that he kept saying he was threatened. He could
6 never say, yes, I had to shoot. He also said he
7 could have shut the door and locked it before the
8 man got right up on him. He was close enough that
9 when he was shoot there was blood on his clothes,
10 blood in the car. But there's nobody ever said he
11 forcibly entered the car. And I think that is a
12 fundamental keystone --

13 THE COURT: Does the statute say he's got
14 to forcibly enter the car, or does it say he's got
15 to attempt to force to from the car.

16 MR. CLEMENTS: Well, we don't know that he
17 was attempting to enter the car or he was just
18 confronting Mr. Pompey, but he never did enter the
19 car.

20 MR. MEETZE: Your Honor, I will dispute
21 that. I think there were multiple witnesses
22 testified he was leaning into the car.

23 THE COURT: All right. I'm sorry,
24 anything else, Mr. Clements?

25 MR. CLEMENTS: Your Honor, it is what it

1 is. I don't think there was any reasonable
2 apprehension. I think it was unreasonable
3 apprehension on the part of Mr. Pompey, if that
4 makes a difference.

5 THE COURT: In whose eyes is reasonable
6 apprehension defined as? This defendant's or whose?

7 MR. CLEMENTS: Well, I think what you have
8 to do is look at the totality of the circumstances
9 and determine whether he was reasonable or not. He
10 says he felt threatened but there were no threats,
11 didn't see a weapon. There's some things in
12 dispute. He was holding — he had his hand up here
13 like he was holding his waistband after he'd fallen
14 down. And as Mr. Pompey said, he wore saggy pants.
15 And he raised the hand with nothing in it according
16 to some of the testimony. Your Honor, the facts are
17 what the facts are. It depends on how you look at
18 them.

19 MR. MEETZE: I only thing I will say to
20 that is, Mr. Clements testified that people wear
21 baggy pants these days. Mr. Pompey never testified
22 these pants were baggy that he was holding up his
23 waistband; that was all. That is all questions that
24 Mr. Clements asked, but that was never testified to
25 and would not be evidence.

1 THE COURT: All right. I'll take the
2 matter under advisement. I'll let you know.
3
4

5 (Hearing was continued on August 15, 2013.)
6
7
8

9 THE COURT: All right, we're on the record
10 with regard to State of South Carolina versus Calvin
11 Pompey. Can I see the indictment please.

12 Mr. Pompey was charged by indictment, indictment
13 number 2012-GS-33-301 was the offense of murder.

14 This indictment alleges that Calvin Jermaine Pompey
15 did in Marion County on or about March 18, 2012
16 willfully, feloniously, and intentionally kill the
17 victim Rondell, Rondell McEachin, with malice
18 aforethought either expressed or implied by means of
19 shooting and the victim did die as a proximate
20 result thereof on or about March 18, 2012 in Marion
21 County in violation of Section 16-3-10 of the South
22 Carolina Code of Laws.

23 Pursuant to such indictment Mr. Pompey by
24 and through counsel filed a motion to seeking
25 immunity pursuant to the protection of persons and

1 property act under 16-11-410, et. al., of the South
2 Carolina Code of Laws. Section 16-11-420, South
3 Carolina Code Subsection A, states that: It is the
4 intent of the general assembly to codify the common
5 law of Castle doctrine which recognizes that a
6 person's home is his castle and to extend the
7 doctrine to include an occupied vehicle and the
8 person's place of business. Subsection E of
9 16-11-420 states that: The general assembly finds
10 that no person or victim of crime should be required
11 to surrender his personal safety to a criminal, nor
12 should a person or victim be required to needlessly
13 retreat in the face of intrusion or attack. Section
14 16-11-440 Subsection (a) (1) and (2) states that: A
15 person is presumed to have a reasonable fear of
16 imminent peril, death, or great bodily injury to
17 himself or another person when using deadly force
18 that is intended or likely to cause death or great
19 bodily injury to another person if the person, one,
20 against whom the deadly force is used is in the
21 process of unlawfully and forcefully entering or
22 unlawfully and forcibly enter a dwelling, residence,
23 or occupied vehicle; or if he removes or is
24 attempting to remove another person against his will
25 from the dwelling, residence, or occupied vehicle;

1 and two, who uses deadly force knows or has reason
2 to believe that an unlawful and forcible entry or
3 unlawful and forcible act is occurring or has
4 occurred. Subsection D of Section 16-11-440 states
5 that: A person who unlawfully and by force enters
6 or attempts to enter a person's dwelling, residence,
7 or occupied vehicle is presumed to be doing so with
8 the intent to commit an unlawful act involving force
9 or a violent crime as defined in Section 16-1-60.

10 First, the Court responsibility is to
11 determine the implication of the act. The Court
12 certainly finds that the act is applicable and that
13 all the facts and circumstances surrounded the
14 defendant occupying a vehicle when the incident
15 subject to this indictment took place. A vehicle as
16 defined in 16-11-430 is defined as: A conveyance of
17 any kind whether or not motorized which is designed
18 to transport people or property. Under Subsection
19 — excuse me, under Section 16-11-440(a) (1): If
20 someone against whom deadly force is used is in the
21 process of unlawfully and forcefully entering or has
22 unlawfully and forcibly entered a dwelling, a
23 residence, or occupied vehicle, the Court finds that
24 it — the topic here or the issue here occupied
25 vehicle, not residence or dwelling, and that's what

1 we have here, an occupied vehicle -- and the one who
2 uses deadly force knows or has reason to believe
3 that an unlawful and forcible entry or unlawful and
4 forcible act is occurring the uncontradicted
5 testimony that was heard in this courtroom as the
6 defendant did know such, he did know such, then
7 there is a presumption that the person here, that
8 person being Mr. Pompey, had a reasonable fear of
9 imminent peril of death or great bodily injury.
10 There's a presumption that Mr. Pompey had reasonable
11 fear of imminent peril of death or great bodily
12 injury to himself when using deadly force that is
13 intended or likely to cause death or greet bodily
14 injury to another person.

15 Furthermore, under Subsection B, as I've
16 already stated, a person who unlawfully and by force
17 enters or attempts to enter an occupied vehicle is
18 presumed to be doing so with the intent to commit an
19 unlawful act involving force or a violent crime as
20 defined in Section 16-1-60. The uncontradicted
21 testimony is that the decedent Mr. McEachin was
22 attempting by force to enter the vehicle occupied by
23 Mr. Pompey; therefore, there has been no testimony
24 that would rebut the presumption of his intentions.
25 It is presumed that the decedent intended to commit

1 and unlawful act involving force or a violent crime
2 as defined in Section 16-1-60.

3 The standard of proof that this Court must
4 use in making this determination is by a
5 preponderance of the evidence, has the defendant
6 established by a preponderance of the evidence that
7 he was entitled to use the force which he used in
8 this particular situation. The uncontradicted
9 testimony that was elicited from this witness stand
10 was that there was an altercation in this club, Club
11 Fusion; that the defendant was not involved in the
12 altercation, but the defendant was removed from the
13 club; that the defendant was told to leave the club
14 and that he was in the process of doing so; that the
15 defendant waited on Mr. Kelly and Mr. Moore, whom he
16 arrived at the club with, and that as soon as all
17 three of them were outside of the club that they
18 went to the car, to their car; that Mr. Moore was
19 the driver of this automobile; that Mr. Kelly was
20 getting into the back seat of the automobile behind
21 the driver; that Mr. Pompey was in the front
22 passenger seat and that he was seated in the car.
23 There was some contradictory testimony as to whether
24 or not his feet were in the car or out of the car,
25 but it is uncontradicted that he was seated in the

1 car.

