

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LAURENS COUNTY  
Court of General Sessions

JUL 20 2016

The Honorable Eugene C. Griffith, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2014-000161

THE STATE,

RESPONDENT,

v.

KATHY LEONARD REVAN,

APPELLANT.

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FINAL BRIEF OF APPELLANT

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## STATEMENT OF THE ISSUE ON APPEAL

### I.

**The lower court abused its discretion in denying Appellant Motion for Immunity pursuant to the Protection of Persons and Property Act where the testimony and evidence adduced during the hearing on Appellant's claim of immunity pursuant to §16-11-440 clearly established that she was entitled to immunity.**

## STATEMENT OF THE CASE

Appellant, Kathy Leonard Revan, was indicted by the Laurens County Grand Jury grand jury during the October, 2011 term for Murder (2011-GS-30-1625) and Possession of a Weapon During a Violent Crime (2011-GS-30-1626) and Attempted Murder (2011-GS-30-1627). She was represented in the trial court by Kim R. Varner, Esquire, and Evan Bramhall, Esquire. The Appellant proceeded to trial by jury on January 13 - 17, 2014 before the Honorable Eugene C. Griffith, Jr. The State was represented at trial by Lance Sheek, Senior Assistant Solicitor, and Taylor Daniel, Assistant Solicitor. At the conclusion of this trial, the Appellant was found guilty and was convicted of Voluntary Manslaughter (2011-GS-30-1625), Possession of a Weapon During a Violent Crime (2011-GS-30-1626), Attempted Murder (2011-GS-30-1627). ”

Appellant was sentenced on January 17, 2014 to twenty (20) years for Manslaughter/Voluntary Manslaughter (2011-GS-30-1625), five (5) years for Possession of a Weapon During a Violent Crime (2011-GS-30-1626), and twenty years for Attempted Murder (2011-GS-30-1627).

The Appellant served and filed a timely Notice of Appeal from his judgment and sentence. This appeal follows.

## ARGUMENT

### I.

**The lower court abused its discretion in denying Appellant's Motion for Immunity pursuant to the Protection of Persons and Property Act<sup>1</sup> where the testimony and evidence adduced during the hearing on Appellant's claim of immunity pursuant to §16-11-440 clearly established that she was entitled to immunity.**

#### **SUMMARY OF TESTIMONY, ARGUMENTS AND EVIDENCE PRESENTED DURING IMMUNITY HEARING HELD PURSUANT TO §16-11-440**

#### **ARGUMENT OF GROUNDS FOR MOTION**

Prior to the commencement of Appellant's General Sessions trial, she made a Motion for Immunity pursuant to the §16-11-440 of the Protection of Persons and Property Act. Appellant argued that she was entitled to immunity under the act based upon, A) the presumption of reasonable fear and B) her right to stand her ground. In support of this position Trial Counsel argued the following.

- It was undisputed that the incident happened in Appellant's home and that she had a reasonable fear of imminent peril. ROA p. 9, l. 24 - p. 10, l. 1.
- Defendant owns the home in Laurens County. It was her residence. At the time she was living with a gentleman names Lynn Straley<sup>2</sup>, who was deceased at the time of trial. Straley had terminal cancer. In June, 2011 his daughter, Tammy, and her female significant other, Shawn, showed up for a visit. They had been traveling around the country staying with various relatives and were ultimately headed to Costa Rica to raise ostriches. What was expected to be a two to three day visit turned into six weeks. Problems began to develop. ROA p. 10, l. 1-24.
- The deceased Shawn confronted Defendant about interfering with her relationship with Tammy; the daughter of Mr. Straley. ROA p. 11, ll. 3-6.
- Following a heated discussion, Tammy and Shawn were instructed to pack up their stuff and leave the residence. ROA p. 11, ll. 7-12.

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<sup>1</sup> Hereafter, the Act.

<sup>2</sup> Hereafter, Straley.