2 This Court determines that whether his
3 feet were in or out of the car is irrelevant. The
4 decedent and Mr. Wheeler were also removed from Club
5 Fusion. Mr. McEachin, the decedent without
6 provocation, there was no testimony that there was
7 any provocation by this defendant Mr. Pompey, that
8 Mr. McEachin without provocation went hurriedly to
9 the automobile that Mr. Pompey was in after having
10 fallen to the ground; that as he approached the car
11 he did so with his hand under his shirt; that after
12 getting to the car, decedent leaned, decedent being
13 Mr. McEachin, leaned into the car; that as the
14 decedent leaned into the car defendant leaned back.
15 As defendant leaned back, that is when he shot the
16 decedent one time resulting in his death. Per the
17 decedent — excuse me, per the defendant the
18 decedent never made any verbal threats, nor did the
19 defendant ever see a weapon and that was something
20 that Mr. Clements on cross-examination questioned
21 him about. And there was testimony elicited from
22 other witnesses whether or not there were any verbal
23 threats or whether or not anybody saw a weapon. And
24 while I certainly understand those arguments from
25 counsel and State v. Duncan, there was never any

1 verbal threats from the victim, nor was there ever a
2 weapon retained by the victim in that case.

3 In State v. Duncan, which is cited at 392
4 S.C. 404, there was a verbal disagreement between
5 the defendant and the decedent in that case. The
6 decedent in that case attempted to enter the porch,
7 simply enter the porch of the defendant, and as he
8 attempted to enter the porch that is when that
9 decedent was killed. In that particular case in
10 State v. Duncan our supreme court affirmed the
11 circuit court's finding that the defendant was
12 entitled to immunity under the protection of
13 property — excuse me, protection of persons and
14 property act. The Supreme Court affirmed the
15 circuit court's finding in that case.

16 My conclusions, based upon all of the
17 uncontradicted testimony that I have set forth on
18 the record based upon my review of the statutes that
19 apply to this particular situation, this Court after
20 much deliberation and review of the law in this
21 case, I find that the defendant has established by a
22 preponderance of the evidence that he is entitled,
23 he is entitled to immunity under the protection of
24 persons and property act. And that is this Court's
25 ruling.

1 Anything further from the State?

2 MR. CLEMENTS: No, Your Honor. Only one
3 question I have, I don't anticipate this happening
4 but I just want to ask on the record as I discussed
5 with the family that involve as far as the appellate
6 rights on this of the State, this is not like a
7 situation where jeopardy has attached since the jury
8 has not been sworn.

9 THE COURT: The Court in Duncan addressed
10 the issue and determined this was a pretrial matter
11 to be determined by the Court. The State has every
12 right to appeal my ruling here, every right to
13 appeal. Jeopardy is not attached and the Supreme
14 Court in turn can reverse me on that, on my ruling
15 here today. If the State feels as though I am wrong
16 I will certainly encourage you all to appeal.

17 MR. CLEMENTS: Your Honor, I —

18 THE COURT: It is — hold on a minute.
19 This is something that — and I have taken under
20 much deliberation certainly understanding the
21 unfortunate situation of a loss of life, and it is
22 it is not something that I have taken lightly
23 because I certainly sympathize with the victim's
24 family and the loss of a loved one and it is a very
25 and tragic unfortunate situation. And my job as you

1 well know as all of you know, my job is to enforce
2 the law that's been enacted by our legislature, and
3 this is my reading of the law and it's my
4 responsibility to interpret this, these statutes and
5 it goes through State v. Duncan. The primary rule
6 of statutory construction is to ascertain and to
7 give effect of the intent of the legislature. And
8 unless there is something in there requiring me to
9 give a different interpretation, I'm supposed to
10 give meaning to the words that are used in the
11 statute, give them their ordinary meaning, and
12 that's what I've done here. I've interpreted from
13 my reading of the statutes and applying the facts
14 that were elicited from this stand, the
15 uncontradicted facts, have found he's entitled to
16 immunity under the protection of persons and
17 property act certainly.

18 And that's why I wanted to make this
19 ruling on the record today after deliberating about
20 this for the last couple of days. I wanted to make
21 the record as complete — I mean, and it's what I do
22 as a judge, I try to do. And I tell people all the
23 time, tell lawyers, I want the record to be as
24 complete as it can be when I'm sitting on this Bench
25 and making my rulings because if I'm wrong I want

1 you to have every right and I want that record to be
2 as complete so the appellate courts can reverse me
3 if I'm wrong and same for defense counsel. I want
4 the record to be complete so if I'm wrong the
5 appellate court has a full record to see what my
6 thought process was and why I ruled a particular way
7 so that they can reverse me if I'm wrong. I don't
8 think so. I hope I've answered your question if you
9 have any others I'll be happy to hear those as well.

10 MR. CLEMENTS: You have answered it, Your
11 Honor. I want to thank you on behalf of the State.
12 You did give this due deliberation over several days
13 and the facts are what the facts. The plain
14 unambiguous meaning of the words of the statute, I
15 think, I cannot argue with that. I just had that
16 question that I know when I talked to the family I
17 want to be sure I understand our appellate rights on
18 this. That's not to indicate we intend on doing
19 anything, but certainly I will discuss that with the
20 family and I appreciate Your Honor's full
21 deliberation in this matter. Thank you.

22 THE COURT: Thank you, Mr. Clements.
23 Mr. Meetze.

24 MR. CLEMENTS: And Your Honor, just to
25 make the record complete for any possible appellate

1 action, we would object on the record, Your Honor.

2 THE COURT: Certainly. So noted for the
3 record. Certainly.

4 MR. CLEMENTS: Thank you.

5 THE COURT: Yes, sir.

6 Mr. Meetze.

7 MR. MEETZE: Your Honor, we have nothing
8 further.

9 THE COURT: Well, rather than draft a
10 formal order I think what I've dictated or what I've
11 stated here on the record clearly sets forth what my
12 findings were and what my conclusions were based
13 upon the evidence and testimony or based upon the
14 testimony that was elicited from this stand.
15 Anything further from the State?

16 MR. CLEMENTS: Nothing further from the
17 State, Your Honor.

18 THE COURT: Defense counsel?

19 MR. MEETZE: No, Your Honor.

20 THE COURT: That will conclude this
21 matter.

22

23 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

24

25

96

WITNESSES

Robert C Smith Marion Police Department

E. L Clements, III

ARREST WARRANT NUMBER

1057403 NP 8-15-13

ACTION OF GRAND JURY

True Bill

Marlene Dawsey
Foreperson of Grand Jury
Date: 8/2/12

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-33-00301

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

THE STATE

vs.

CALVIN JERMAINE POMPEY

Indictment for

MURDER

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARION)

MURDER

At a Court of General Sessions, convened on AUGUST 2, 2012 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- MURDER

That CALVIN JERMAINE POMPEY did in Marion County, on or about March 18, 2012, willfully, feloniously, and intentionally kill the victim, Rondale McEachin, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about March 18, 2012 in Marion County, in violation of Section 16-03-0010 and 20, S. C. 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF MARION	)	TWELFTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA	)	
	)	
- vs -	)	MOTION TO DISMISS
	)	INDICTMENT
Calvin Jermaine Pompey,	)	INDICTMENT No: 2012-GS-33-0301
	)	
DEFENDANT.	)	

TO: E.L. CLEMENTS, III, SOLICITOR, TWELFTH JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that the above named defendant, by and through his undersigned counsel, Vick Meetze, will hereby move before the Court of General Sessions of Marion County, at a time and date to be determined by the Court, for an Order dismissing the above referenced indictment pursuant to South Carolina Code § 16-11-440 and § 16-11-450.

This motion is made upon the grounds that the Defendant is in the category of persons covered by South Carolina Code § 16-11-440 (A) and that he is entitled to immunity from criminal prosecution in this case as set forth in South Carolina Code § 16-11-450 (A).

Respectfully submitted,

Vick Meetze

Vick Meetze
Assistant Public Defender
Twelfth Judicial Circuit

10/12, 2012
Marion, South Carolina

FILED
BOOK _____ PAGE _____
2012 OCT 12 A 11:50
MARION COUNTY SC
CLERK OF COURT
JERRY R. RHODES

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION.)

IN THE COURT OF GENERAL SESSIONS
 TWELFTH JUDICIAL CIRCUIT
 Indictment No. 2012-GS-33-0301

State of South Carolina,)

vs.)

CERTIFICATE OF MAILING

Calvin Jermalne Pompey,)

Defendant.)

I, Mollie Sloan, do hereby certify that I have forwarded a Motion to Dismiss Indictment Number 2012-GS-33-0301, to the Honorable E. L. Clements, III, Solicitor of the Twelfth Judicial Circuit, by depositing the same in the U. S. Mail, first class, postage prepaid, and addressed to:

The Honorable E. L. Clements, III
 SOLICITOR, 12TH JUDICIAL CIRCUIT
 180 N. Irby Street, MSC-Q
 Florence, S. C. 29501

and the same was forwarded on October 12, 2012.


 Mollie Sloan

Marion, SC
 October 12, 2012

FILED

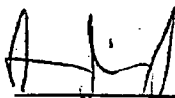
BOOK _____ PAGE _____

2012 OCT 12 A 11:50

MARION COUNTY SC
 SHERRY R. RHODES
 CLERK OF COURT

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."



ALPHONSO SIMON, JR.
Assistant Attorney General

Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR APPELLANT

September 22, 2014.

NOTICE OF APPEAL OF A CASTLE DOCTRINE RULING BY THE
HONORABLE D. CRAIG BROWN, IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

AUG 21 2013

Appeal From Marion County
Court of General Sessions

ATTORNEY GENERALS
OFFICE

D. Craig Brown, Circuit Court Judge

Case No.: 2012-GS-33-00301

The State of South Carolina,

Appellant,

v.

Calvin Jermaine Pompey,

Respondent.

NOTICE OF APPEAL

The State of South Carolina pursues an appeal of the Castle Doctrine ruling by the Honorable D. Craig Brown on August 13, 2013, in the Court of General Sessions for Marion County, South Carolina.

August 19, 2013



E. L. Clements, III Solicitor
Twelfth Judicial Circuit
City-County Complex
180 North Irby Street, MSC-Q
Florence, SC 29501
(843) 665-3091

Other Counsel of Record:
Scott P. Floyd, Public Defender
Attorney for the Respondent
221 N. Main Street
Marion, SC 29571
(843) 423-3303

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

**Appeal From Marion County
Court of General Sessions**

D. Craig Brown, Circuit Court Judge

Case No.: 2012-GS-33-00301

The State of South Carolina,

Appellant,

v.

Calvin Jermaine Pompey,

Respondent.

PROOF OF SERVICE

I certify that I have served the State of South Carolina's Notice of Appeal on Calvin Jermaine Pompey by hand-delivering the Notice of Appeal on August 19, 2013, to his attorney of record, Scott P. Floyd, Esquire, Public Defender.

August 19, 2013



E. L. Clements, III Solicitor
Twelfth Judicial Circuit
City-County Complex
180 North Irby Street, MSC-Q
Florence, SC 29501
(843) 665-3091
Attorney for Appellant
State of South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001769

THE STATE

APPELLANT

V

CALVIN JERMAINE POMPEY,

RESPONDENT

FINAL BRIEF OF APPELLANT

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
South Carolina Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
(803) 734-6305

E. L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit
Box Q
City-County Complex
Florence, South Carolina 29501
ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
ARGUMENT	12
THE TRIAL COURT ERRED IN FINDING RESPONDENT WAS ENTITLED TO IMMUNITY UNDER THE PROTECTION OF PERSONS AND PROPERTY ACT; THERE WAS NO EVIDENCE TO SUPPORT THE COURT'S FINDING THAT THE VICTIM WAS EITHER IN THE PROCESS OF FORCIBLY ENTERING OR HAD FORCIBLY ENTERED RESPONDENT'S VEHICLE WHEN RESPONDENT FIRED THE FATAL SHOT	12
CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases

Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991) 13

Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d

690 (1996)..... 15

Sloan v. Hardee, 371 S.C. 495, 640 S.E.2d 457 (2007) 16

State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013). 13

State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973)..... 13

State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)..... 12, 15, 16

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 13

Statutes

S.C. Code § 16-11-440 12, 13

STATEMENT OF ISSUE ON APPEAL

Whether the court erred in granting the Respondent Calvin Jermaine Pompey immunity from prosecution under the Protection of Persons and Property Act, specifically under S.C. Code Ann. § 16-11-440(A), when there was no evidence to support a finding the victim was unlawfully and forcefully entering, or had unlawfully and forcibly entered the Respondent's vehicle when Respondent shot him?

STATEMENT OF THE CASE

Respondent Calvin Jermaine Pompey ("Respondent") was arrested and indicted for Murder (2012-GS-33-301) in the shooting death of Rondell McEachin. On October 12, 2012, Respondent filed a Motion to Dismiss Indictment, asserting he was entitled to immunity from criminal prosecution under S.C. Code §§ 16-11-440(A) and 16-11-450(A). (R. pp. 98-99).

An evidentiary hearing on the Motion was held before the Honorable D. Craig Brown, Circuit Court Judge, on August 13, 2013. (R. pp. 1-85). Respondent was present and was represented by Vick Meetz, Esquire, Assistant Public Defender with the Twelfth Circuit Public Defender's Office. Id. The State was represented by Solicitor E.L. Clements, III, Esquire of the Twelfth Judicial Circuit. Id.

On August 15, 2013, the trial court dictated its Order on the Motion on the record. (R. pp. 85-91). Appellant subsequently filed its Notice of Appeal.

The State now respectfully requests this Court reverse the trial court's Order granting the Motion to dismiss the indictment, and remand this case for trial.

STATEMENT OF FACTS

On March 18, 2013, Respondent Calvin Jermaine Pompey ("Respondent") shot and killed the victim, Rondell McEachin, in the parking area outside of Club Fusion in Marion County.

Respondent and his friends go to Club Fusion.

Respondent, Kadeem Kelley, and Joshua Ward all travelled together to Club Fusion on the early morning of March 18, 2013.¹ (R. pp. 5, 50-1). It was unclear how long the three were in the club that night. (See R. pp. 11, 51). Kelley was only able to say they were at the club for longer than five minutes. (R. p. 11). While the three were inside the club, an altercation broke out between other club goers. (R. pp. 5, 51-2; see R. pp. 33, 71). Kelley indicated that it did not appear Respondent was not involved in the altercation. (R. pp. 5, 11, 13). However, Respondent was removed from the club with those involved in the altercation.² (R. pp. 5, 11, 13, 52, 59). Respondent denied being involved in the altercation, but he did state that he attempted to break up the fight. (R. pp. 52, 59).

After the altercation was over, Kelley and Ward went outside and met up with Respondent. (R. pp. 6, 53). Kelley and Respondent both indicated that they met up outside the club no more than a couple minutes after the altercation inside was over. (R. pp. 14, 53). The three then headed towards their car, a

¹ Kelley is Respondent's brother-in-law. (R. pp. 10, 51).

² Kelley later conceded Respondent may have been involved in the fight, but noted that it did not appear that Respondent's clothes were messed up, Respondent was not scratched up, and it did not appear Respondent had been in a fight. (R. pp. 13, 15).

2001 Mitsubishi Gallant. (R. pp. 14, 53; see R. p. 45). Ward was driving, Respondent was sitting in the front passenger seat, and Kelley was sitting in the rear passenger seat. (R. pp. 7-9, 17).

The victim was also at Club Fusion with a friend.