- A physical altercation followed with Shawn initially hitting Defendant and the two ended up on the floor. Tammy was outside when the physical altercation was initiated by Shawn and the strike happened out of Straley's sight as well.
- When Straley's daughter, Tammy came back in the house, the two women, both of whom were about 20 years younger than Defendant, beat her badly. She had two bad black eyes and a broken nose and was bleeding. ROA p. 11, l. 18 - p. 12, l. 2.
- There was a significant weight difference between the Victim<sup>3</sup> and Appellant; approximately 100 pounds difference. ROAp. 11, l. 24.
- Not only was Appellant approximately twenty years younger and double teamed by Shawn and Tammy, she suffers from multiple medical problems. ROA p. 11, ll. 13-18.
- Straley stopped the fight. Defendant went to the bathroom to clean up because she was bleeding. Before coming back out of the bedroom she armed herself. She had been attacked and believed another beating was about to occur.
- Upon exiting her bedroom she found that Tammy and Shawn, who had been told to leave, were still there and Tammy was coming towards her. Appellant fired a shot intended as a warning shot. It hit Shawn in the femoral artery and she died shortly thereafter.

## **SUMMARY OF TESTIMONY FROM *IN CAMERA* CASTLE HEARING**

### **KEITH MCINTOSH**

He testified to his position as a Lieutenant with Laurens County Sheriff's Department. He had been with the department for 12 years. He confirmed that on August 11, 2011 he was the investigator on call. He received a dispatch call that there had been a shooting on Revan Road in Mountville. He proceeded there. ROA p. 16, l. 23 – p. 17, l. 4. Lt. McIntosh estimated his arrival time at 35-40 minutes after the shooting. When he arrived, Road Deputies, Appellant, Straley, the deceased and Tammy Jo Morrigan<sup>4</sup> were on the scene, in addition to the EMS personal who had responded to the scene. First spoke with road deputies, Lt. Marty Grain, Sgt. Will. Johnston and had them fill him in on what they found

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<sup>3</sup> Hereafter, Shawn.

<sup>4</sup> Hereafter, Tammy.

when they arrived at the scene. ROA p. 17, ll. 7-22.

Lt. McIntosh was not able to recall which principal he interviewed first. ROA p. 17, l. 23 – p. 18, l. 7. Lt. J. D. Shelton, there and he took statements from both Tammy and Straley. ROA p. 18, ll. 8-25. McIntosh's description of Straley's statement was very simple to say the least. ROA p. 19, ll. 1-3. His description of Straley's statement lacked much of the detail that was in fact in the deposition was ultimately introduced during this proceeding. He basically described Straley as having stated that there was an altercation he heard and went in to attempt to break it up. Left room again heard gun shot and came back into the room. ROA p. 19, ll. 4-10. He did a walk through of the scene, which was a double wide trailer, but did not prepare diagram of the scene. He opined that this "more than likely would have been SLED." ROA p. 19, ll. 11-23.

McIntosh testified that he entered the residence through front door. His description of where Shawn was shot and where Defendant was standing is not very clear and was full of references to what they "determined" and what their "understanding" was without explanations. His testimony is unfortunately full of "I was told" references without any explanation as to who the information came to him from. ROA p. 20, l. 2 – p. 23, l. 19.

McIntosh, summarized his conversation with Tammy saying she reported that she had been out with her father that day. They had bought a weed eater. She was outback for a good while and when she came in Defendant and Shawn, was on the floor with each other. She described them as "partially one on the other" and the Defendant had the Shawn by the hair. This time he describes Tammy having to try hard to get Defendant to let go of Shawn's hair. "She did what she had to do to get Defendant to turn loose." He further stated, "Defendant then got up, went to her room and washed up and came back out with a gun."

ROA p. 23, l. 20 - p. 24, l. 18. Ultimately, McIntosh admits Tammy had actually reported that Shawn was on top of Defendant. He then tried to explain his testimony by saying that was right because “Defendant pulled her down by the hair.” McIntosh goes on to say according to *other statements* “she was off to the side somewhat”. The record reflects that Tammy, was the sole eye witness to what position these two women were in when Tammy walked back in the house. ROA p. 24, l. 19 - p. 25, l. 7. McIntosh puts Shawn’s age at thirty something and “a little bit heavier,” than Defendant. Would only concede Shawn was “bigger” than Defendant. ROA p. 25, l. 11-25.

He concedes Defendant was 20 something years older than Shawn, and admitted that Tammy said she hit Defendant several times in the eye with her fist. Then he reported these blows only took place after Defendant kicked Tammy. ROA p. 26, ll. 1-17. McIntosh testified that Tammy was in her thirties about the size of Defendant. ROA p. 26, ll. 18-25.

McIntosh admits being aware that Tammy had military experience. He declined to describe her as muscular. He did described Tammy as 5’6” to 5’ 7” tall, 175 to 180 lbs and not fat or obese. ROA p. 27, ll. 1-22.