Milton Wheeler was with the victim on the day of the shooting. (R. pp. 68-9). He testified that both he and the victim went to Club Fusion together that night. (R. p. 71). Wheeler also recalled that they were both removed from the club after there was an altercation between others inside the club. (R. pp. 71-2). Wheeler did not see what happened because he was at the bar getting drinks. (R. p. 72). After he and the victim were put out of the club, he recalled Mr. McRae trying to calm down the victim and him. (R. p. 72)

Roderick McRae, the owner of Club Fusion, testified that he was outside in the parking lot on the evening of March 18, 2012. (R. p. 31). He never saw Respondent or Kelley, but he did see the victim with another guy. (R. p. 31). McRae testified that it appeared the two had been involved in an altercation inside the club because they were acting erratic and appeared to be riled up a little bit. (R. pp. 31-2, 33). McRae further testified that he was able to calm down the victim, but the victim's friend would not calm down. (R. pp. 33, 34, 39, 41-2).

The victim approached Respondent's car.

McRae testified that shortly after he turned away from the victim, the victim hopped a pillar and fell face first. (R. pp. 34, 43). McRae noted that he believed the victim was intoxicated based upon the jump attempted by the victim. (R. p. 34). When the victim got up, he started heading towards Respondent's

car. (R. p. 35). McRae stated that he attempted to stop the victim, but he was too far away when McRae saw that he was heading towards the car. (R. p. 37). McRae indicated the victim was not running, but was moving in a hurried motion straight towards the car. (R. pp. 35, 37, 45). McRae testified that the victim was heading towards the rear of the car. (R. pp. 37-8).

Kelley testified that as he, Respondent, and Ward were getting into the car, the victim and some others were following them to the car. He noted that one guy had his hand under his shirt as if he had something. (R. p. 6). Kelley indicated that Respondent was in the car and was leaning back in the front passenger seat when the victim approached. (R. pp. 7, 18). According to Kelley, Respondent's foot was hanging out of the doorway when the victim approached. (R. p. 18). He noted that the victim was inside the car or reaching in the car. (R. p. 8). The victim did not say or do anything when he got to the car. (R. p. 8). Kelley knew Respondent had a gun that night. (R. p. 19). Kelley indicated that Respondent had left the gun in the car when they went into the club. (R. p. 19).

Respondent testified that he, Kelley and Ward went to the car. (R. p. 53). When Respondent got to the car, he started to get in. (R. p. 53). He saw the victim running towards the car with his hand under his shirt. (R. p. 53). Respondent noted that he had brought his gun with him that night, and it was in the glove compartment of the car. (R. p. 54). Respondent also testified that he saw two other people coming after the victim. (R. p. 55).

Respondent shot the victim.

Once the victim leaned into the car, Kelley heard one shot. (R. p. 8). Kelley testified Respondent was the one who let off the shot, and the shot was fired inside the car. (R. p. 18). McRae also heard one shot. (R. p. 36). When the shot was fired, he noted the car door was open, and the victim was leaning into the car. (R. pp. 36-7). McRae also observed that the person in the car had the car door open and his feet were flat on the ground. (R. p. 43). McRae described the person's position as almost a defensive position, and McRae further noted that the person leaned further back the closer the victim got to the car. (R. pp. 43, 47).

Wheeler stated,

Well, when they [Respondent and his friends] was heading over to the car I don't know why he [the victim] was running to the car, but when he got there he check over everything. And then when we made it to car everybody was saying, Pompey, don't do it, don't do it, and next I heard a gunshot and I took off running.

(R. p. 72, ll 17-22). Wheeler never saw the victim with a weapon or anything in his pocket. (R. p. 73). He also never saw him get into an altercation with Respondent, and he did not recall seeing the victim do anything threatening. (R. p. 73). Wheeler only heard one gunshot. (R. pp. 73, 74). Wheeler testified that Respondent was in the car when the shot was fired. (R. p. 74). He could not see Respondent's feet, but Respondent was in the car. (R. p. 74). He saw the victim run towards the car door. (R. p. 74). While Wheeler initially testified that he did not see the victim do anything with his hands, he later admitted that he saw the victim raise his hand at Respondent. (R. pp. 74, 76).

Respondent testified that when the victim got to the car, Respondent shot. (R. p. 54). He indicated that the victim was on top of him, and was close enough for there to be blood inside the car and on Respondent's clothes after the shot was fired. (R. p. 55). Respondent stated that he was sitting down in the front passenger seat, and he was leaning back in the seat when he fired the shot. (R. p. 55).

Respondent testified that when he fired the shot, his feet were inside the car. (R. pp. 60-1). Respondent also stated that he did not hear the victim or anyone else make a threat. (R. p. 62). He also admitted that he never saw anything other than the victim's hand under the victim's shirt. (R. p. 62). Respondent never saw a weapon. (R. p. 63). Respondent acknowledged that he could have told the victim to back off, but he questioned whether that would have been effective. (R. p. 63). He also noted that he was not sure if he could have shut the door before the victim got to him. (R. p. 63). However, Respondent later agreed that he could have closed the door. (R. p. 65). He further testified that he shot the victim because he felt threatened. (R. pp. 65-66).

After the shot was fired.

McRae testified that after Respondent shot the victim, he pointed the gun at the other guy. (R. p. 46). McRae stated that the other guy pleaded for his life. (R. p. 46). Then Respondent pointed the gun at McRae. (R. p. 46). McRae testified that Kelley then intervened and told Respondent that McRae had nothing to do with this, and identified McRae as the owner of the club. (R. p. 46). McRae

noted that Respondent was out of the car when he pointed the gun at the victim's friend, but he was in the car when he shot the victim. (R. pp. 46-7). He also noted that the victim was really close to the Respondent when he shot him. (R. p. 47).

Kelley testified that he, Respondent, and Ward left the scene immediately after the shooting. (R. pp. 9, 27-8). He denied anything was said after the shot was fired, other than him telling the others to go. (R. p. 27). Respondent indicated that he protected himself after he fired the shot. (R. pp. 55-6). He noted that two more people were heading towards the car at that time. (R. p. 55). He also noted that they left as soon as they felt it was safe to leave. (R. p. 56).

Wheeler testified that he took off running after he heard the gunshot. (R. p. 72). When he returned to where the victim was shot, he told others to call 911. (R. p. 72).

The Trial Court found Respondent was entitled to immunity.

On August 15, 2013, the trial court granted immunity. In granting immunity, the court stated as follows:

Mr. Pompey was charged by indictment, indictment number 2012-GS-33-301 was the offense of murder. This indictment alleges that Calvin Jemaine Pompey did in Marion County on or about March 18, 2012 willfully, feloniously, and intentionally kill the victim Rondell, Rondell McEachin, with malice aforethought either expressed or implied by means of shooting and the victim did die as a proximate result thereof on or about March 18, 2012 in Marion County in violation of Section 16-3-10 of the South Carolina Code of laws.

Pursuant to such indictment Mr. Pompey by and through counsel filed a motion to seeking immunity pursuant to the

protection of persons and property act under 16-11-410, et. al., of the South Carolina Code of laws. Section 16-11-420, South Carolina Code Subsection A, states that: It is the intent of the general assembly to codify the common law of 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. Subsection E of 16-11-420 states that: The general assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack. Section 16-11-440 Subsection (a) (1) and (2) states that: A person is presumed to have a reasonable fear of imminent peril, 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, one, against whom the deadly force is used is in the process of unlawfully and forcefully entering or unlawfully and forcibly enter 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 two, who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred. Subsection D of Section 16-11-440 states that: 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.

First, the Court responsibility is to determine the implication of the act. The Court certainly finds that the act is applicable and that all the facts and circumstances surrounded the defendant occupying a vehicle when the incident subject to this indictment took place. A vehicle as defined in 16-11-430 is defined as: A conveyance of any kind whether or not motorized which is designed to transport people or property. Under Subsection – excuse me, under Section 16-11-440 (a) (1): If someone against whom deadly force is used is in the process of unlawfully and forcefully entering or has unlawfully and forcibly entered a dwelling, a residence, or occupied vehicle, the Court finds that it – the topic here or the issue here occupied vehicle, not residence or dwelling, and that's what we have here, an occupied vehicle – and the one who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring the uncontradicted testimony that was heard in this courtroom as the defendant did know such, he did know such, then there is a presumption that the person here, that person being Mr. Pompey, had a reasonable fear

of imminent peril of death or great bodily injury. There's a presumption that Mr. Pompey had reasonable fear of imminent peril of death or great bodily injury to himself when using deadly force that is intended or likely to cause death or great bodily injury to another person.

Furthermore, under Subsection B, as I've already stated, a person who unlawfully and by force enters or attempts to enter an 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. The uncontradicted testimony is that the decedent Mr. McEachin was attempting by force to enter the vehicle occupied by Mr. Pompey; therefore, there has been no testimony that would rebut the presumption of his intentions. It is presumed that the decedent intended to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

The standard of proof that this Court must use in making this determination is by a preponderance of the evidence, has the defendant established by a preponderance of the evidence that he was entitled to use the force which he used in this particular situation. The uncontradicted testimony that was elicited from this witness stand was that there was an altercation in this club, Club Fusion; that the defendant was not involved in the altercation, but the defendant was removed from the club; that the defendant was told to leave the club and that he was in the process of doing so; that the defendant waited on Mr. Kelly and Mr. Moore, whom he arrived at the club with, and that as soon as all three of them were outside of the club that they went to the car, to their car; that Mr. Moore was the driver of this automobile; that Mr. Kelly was getting into the back seat of the automobile behind the driver; that Mr. Pompey was in the front passenger seat and that he was seated in the car. There was some contradictory testimony as to whether or not his feet were in the car or out of the car, but it is uncontradicted that he was seated in the car.

This Court determines that whether his feet were in or out of the car is irrelevant. The decedent and Mr. Wheeler were also removed from Club Fusion. Mr. McEachin, the decedent without provocation, there was no testimony that there was any provocation by this defendant Mr. Pompey, that Mr. McEachin without provocation went hurriedly to the automobile that Mr. Pompey was in after having fallen to the ground; that as he approached the car he did so with his hand under his shirt; that after getting to the car, decedent leaned, decedent being Mr. McEachin, leaned into the car; that as the decedent leaned into the car defendant leaned

back. As defendant leaned back, that is when he shot the decedent one time resulting in his death. Per the decedent — excuse me, per the defendant the decedent never made any verbal threats, nor did the defendant ever see a weapon and that was something that Mr. Clements on cross-examination questioned him about. And there was testimony elicited from other witnesses whether or not there were any verbal threats or whether or not anybody saw a weapon. And while I certainly understand those arguments from counsel and State v. Duncan, there was never any verbal threats from the victim, nor was there ever a weapon retained by the victim in that case.

In State v. Duncan, which is cited at 392 S.C. 404, there was a verbal disagreement between the defendant and the decedent in that case. The decedent in that case attempted to enter the porch, simply enter the porch of the defendant, and as he attempted to enter the porch that is when that decedent was killed. In that particular case in State v. Duncan our supreme court affirmed the circuit court's finding that the defendant was entitled to immunity under the protection of property — excuse me, protection of persons and property act. The Supreme Court affirmed the circuit court's finding in that case.

My conclusions, based upon all of the uncontradicted testimony that I have set forth on the record based upon my review of the statutes that apply to this particular situation, this Court after much deliberation and review of the law in this case, I find that the defendant has established by a preponderance of the evidence that he is entitled, he is entitled to immunity under the protection of persons and property act. And that is this Court's ruling.

(R. p. 85, l 12 — R. p. 91, l 25).

ARGUMENT

THE TRIAL COURT ERRED IN FINDING RESPONDENT WAS ENTITLED TO IMMUNITY UNDER THE PROTECTION OF PERSONS AND PROPERTY ACT; THERE WAS NO EVIDENCE TO SUPPORT THE COURT'S FINDING THAT THE VICTIM WAS EITHER IN THE PROCESS OF FORCIBLY ENTERING OR HAD FORCIBLY ENTERED RESPONDENT'S VEHICLE WHEN RESPONDENT FIRED THE FATAL SHOT.

The trial court erred in finding Respondent was entitled to immunity from prosecution under S.C. Code Ann. § 16-11-440(A). Contrary to the trial court's findings, there was no evidence presented at the evidentiary hearing that the victim forcibly entered Respondent's vehicle. Since the victim was not forcefully entering or had not forcibly entered Respondent's vehicle when he was shot, Respondent was not entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(A). As a result, the trial court abused its discretion in finding Respondent was entitled to immunity under the Act.

Standard of Review

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(A) states,

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of **unlawfully and forcefully entering**, or has **unlawfully and forcibly entered** a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A)(emphasis added).

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973)). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings."). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013). "Section 16-11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." Id.

At issue in this case is whether the trial court erred in finding the victim forcibly entered or was in the process of forcibly entering Respondent's vehicle when Respondent shot him. The testimony presented at trial did not support the finding. At the hearing, each witness indicated that when the shooting occurred, Respondent was sitting down in the front passenger seat of the car. (R. pp. 18, 36, 47). Kelley indicated the car door was open and Respondent's feet were outside the vehicle. (R. p. 18). Mr. McRae similarly testified the car door was open before the shooting. (R. p. 36). McRae also indicated that Respondent's feet were outside the car, and were flat on the ground around the time the shot was fired. (R. p. 43). While Respondent denied that his feet were outside the car door when he shot the victim, he did admit that the vehicle's door was open. (R. pp. 54, 61; see R. pp. 64-5). Similarly, the victim's friend Wheeler testified that the Respondent was in the car when he shot the victim. (R. p. 74). Altogether, all indicated that the car door was open when the victim leaned in before the shooting.

There was no testimony at the motion hearing that indicated the victim had any physical contact with Respondent before the shooting. None of the witnesses, including Respondent, heard the victim make any threats towards Respondent. (R. pp. 22, 27, 47, 62, see R. p. 73). Furthermore, no one saw the victim with a weapon. (R. pp. 63, 73; see R. p. 26). In light of this testimony at the motion hearing, Appellant submits Respondent failed to show any force was used by the victim in leaning into the vehicle.

Contrary to the hearing judge's findings, this case is not analogous to the factual scenario presented in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). In Duncan, the Supreme Court noted that according to the defendant's girlfriend,

The victim was opening the screened porch door when respondent exited the front door of the house onto the porch with the gun. At one point, the victim began advancing across the porch and Templeton was "between [the victim] and [respondent]" and was "trying to get [the victim] off the steps and leave." The victim continued to force his way onto the porch.

Duncan, 392 S.C. at 407, 709 S.E.2d at 663. That was far more than the actions taken by the victim in this case. As already noted, by all accounts the victim leaned into an open car door. The victim here neither attempted to open the car door nor took any action to force Respondent to open the door.

In all, Appellant submits that a forcible entry under the Act requires more than a person leaning into an open car door. While the Act does not specifically define what constitutes a forcible entry for the purposes of the presumption afforded in S.C. Code Ann. § 16-11-440(A), the ordinary meaning of the words used in the statute would clearly indicate that something more than leaning into an open door is necessary to support a finding of forcible entry. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Duncan, 392 S.C. at 408, 709 S.E.2d at 664 (citing Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Id. When a statute's terms are clear and unambiguous on their face, there is no

room for statutory construction and a court must apply the statute according to its literal meaning. Duncan, 392 S.C. at 408-09, 709 S.E.2d at 664 (citing Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). Forcible entry is clear and unambiguous. It requires entry by some use of force. In this case, there was no evidence the victim entered Respondent's vehicle using force. To the contrary, the testimony clearly showed the door was open, and the victim only leaned inside. Thus, Appellant submits the trial court abused its discretion in finding Respondent was entitled to immunity under S.C. Code § 16-11-440(A).