It is apparent from McIntosh’s testimony that he viewed everything from the perspective of believing Tammy’s version of the facts. He minimizes Defendant’s injuries and says he can’t recall her telling him she couldn’t even see out of her left eye or her needing medical attention for her eye. ROA p. 27, l. 23 -p. 30, l. 9.

A review of Appellant’s photographs from after this beating verifies the severity of the beating she received obvious. These photographs were introduced at the trial that followed the immunity hearing, although it appears the Court had access to them during the hearing. When McIntosh was asked when was the last time he listened to the tape

(Defendant's interview) he indicated that he did not remember but stated, "we listened to it ---it's been a while, but we listened to it." ROA p. 30, ll. 10-12. McIntosh was questioned about the fact that Tammy claimed to have been attacked with a decorative sword and cut on her arm. McIntosh testified, "She did mention something about a decorative sword, yes." He acknowledged that they did not take any swords into evidence. It was his testimony that he could not remember whether he saw any at the scene. Curiously, he noted, "If they were there, we probably did." He then indicated that SLED took pictures at the scene. ROA p. 32, l. 11 - p. 33, l. 2. **The transcript indicates that during McIntosh's testimony, Part I of Appellant's interview by law enforcement played for judge but not transcribed.<sup>5</sup> ROA p. 34, ll. 12-20. The CDs of this interview were later introduced as State's Ex. No. 9 at Appellant's trial. ROA p. 244 marked for ID and ROA p. 478 admitted into evidence. The content of these recordings, although published in open court, were not "taken down" by the Court Reporter and have not been transcribed as a part of the available record of either proceeding.**

McIntosh acknowledges that there were spots all over Defendant's shirt. He says it was blood, but admits it was never tested to see if it matched Defendant or someone else on the scene at the time of this incident. ROA p. 36, ll. 15-23.

McIntosh testified to the presence of blood in the residence where the physical altercation took place. Blood drops in the hall. Acknowledges that they could have asked for testing, but didn't. He stated that "SLED didn't require it." ROA p. 36, l. 24 -p. 37, l. 15.

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<sup>5</sup> A subsequent amendment to this transcript by the Court Reporter confirmed that both parts were in fact played for the Court.

## **MICHAEL BENJAMIN BLACKMON**

This witness was also an Officer with the Sheriff's Office in Laurens County. He arrived after McIntosh. McIntosh was lead investigator on call that evening. In addition to the individuals mentioned by McIntosh in his testimony, Blackmon says someone from their unit named Lt. Glasgow was at the scene. ROA p. 38, ll. 1-25. This witness spoke with Staley and Tammy and testified that he was told Defendant has some sort of altercation with the "victim" and Defendant had shot her.

When Defense Counsel Varner asks to see the witness's notes, Blackmon hands them over and says the Solicitor's Office was given a copy of case file, but he didn't personally turn it or anything over to Defense Counsel because it wasn't his case. ROA p. 39, ll. 12-14 - p. 40, ll. 10-12. Blackmon says he interviewed Defendant on tape and wrote out her statement for her. He obtained copies of 911 tapes. He never went inside residence. He says McIntosh interviewed Tammy, but he "believes" she wrote her statement herself. He witnessed it. Straley was interviewed and his statement was taken by another officer, Lt. Shelton. ROA p. 40, l. 16 - p. 41, l. 21. When asked what forensic or chemical testing was done or DNA testing, he once again referenced his notes and then said, with written consent, buccal swabs were taken from Defendant and Straley. ROA p. 41, l. 25 -p. 42, l. 11.

## **TAMMY JO MORRIGAN**

Tammy testified that the deceased, Shawn Faye Morrigan, was married to her. She then clarified that they were not legally married in any state that would recognize their marriage. She didn't take Shawn's last name, they picked a last name and both had their names changed in Atlanta. ROA p. 42, l. 18 - p. 43, l. 17. She had met Shawn on line. They had known each other for a year and a half when Shawn died. Tammy stated that she

had bachelor's degrees in math and computer science and a master's degree in finance. According to her testimony, she was in military for four years, was honorably discharged and was an air traffic controller not a drill sergeant in the Army. ROA p. 43, l. 18 - p. 45, l. 5. She admits in her testimony that she is trained in hand-to-hand combat, but noted that she doesn't do weight lifting because her ankles are fused and do not move. ROA p. 45, ll. 6-23.

Tammy testified that when she and Shawn came to her father's home in June, 2011, it was their original intent to stay just a few days. They had been traveling around the country. They had stayed with her sister for a few days, but said for the most part they had been camping since they left Atlanta, April 1, 2011. They stayed longer because her father, who was in the middle of chemotherapy, asked them to. At the time of the trial, Tammy was 48 years old. Shawn was a nurse and was 37 years old when she died. ROA p. 45, l. 24 - p. 48, l. 21. She stated her belief that Defendant was guilty of murder and other charges. Declared a hostile witness without objection from the State. ROA p. 48, l. 22 - p. 49, l. 10. Tammy denied telling Defendant that she and Shawn had burned up a car, a 2007 Volvo titled in Shawn's name, in order to get "out from under it." Acknowledged that they did file an insurance claim on the car. The loan was apparently in Tammy's name. Her actual testimony was, "I held the loan on it." ROA p. 49, l. 12 - p. 50, l. 23.

Tammy also denied Appellant had arguments over Shawn and her smoking pot. Says pot was in fact procured for her father from Defendant's son. Father was losing weight rapidly and had no appetite due to cancer. She did not, however, deny that she and Shawn were smoking in the house, but said happened very rarely. ROA p. 50, l. 24 - p. 51, l. 16. She claimed that there had been no argument about them staying up all night and disturbing her father. ROA p. 51, ll. 17-22. She also claimed they contributed to the household while they

were there both by buying food and helping her father do work around the farm. ROA p. 51, l. 23 - p. 52, l. 6.

Appellant attempted to question Tammy about her knowledge concerning Shawn stealing medical supplies at the doctor's offices. State objects on grounds of relevance. Judge did not clearly rule, but Defense Counsel moved on. ROA p. 52, l. 7 - p. 53, l. 23.

Tammy testified that the night before Shawn died, Appellant and her father talked to her because of their concerns about her relationship with Shawn. They were afraid all that Shawn was interested in was her money. Tammy testified that this was ridiculous because Shawn had access to all her money and had for a year and a half before then. Significantly, she acknowledged that she told Shawn all about this conversation. The next morning the two of them left the house, before Appellant and her father because they went car shopping. They came back in the late afternoon. ROA p. 53, l. 25 - p. 55, l. 2. Tammy recalled that her father and Appellant came home just before it got completely dark. They had purchased a weed-eater. She and her father went outside, gassed up the weed-eater, and she worked on weeds for about 15-20 minutes. She quit when it got completely dark. When she came in the house, Shawn was in the kitchen and came toward her crying. She testified that Shawn said she just couldn't take "their negativity" any more and wanted them to leave. She stated that she had agreed to leave. ROA p. 55, l. 3 - p. 56, l. 13. Tammy claimed her father tried to get them to stay and sleep on it, but stated that Appellant was screaming for her father to tell them to get out. They were packing up and they had taken a load out to the car. Next she heard Shawn yell that Appellant was throwing their stuff out the door. ROA p. 56, l. 15, - p. 57, l. 2. Tammy said that Shawn took off back into the home. Tammy said she wasn't as fast as Shawn and by the time she got back inside Appellant had Shawn pinned on the

floor with both hands in her hair and she couldn't move. ROA p. 57, ll. 1-6.

Tammy claimed Shawn was on her back. She said Defendant was behind her with Shawn's hair in her hands. She admits she didn't see it, but said it "looked like" Appellant had come up behind her and pulled her down by the hair. Tammy claimed she dropped to her knees, and was trying to get Appellant off Shawn when father came in and screamed for her to get off Appellant. She testified that she put her hands in the air, and when she did, Appellant kicked her. According to her testimony, that is when she punched Defendant three times in the eye. ROA p. 58, l. 12 - p. 60, l. 8. Tammy claimed that she had no idea how Appellant's right eye so badly blackened or how she got a broken nose. She stated that when Appellant let go of Shawn, she was trying to get her up, when Appellant disappeared into the bedroom. Tammy recalled that her father's feeding tube had gotten pulled out. He was at kitchen sink trying to get, she assumed, his bleeding to stop. Tammy's testimony denies that her father broke up the altercation. She testified that her father was a coward and said he had been a coward his whole life. In her hearing testimony she makes the comment that after she took gun away from Defendant she had to yell for father to "come into kitchen and take it." She stated that was after Appellant shot Shawn and tried to shoot her too. ROA p. 60, l. 9 - p. 61, l. 2.