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court reverse the trial court's Order granting Respondent immunity from prosecution under the Protection of Persons and Property Act and remand for a trial on the murder indictment.

Respectfully submitted,

ALAN WILSON
Attorney General

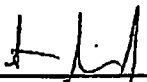
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

E.L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit
Box Q
City-County Complex
Florence, South Carolina 29501

ATTORNEYS FOR APPELLANT

By: 
Alphonso Simon Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

October 30, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001769

THE STATE

APPELLANT,

V.

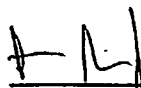
CALVIN JERMAINE POMPEY,

RESPONDENT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 30th day of October, 2014.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001769

THE STATE

APPELLANT,

V.

CALVIN JERMAINE POMPEY,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Final Brief of Appellant and Certificate of Compliance on Respondent by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 30th day of October, 2014.



ALPHONSO SIMON, JR.
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

APPELLANT,

V.

CALVIN JERMAINE POMPEY,

RESPONDENT

APPELLATE CASE NO. 2013-001769

FINAL BRIEF OF RESPONDENT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR RESPONDENT.

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	
There was evidence to support the trial court granting respondent Pompey immunity from prosecution pursuant to S.C. Code Ann. §16-11-440 and §16-11-450 where the evidence showed the irate decedent quickly approached the automobile respondent was inside, with a hand under his shirt seemingly hiding a weapon, and he was reaching inside the automobile for respondent when he was shot a single time.	5
Relevant Facts	5
Order	8
Discussion – Standard of Review	9
CONCLUSION	13
CERTIFICATE OF COUNSEL	14

TABLE OF AUTHORITIES

Cases

<u>Felts v. Richland County</u> , 303 S.C. 354, 400 S.E.2d 781 (1991)	10
<u>State v. Cutter</u> , 261 S.C. 140, 199 S.E.2d 61 (1973).....	9
<u>State v. Duncan</u> , 392 S.C. 404, 709 S.E.2d 662 (2011).	12
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001)	9, 10

Statutes

S.C. Code Ann. §16-11-450.....	3, 5, 12
S.C. Code Ann. §16-11-440.....	3, 5, 12
S.C. Code Ann. §16-11-440(A)	3, 4
S.C. Code Ann. §16-11-450(A)	4
S.C. Code Ann. §16-11-420(A).....	11
S.C. Code Ann. §16-11-420(D)	11
S.C. Code Ann. §16-11-420(E).....	11
S.C. Code Ann. §16-11-440(A)(1) &(2)	10

STATEMENT OF ISSUES ON APPEAL

Whether the court erred in granting the Respondent Calvin Jermaine Pompey immunity from prosecution under the Protection of Persons and Property Act, specially under S.C. Code Ann. §16-11-440(A), when there was no evidence to support a finding the victim was unlawfully and forcefully entering, or had unlawfully and forcible entered the Respondent's vehicle when Respondent shot him?

COUNTER STATEMENT OF ISSUE ON APPEAL

Whether there was evidence to support the trial court granting respondent Pompey immunity from prosecution pursuant to S.C. Code Ann. §16-11-440 and §16-11-450 where the evidence showed the irate decedent quickly approached the automobile respondent was inside, with a hand under his shirt seemingly hiding a weapon, and he was reaching inside the automobile for respondent when he was shot a single time?

STATEMENT OF THE CASE

Respondent Calvin Jermaine Pompey was indicted by the Marion County Grand Jury for the offense of murder. R. p. 96. On October 12, 2012 respondent filed a Motion to Dismiss the Indictment asserting he was in the category of persons covered by S.C. Code Ann. §16-11-440(A) and that he was entitled to immunity from criminal prosecution pursuant to S.C. Code Ann. §16-11-450(A). R. p. 98.

An evidentiary hearing was held before the Honorable D. Craig Brown, on August 13, 2013. Respondent was represented by Vick Meetz. Solicitor E.L. Clements, III represented the state. R. p. 1.

On August 15, 2013 the trial court dictated its order granting immunity into the record. R. p. 85, l. 9 – 91, l. 25. The state subsequently filed a Notice of Intent to Appeal.

ARGUMENT

There was evidence to support the trial court granting respondent Pompey immunity from prosecution pursuant to S.C. Code Ann. §16-11-440 and §16-11-450 where the evidence showed the irate decedent quickly approached the automobile respondent was inside, with a hand under his shirt seemingly hiding a weapon, and he was reaching inside the automobile for respondent when he was shot a single time

Relevant Facts

Kadeem Kelley testified that on March 18, 2012 he went to the Club Fusion in Marion County with his respondent brother-in-law, and Josh. R. p. 4, l. 23 – 6, l. 3. It was after midnight, and an altercation occurred inside the club. Kelley did not see what happened during the altercation but he learned that respondent had been “thrown out of the club.” R. p. 5, ll. 5–23. As will be seen *infra*, respondent later testified that he tried to break up the fight inside the club but left as requested without incident when security intervened.

Kelley headed to the car with respondent and their friend Josh fully intending to leave. R. p. 6, ll. 7-10. Josh unlocked the door and “everybody proceeded to get in the car.” R. p. 7, ll. 4-10. Respondent was in the passenger seat, and Kelley was in the backseat behind the driver’s seat. Kelley testified: “I saw people coming to the car that wasn’t with us, didn’t know them, never seen them before. One guy was running up with his hand under his shirt as if he had something.” R. p. 7, ll. 15-22.

Respondent testified that the decedent came running towards him with his hand under his shirt, and he told the trial court the decedent was “on top of me” when he shot him inside the automobile. R. p. 53, l. 16 – 55, l. 3.

Kelley also remembered that respondent was sitting in the passenger seat when the decedent came running up with his hand under his shirt, and he reached inside the

automobile. R. p. 7, l. 15 – 9, l. 4. Kelley said he did not see the respondent involved in a fight inside the club, and it was not clear why the decedent was directing his anger at them. R. p. 11, ll. 16-17.

Kelley further testified that respondent left his gun inside the car when they went into the club. Kelley stated that respondent kept a gun in the car because of “prior things that happened to him.” R. p. 20, ll. 9-10. Respondent would later explain that about five years prior to this incident: “I had got jumped by nine people, had surgery. I had plates in my face all in the right side. They knocked two teeth out, jaw broke.” Respondent said this was something that was impossible to forget. R. p. 57, ll. 6-11.

Kelley confirmed that respondent was inside the car when he shot the decedent, who, as seen, respondent said was “on top of him.” R. p. 18, ll. 17-24.

Roderick McCrae was the owner of the Fusion Sports Bar. R. p. 30, l. 11 – 31, l. 4. McCrae thought the altercation inside the club occurred about 3:00 to 3:30 in the morning. McCrae described the decedent as “kind of erratic, kind of riled up a little bit.” McCrae said he talked to the decedent and the man with him, and told them “it’s not worth it... just go home, it’s not worth it. McCrae thought the situation had calmed down with them. R. p. 32, ll. 8-21.

McCrae said he was told the decedent had been involved in the altercation inside his bar. McCrae maintained he thought the decedent and the other man were going to go home. However, McCrae recalled: [I] took my eyes off Mr. Rondell [the decedent]; and before I knew it he hopped a pillar about as high as the middle of my leg, and he fell face first so I knew he was intoxicated. He popped up. And when he popped up off the ground, the car was in my sight and I saw him. I said, man, I still – I put my hand on the pillar. I was like,

don't go over there, don't go over there. He went straight to the car... not so much running but in a hurried motion...straight towards the car." R. p. 34, l. 13 – 35, l. 7.

Mr. McCrae said that the car door was open, and he respondent was "sitting with his feet on the ground and he saw the decedent leaning into the car when a single gunshot went off." R. p. 36, ll. 14-22; 37, ll. 1-3. On cross-examination McCrae confirmed that the decedent approached respondent's car at a fast pace. McCrae lamented: "[B]efore I could hop across that pillar and grab him it was too late." R. p. 45, ll. 16-20.