Tammy testified that it took her a couple minutes to get Shawn off the floor. She said that Shawn had a couple herniated disks and was hurting badly from the altercation. "Somebody yelled" and she turned around to see Appellant with a gun. According to her, Appellant pointed it and then moved her hand to the side and pulled the trigger. Next, Appellant brought gun back around toward her face. Tammy testified that she could see Appellant pulling the trigger, so she grabbed the gun and Appellant shot into the ceiling.

ROA p. 62, l. 2 - p. 63, l. 18.

Tammy claimed that as her father was coming in, Appellant grabbed fancy walking stick with long knife in it. She testified Appellant was trying to stab her with it. It was her testimony that her father came and took it away from Appellant. ROA p. 64, l. 20 - p. 65, l. 8. She claimed she got “a couple of small cuts from it. She didn’t quite get it all the way out.” ROA p. 66, l. 1-6. Admits she didn’t tell police about it when she was questioned at the scene. She told police about the knife later when she was giving her statement.

ROA p. 66, ll. 7-16. Tammy testified that it took a long time before “they” called 911. She stated that she could hear Appellant and her father in there discussing what they were going to tell the police. Claims to have heard her father tell Appellant “we better get down what we’re gonna tell the police.” Says police took no pictures of her cuts or stab marks. Tammy testified that police supposedly called ambulance for the concussion from when Defendant kicked her in the head. She claimed EMS told her she should probably go to the hospital, but police said they would rather her give her statement first and then go. She could not, however, remember what police officer said she needed to give a statement before going to the hospital. ROA p. 66, l. 17 - p. 68, l. 13. There was no testimony about her even going to a hospital at a later date or any other basis for the claim of a concussion.

On cross-examination, Tammy testified that she never heard Shawn threaten Appellant. She testified that Shawn didn’t believe in violence. She claimed she didn’t hit Appellant until after Appellant kicked her. She states that once Appellant let go of her hair, Shawn never hit her again. Tammy testified that they had been living there 6-8 weeks, but had been asked to leave. She asserted that from the time they were asked to go, they were doing everything they could to get out as quickly as they could. She claimed they would

have left if altercation hadn't happened. ROA p. 69, l. 12 - p. 75, l. 10.

Tammy claimed she can walk fine on even surfaces, but can't walk on uneven surfaces and can't run. ROA p. 75, ll. 14- 21.

During hearing an issue was raised concerning Straley's deposition in a wrongful death case brought by Shawn's family against Appellant. The law suit involved Appellant's home owner's insurance. Law suit did not involve Appellant's criminal lawyers who were not involved in the civil litigation. Straley died 6-7 months later after deposition. Defense Counsel found out about it later from civil defense lawyer, Warren Mowery. After a brief recess, the Court allowed deposition in for the hearing; but said would not necessarily allow in trial. Allowed initially for the Castle hearing only. ROA p. 78, l. 25 - p. 85, l. 9.

#### **KATHY LEONARD REVAN**

Appellant's testimony reveals that she was 58 years old and resided at 315 Revan Drive. She had lived there for around forty years. Appellant revealed that she suffered from numerous medical problems which serious impacted her health. According to her testimony, she has COPD. She indicated that she has ten lesions on her brain, nine of which circle her brain and the other one is on her hypothalamus. She indicated that these lesions could be scar tissue or growths. She indicated that she has word-finding problems. Appellant testified that she is unsteady when she walks and falls a lot. Also has an adrenal gland insufficiency. She is extremely tired, suffers from dizziness and feels like she is "gonna pass out a lot". Says fatigue is caused by her pituitary gland being too small. ROA p. 86, l. 22 - p. 89, l. 14. Appellant testified that she always has steroids on hand to take to keep her blood pressure up if she gets really ill or she has any kind of trauma. If her blood pressure drops it could kill her. She stated that she usually has to take the steroids a couple times a year. ROA p. 89, l.

15 - p. 90, l. 3. Appellant testified that she also has degenerative disk disease. She has had lower back surgery. In 2003 she was in a car wreck and broke her neck. Her left arm has been weaker ever since that accident. Appellant testified she is on pain meds daily. She takes valium for muscle spasms. Her doctor's recommend she not be up more than an hour without being able to lie down. ROA p. 90, ll. 6-20. Appellant testified that she is in constant pain since 1998 when she ruptured a disk in her back. She wears a special brace if she is going to be up for a long time or expects to be lifting anything or stooping. ROA p. 90, l. 13 - p. 91, l. 13. Appellate also testified that she is diabetic. She stated that she is on oral medication for diabetes and takes Novolog insulin; usually about 3 shots a day. ROA p. 91, l. 14 - p. 92, l. 4.

In addition, Applicant testified that she suffers from Dupuytren's Contractures Disease. She testified that both her parents had this condition too. Her described how her feet draw "down flat" at night. She reported that her ring finger on left hand is drawing in a permanently disfigured state. She testified that this disease will eventually draw fingers into a fist. ROA p. 92, l. 5 - p. 93, l. 8. Appellant also has issue with her heart. She has tachycardia, PVC and a leaking mitral valve. She explained that this means that her heart beats too fast and that PVC means her heart is beating an extra beat. ROA p. 93, ll. 13-22. Appellant reported that she also suffers from fibromyalgia, which she indicated makes her feel sore and achy like she has the flu all the time. She testified that "weather changes make you sick, real sick" if you have this condition. ROA p. 93, l. 23 - p. 94, l. 6.

Appellant testified that she worked as a nurse for 15 years until she ruptured disk trying to keep a patient from falling. Her job was terminated and it took her three years to get on disability. Has been on Social Security Disability ever since. ROA p. 96, l. 2 - p. 98,

1. 2.

Appellant testified that she met Straley because he was step-grandfather to her granddaughter. They had known each other 10 years. After he and his wife split up, he started working for her fixing up trailer for her. He was ten years older than her. Sadly, in January, 2010, six or seven months after they got together, they found out he had stage 4 cancer. ROA p. 98, l. 5 - ROA p. 99, l. 24. She described their relationship by testifying that they took care of each other. ROA p. 100, l. 3 - p. 101, l. 5.

In October, 2010, Appellant had gone with him to see his three daughters in Pennsylvania. On that trip they also met woman Tammy was married to at that time, Janet Bond. They had Shawn once before at Appellant's house in Greer in the Spring of 2010. Tammy and Shawn were only there a few hours that trip and didn't stay that time. ROA p. 104, ll. 6-17. They had not seen any of them again June, 2011, when Tammy came with no advance warning. Tammy just called and said they needed directions to farm. Tammy stayed for 6 weeks. While she was there her daughter Amy came for a week and her daughter Kelly came another time for a weekend. In August, 2011 Straley was told he had been told he had a month and a half to live. ROA p. 101, l. 6 - p. 104, l. 25.

With regard to the incident that lead to Shawn's shooting, Appellant testified that after she told Tammy and Shawn to leave and they were taking their stuff out to the car, every time they would come by her they would deliberately hit the leg rest part of her recliner knowing her leg was in bad shape. They hit her chair at least four times, before she got up and decided to help get their stuff out of the house so they could go on and leave. ROA p. 123, l. 19 - p. 124, l. 24. She described Shawn as becoming enraged at her for touching their stuff. She "she took her body and knocked into me and when she did , I lost

my balance and I reached out to grab anything, as it happened, I grabbed her by the hair of the head...” ROA p. 125, ll. 1 - 15. After Shawn slammed into her, Appellant fell to the floor with Shawn on top of her. When they landed, she said she still had hold of Shawn’s hair in her left hand. ROA p. 126, ll. 2 - 13. Next Tammy came in and put her right knee in Appellant’s left breast, She then straddled Appellant and stepped on her right hand. She described how Tammy then began beating her in the face with her fists; striking her approximately 20 times. Appellant received a gash over her left eye and a broken nose. ROA p. 127, ll. 7 - 25. Appellant went into the bedroom she shared with Straley and splashed water on her face because she had blood flowing into both eyes. She could hear Tammy outside her room cursing at her Daddy. She expressly testified that she was afraid they were going to either, come in her room and jump on her again, or else they were going to jump on Straley. ROA p. 129, l. 3 - p. 130, l. 11. As she went to walk back out, she stopped and retrieved her pistol from under her mattress. ROA p. 130, ll. 12 - 15.

She stated that when she stepped back into the room, Tammy started advancing toward her. Appellant testified that she fired a shot towards the side as a warning shot. ROA p. 137, ll. 4-22. Appellant specifically testified that she fired across her body. Previously in her testimony she stated that her left eye was swollen shut and she only had peripheral vision in right eye. Next, Tammy came at her and tried to get gun, but Straley got it from her. As he was taking the gun away from her it went off a second time and that shot went into the ceiling. ROA p. 132, ll. 4-15; ROA p. 138, l. 13-25.