Respondent testified that the club was crowded that night, and the altercation occurred near him. Respondent tried to break up the fight but the security men grabbed him and took him outside the club. Respondent said he went peacefully and he waited outside for Kelley and Josh. R. p. 50, l. 14 – 52, l. 24.

Respondent testified that when they were getting in the car he saw the decedent running to the car "with his hand under his shirt." Respondent recalled: "[A]s I started to get in the car, it took him [Josh] a while to unlock the door. So when I got in the car I was sitting down, I seen him coming. And when he started coming he started to reach in. It really looked like he was running -- everything was happening so fast -- with his hand under his shirt." R. p. 54, ll. 6-15. Respondent testified he grabbed the gun, and that the decedent was "on top of me close enough for blood in the car and on my clothes" when he shot him. R. p. 54, l. 6 – 55, l. 3.

On cross-examination respondent stated that he left the club when requested to do so. "If they tell you to leave the best thing for you to do is leave so I left." R. p. 59, l. 25 – 60, l. 2. Respondent confirmed that he was inside the automobile when he saw the decedent running towards the car. R. p. 60, l. 5 – 61, l. 10. Respondent said he shot the decedent because he felt threatened and "I felt my life was in danger." R. p. 65, ll. 18-25.

The state called Milton Wheeler as a witness. Wheeler said he was with the decedent the entire day of the incident. R. p. 68, l. 14 – 69, l. 12. Wheeler confirmed that respondent was inside the car when the shot was fired. R. p. 74, l. 2-11. Wheeler said the entire incident “happened so fast,” but he maintained he did not see the decedent do anything with his hands. R. p. 74, ll. 9-20.

However, on cross-examination Wheeler acknowledged in his statement to the police he told them that the decedent had “reached out” with his hands at the time of the shooting. R. p. 76, ll. 4-11. Wheeler further admitted that in his statement he told the police that the decedent raised his hand at respondent. R. p. 77, l. 14 – 78, l. 6.

Defense counsel argued that “none of the evidence here is in dispute as to what happened. We feel like the facts fit this statute.” R. p. 82, ll. 9-11. The judge took the matter under advisement.

Order

After the break of a day to consider his ruling, the trial judge reconvened court, and he issued his order. He ruled that S.C. Code Ann. §16-11-420 stated the intent of the General Assembly was that no person or victim of a crime was required to surrender his personal safety. A person was presumed to have a reasonable fear of imminent peril death or great bodily injury and could use deadly force if another person was unlawfully and forcefully entering a dwelling, residence or occupied vehicle. S.C. Code Ann. §16-11-440(A)(1)-(2); R. p. 85, l. 9 – 87, l. 9.

The judge ruled that the evidence showed that the decedent was attempting by force to enter the vehicle occupied by respondent, and that he intended to commit an unlawful act. The law presumed respondent had a reasonable fear of great bodily injury or death given the decedent’s actions. R. p. 86, l. 9 – 89, l. 2.

The judge found that the respondent had proven by a preponderance of the evidence that he was entitled to immunity. The judge observed: "There was some contradictory testimony as to whether his feet were in the car or out of the car. But it is uncontradicted that he was seated in the car. This court determines that whether his feet were in or out of the car is irrelevant." R. p. 89, l. 23 – 90, l. 1.

The judge further found that the decedent went hurriedly to the automobile where respondent was after the decedent had fallen to the ground. The decedent approached the car with his hand under his shirt and he leaned into the car. The respondent leaned back and shot the decedent one time resulting in his death. R. p. 90, l. 2 – 91, l. 25. The judge ruled respondent was entitled to immunity.

Discussion

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973)). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings.")

The essence of the state's argument is that there was no evidence the "victim forcefully entered respondent's automobile." Brief of Appellant at 12. However, the

evidence in this case shows that respondent was in the front passenger seat of the car. The decedent, who was apparently intoxicated and irate, fell on his face in the parking lot. He then got up and very quickly went to the automobile where respondent was sitting in the front passenger seat, and he reached into the automobile. He also had a hand under his shirt which indicated he may have been armed. Respondent testified he felt threatened and in fear for his life, and he shot the decedent while the decedent was "on top" of him.

Further, it appears evident this was a violent night club since the people entering were checked for weapons. Further, respondent testified he knew it was a good idea to peacefully leave the club when asked to do so. Respondent had been very badly injured in the past, and that is why he had a gun in the car. As stated, the decedent was reaching into the car and was "on top of him" when respondent shot him.

S.C. Code Ann. §16-11-440(A)(1) & (2) provide 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 the person: (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered ... an occupied vehicle or if he removes or in attempting to remove another person against his will from ... an occupied vehicle; and, (2) who uses deadly force, knows or has reason to believe that an unlawful and forceful entry or unlawful and forceful act is occurring or has occurred.

Reaching into an automobile, or, more accurately reaching for respondent inside of the automobile, and being on top of respondent was an unlawful and forceful act. The evidence in this case was also sufficient for the alternative application of the statute that the decedent was attempting to remove respondent against his will from the occupied vehicle.

A reasonable person would have been afraid if a "riled up" intoxicated person reached into his car to assault him, or worse. Further, the decedent in this case had a hand under his shirt which would lead a reasonable person to believe he was hiding a weapon.

The state attempts to make much of the fact that the decedent did not attempt to open the car door nor force respondent to open the door. Brief of Appellant at 15. However, the undisputed evidence was that the car door was open when the decedent reached in and was "on top" of respondent. Whatever the state's definition of "force" might be -- it is too narrow -- particularly given the intent of the legislature when passing these statutes.

S.C. Code Ann. §16-11-420(A) provides that it was the intent of the General Assembly to codify the common law doctrine which recognized that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

S.C. Code Ann. §16-11-420(D) further provides that the General Assembly finds that persons residing or visiting this State shall have the right to expect to remain unmolested and safe within their homes, businesses and vehicles.

Finally, and very importantly, S.C. Code Ann. §16-11-420(E) provides that "the General Assembly finds 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."

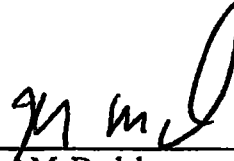
Simply put, respondent was not obligated to try and push the irate decedent away from the car, hope that he could close the door and lock it before the attacker overpowered him, and then pray that that drunk and angry attacker would simply go away. The trial court correctly found that respondent proved by a preponderance of the evidence that he was entitled to immunity pursuant to S.C. Code Ann. §16-11-440 and §16-11-450. See State v.

Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Because there was evidence supporting the trial court's ruling, it should be affirmed.

CONCLUSION

By reason of the foregoing arguments, the ruling of the lower court should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

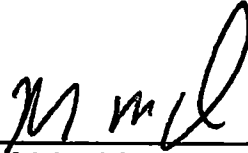
ATTORNEY FOR RESPONDENT.

This 13th day of October, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 13, 2014



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Respondent

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Judge

THE STATE,

APPELLANT,

V.

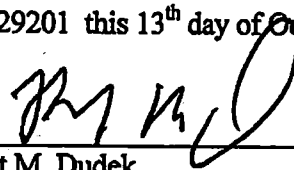
CALVIN JERMAINE POMPEY,

RESPONDENT

APPELLATE CASE NO. 2013-001769

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Respondent in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 13th day of October, 2014.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 13th day of October, 2014.

Rhonda Dimecia Ross (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Appellant,

v.

Calvin Jermaine Pompey, Respondent.

Appellate Case No. 2013-001769

Appeal From Marion County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2015-UP-280
Submitted March 1, 2015 – Filed June 10, 2015

AFFIRMED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Alphonso Simon, Jr., all of
Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, for Appellant.

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Respondent.