After Straley took gun away from her he took it to car and locked it up. Appellant says once Straley got the gun from her, he told Tammy to go check on Shawn because she was in bedroom screaming. Appellant said she didn’t know Shawn was hit until Tammy

came back and reported it. Straley called 911. Testifies that she was completely truthful in her interview by law enforcement and her statement. Clearly testifies she was in fear for her life at the time of this incident. ROA p. 139, l. 1 - p. 140, l. 23.

Appellant testified that there was no logical reason for Shawn to be over in left corner where she was when she got hit by warning shot. Appellant testified that she believed they were trying to jump her to “finish her off.”<sup>6</sup> ROA p. 140, l. 24 - p. 141, l. 22.

Appellant denied ever putting the gun in Tammy’s face. She testified that she wouldn’t have because she knew Tammy was trained in hand- to -hand combat. ROA p. 141, l. 23 - p. 142, l. 13.

On cross-examination, the State tried to get Appellant to say she wasn’t acting in self-defense, because her claim was actually accident. Appellant adhered to her position; she was defending against a violent crime being committed against her. She fired the warning shoot because she believed doing so would stop them from jumping her again. ROA p. 137, l. 19 - p. 138, l. 9; ROA p. 142, l. 21 - p. 145, l. 12. The State tried to get Appellant to identify a walking stick in a crime scene photo of her bedroom. Appellant says she has never seen it before. The State did not introduce the crime scene photo they tried to get Appellant to identify walking stick in. Likewise, no such walking stick, or sword, was introduced into evidence by the prosecution. ROA p. 146, ll. 17-19. A review of that photograph, eventually admitted into evidence at trial as *State’s Ex. No. 23*, reveals that it only shows a portion of what appears to be a small brown object. It does not show a sword or walking stick as suggested. ROA p. 145, l. 11 - p. 146, l. 3. During this hearing, Appellant was shown her booking photo. That photograph was admitted as *State’s Ex. No. 2* for ID only,

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<sup>6</sup> Crime scene photographs show damage to the door jam of the bedroom low toward bottom of jam. *State’s Exhibits No. 14 and 15* from the trial.

without objection. ROA p. 146, l. 4-17.

**EVAN BRAMHALL, ESQUIRE**

WITNESS SWORN TO READ ACCURATELY TRANSCRIPT OF LYNN STRALEY'S DEPOSIT.

Only a portion of the deposition was published to the Court. The reading began at Page 21, l. 1 of Deposition. ROA p. 248

Straley's sworn deposition confirmed that while Tammy was outside, Shawn was arguing with Appellant. He described argument as completely verbal until Tammy came in from weed eating outside. According to Straley, that is when argument got worse and Appellant told them to get their stuff and leave. Every time they would pass Appellant in her recliner they were knocking her. He stated it was obviously deliberate; especially after doing it multiple times. ROA p. 148, l. 1 - p. 151, l. 11.

Straley recalled Appellant saying she was going to help them because "I can't take this anymore." Shawn was on the way out of bedroom and purposefully bumped Appellant with her hip and threw her off balance. ROA p. 152, l. 3. Straley stated that it was apparent it was deliberate. He described seeing Appellant grab Shawn's hair, which was fairly long, to regain balance and watching them fall to the ground. He stated that Appellant ended up on the bottom on her back, possibly leaning toward one side "a little bit." ROA p. 153, ll. 1-25. Straley said Shawn was on top of Appellant but not facing her. Described Shawn as kind of on her side on top of Appellant. ROA p. 154, ll. 3-11. He further described Shawn scratching at Appellant on her legs, thigh and stomach. He said when Tammy came in she jumped in on it. ROA p. 154, ll. 13-16.