PER CURIAM: The State appeals a circuit court decision granting Calvin Jermaine Pompey immunity from prosecution for murder pursuant to the Protection of Persons and Property Act¹ (the Act). The State argues no evidence supports the circuit court's finding that the victim was in the process of forcefully entering, or had forcibly entered, Pompey's vehicle when Pompey shot him. We affirm.

The State indicted Pompey for murder alleging he shot and killed the victim outside a nightclub in Marion. Pompey filed a motion to dismiss the indictment on the ground that he was immune from criminal prosecution under the Act. The circuit court conducted an evidentiary hearing and received testimony from four witnesses, including Pompey, his brother-in-law, the nightclub owner, and a companion of the victim. *See State v. Duncan*, 392 S.C. 404, 410-11, 709 S.E.2d 662, 665 (2011) (requiring the circuit court to conduct, upon motion of either the defendant or the State, a pretrial evidentiary hearing and decide by a preponderance of the evidence presented during the hearing whether the defendant is immune from criminal prosecution under the Act).

The circuit court granted the motion to dismiss, finding Pompey showed by a preponderance of the evidence that the victim was attempting to forcefully enter the vehicle occupied by Pompey when Pompey shot him. *See* S.C. Code Ann. § 16-11-440(A)(1) (Supp. 2014) (providing a defendant is entitled to a presumption of reasonable fear of imminent peril of death or great bodily injury if the defendant uses deadly force against a person who "is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a[n] . . . occupied vehicle"); § 16-11-440(D) (stating an aggressor "who unlawfully and by force enters or attempts to enter a person's . . . 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"). Accordingly, the circuit court ruled Pompey was entitled to the legal presumptions in section 16-11-440, and thus was immune from criminal prosecution under the Act. *See* § 16-11-450(A) (stating "[a] person who uses deadly force as permitted by the provisions of this article . . . is justified in using deadly force and is immune from criminal prosecution").

¹ S.C. Code Ann. §§ 16-11-410 to -450 (Supp. 2014).

We find the circuit court did not abuse its discretion in determining by a preponderance of the evidence that the victim was in the process of forcefully entering Pompey's vehicle in accordance with section 16-11-440. *See State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review."). The un rebutted eyewitness testimony showed Pompey and two friends were sitting in a parked car outside the nightclub when the uninvited victim rapidly approached the vehicle. Pompey was in the front passenger seat and his door was open. The nightclub owner, who was standing nearby, begged the victim not to go to the car, but the victim continued advancing. While approaching the vehicle, the victim had his hand under his shirt in his waistband, a typical place to keep a weapon. The victim reached and leaned inside the vehicle towards Pompey, actions causing Pompey to lean back and shoot the victim. The uncontroverted testimony showed the victim was inside the vehicle and "on top of" Pompey when Pompey shot him.

The evidence supports the circuit court's finding that the victim was forcing his way into the vehicle when Pompey shot him. *See generally State v. Douglas*, Op. No. 5286 (S.C. Ct. App. filed Dec. 23, 2014) (Shearouse Adv. Sh. No. 51 at 60) (affirming the circuit court's grant of immunity and recognizing "the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the [circuit] court's ruling is supported by any evidence" (internal quotation marks and citation omitted)). We therefore affirm the circuit court's ruling granting Pompey immunity from prosecution.

AFFIRMED.²

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED

JUN 25 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001769

THE STATE

APPELLANT,

V.

CALVIN JERMAINE POMPEY,

RESPONDENT.

PETITION FOR REHEARING

Comes now Appellant, above named, by and through the Attorney General of South Carolina, and pursuant to Rule 221(a), SCACR, hereby respectfully petitions this Court to rehear this matter.

Appellant respectfully submits this Court has misapprehended what constitutes evidence of a forceful entry under the Protection of Persons and Property Act. Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit

court to use in determining immunity under the Act is a preponderance of the evidence.” Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(A) states,

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and **forcefully entering**, or has unlawfully and **forcibly entered** a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A)(emphasis added).

While the Act does not specifically define what constitutes a forcible entry for the purposes of the presumption afforded in S.C. Code Ann. § 16-11-440(A), the ordinary meaning of the words used in the statute would clearly indicate that something more than leaning into an open door is necessary to support a finding of forcible entry. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Duncan, 392 S.C. at 408, 709 S.E.2d at 664 (citing Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Id.

Appellant respectfully submits that in its finding there was evidence of a forceful entry, this Court implicitly and improperly conflates the concept of one’s right to act on appearances when acting in self-defense with the nature of the

evidence that must be presented to establish a forcible entry occurred or was occurring. Respondent's belief the victim may have had a weapon and the reasonableness of that belief may be relevant in the court's determination of the existence of evidence to support S.C. Code Ann. § 16-11-440(A)(2). That belief is not relevant to the factual analysis required by S.C. Code Ann. § 16-11-440(A)(1).

As noted by this Court, the testimony presented at the hearing reflected that Respondent was sitting in the front passenger seat of a parked car with the door open. There was no testimony at the motion hearing that indicated the victim had any physical contact with Respondent before the shooting. None of the witnesses, including Respondent, heard the victim make any threats towards Respondent. (R. pp. 22, 27, 47, 62, see R. p. 73). Furthermore, no one saw the victim with a weapon. (R. pp. 63, 73; see R. p. 26). Altogether, there was no evidence the victim used unlawful force when he leaned into the open car door. There is no evidence in the record to support a finding that the victim was forcefully entering the vehicle as required under S.C. Code Ann. § 16-11-440(A)(1).

Altogether, for the reasons stated above, Appellant requests this Court reconsider its opinion and reverse the circuit court's Order Granting Immunity.

Respectfully submitted,

ALAN WILSON
Attorney General

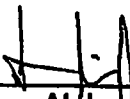
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

By:  _____
Alphonso Simon Jr.

June 25, 2015

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 25 2015

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge SC Court of Appeals

Appellate Case No. 2013-001769

THE STATE

APPELLANT,

V.

CALVIN JERMAINE POMPEY,

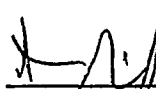
RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Petition for Rehearing on Respondent by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 25th day of June, 2015.



ALPHONSO SIMON, JR.
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Appellant,

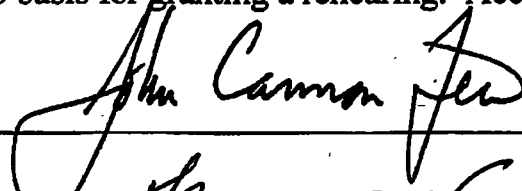
v.

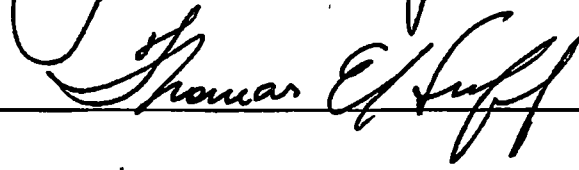
Calvin Jermaine Pompey, Respondent.

Appellate Case No. 2013-001769

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


C.J.


J.


J.

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire

Alan McCrory Wilson, Esquire

Donald J. Zelenka, Esquire

Alphonso Simon, Jr., Esquire

FILED

August 20, 2015

John W. McIntosh, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. : 2015-001992

THE STATE

PETITIONER,

v.

CALVIN JERMAINE POMPEY,

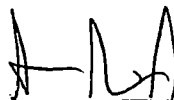
RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., hereby certify that a true copy of the redacted Record on Appeal and Appendix to the Petition for Writ of Certiorari has been served upon opposing counsel by depositing two (2) copies in the United States mail, postage prepaid, to the following:

Robert M. Dudek, Esq.
SCCID\Division of Appellate Defense
1330 Lady St., Ste. #401
Columbia, South Carolina 29201

This 12th day of October, 2015.



ALPHONSO SIMON, JR.
Assistant Attorney General
Bar No. 74713