Straley says when Tammy came in , Appellant had her left hand holding Shawn's

hair. Tammy put her left foot on Appellant's right hand and her right knee in Appellant's chest and began beating her with her fist in "her upper head" area. Shawn was screaming "let me go." He stated that Appellant wasn't saying anything because she was "getting the hell beat out of her." ROA p. 154, l. 18 - p. 155, l. 25. Straley said he got Tammy to quit beating Appellant. In the process, his feeding tube got ripped out, he thinks by Shawn, but apparently was not certain. Tammy let Appellant up. Appellant was bleeding out of her nose and mouth. "Her eye is swelled up." He took Appellant to bathroom and handed her a washcloth from somewhere, either towel bar or sink. He walked out of bedroom into kitchen three feet away. ROA p. 157, l. 13 - p. 158, l. 17. He described Appellant's eye as in "not too good a shape." ROA p. 158, l. 8. Straley said he had gone in the kitchen getting ice in zip lock for Appellant's eye. Says Tammy and Shawn had gone back into the bedroom. Says he didn't know it, but Appellant must have come out right behind him. ROA p. 158, l. 8 - ROA p. 159, l. 3

Straley recalled hearing his daughter, Tammy say "are you crazy". Appellant was standing in doorway, between dining area and kitchen, with gun in her right hand. He made a dive for Appellant to grab the gun, Tammy made a dive for it at the same time. The gun was in Appellant's right hand pointed across her body pointed towards the floor in area where their bedroom came into living room. Shawn was coming out of bedroom into living room. He and Tammy were both about 4 feet away and grabbed at Appellant from different directions. He believed the gun "didn't go off until after we got to her." ROA p. 159, l. 1 - p. 162, l. 6. He was trying to grab her right arm. Didn't get to her arm until after first shot. Then he and Tammy had her right arm and gun went off a second time into dining room ceiling. Straley then took gun from her. He clearly stated that the gun was pointed at the

floor when he first saw Appellant with it. Straley said he didn't know whether he had hold of Appellant before first shot fired. "I thought it was at the time down." At first he didn't know Shawn was hit. ROA p. 162, l. 3 - p. 163, l. 23.

He says he took gun and hid it under a cushion in a chair. ROA p. 164, ll. 4-7. Says he wrenched gun out of her hand. Says "she must have let go of it" after the shot into the ceiling.<sup>7</sup> ROA p. 164, l. 8-19. Straley recalled that Shawn was the first to say anything; said "she shot me." Tammy yelled to call 911, and he did while Tammy to help Shawn in the bedroom. ROA p. 165, ll. 1-10.

In a portion of this deposition testimony Straley says something about while he was on phone with 911 they said something about not being able to "find us". He stated that Tammy was pressing towels on Shawn's leg. Appellant was in bedroom had medication she was supposed to take in the event of trauma. A policeman finally got there and Straley told him "you've got to get an ambulance here now." ROA p. 165, l. 19 - p. 168, l. 17.

The hearing Judge had the entire deposition marked as Court's Exhibit No. 1. Defense Counsel moved it into evidence, but Court says only portion read into record will be in evidence. They had started on page 21. State asks that previous page be read in as well. Previous page, which would be pg. 20, read into record beginning at line 11.

ROA p. 168, l. 20 - p. 170, l. 5.<sup>8</sup>

#### **LYNN STRALEY'S WRITTEN STATEMENT TO POLICE.**

When the subject of Straley written statement to law enforcement comes up, the Court says "why can't you just read it? If y'all stipulate it's coming in. ROA p. 171, ll. 1-2.

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<sup>7</sup> Earlier testimony indicated that he said he took the gun and locked it in the car.

<sup>8</sup> Entire deposition marked as Court's Ex. 1 No portion of it marked and introduced as Defendant's Ex. See Index No objection on the record despite fact that Defense Counsel had asked for it to be a Defense Exhibit.

State's Ex. No. 3 for ID. The State says, "That's fine with me, judge, *instead* of having somebody read it." ROA p. 171, ll. 3-4. Next, Defense Counsel indicates no objection stating "that's fine, Your Honor." ROA p. 171, l. 5. Inexplicably, the statement is then marked State's Ex. No. 3 for ID and no one reads it into record. ROA p. 171, ll. 6-12.

McIntosh had previously summarized from memory, what Straley said that night. That Summary was only six lines long. That summary could not have covered everything in the statement. ROA p. 19, ll. 4-10.

### **STATE'S REBUTTAL TO IMMUNITY ARGUMENTS.**

State cites to *State v. James Curry*, , 406 S.C.364, 752 S.E.2d 263 (2013), for the proposition that the presumption of fear doesn't apply when Victim is an invitee with equal right to be there. ROA p. 180, l. 24 - p. 184, l.10.

### **DISCUSSION**

The review of a claim of immunity under the Act requires a pre-trial determination applying a preponderance of the evidence standard. On appeal such rulings are reviewed under and abuse of discretion standard of review. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). Our Supreme Court has found that, "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining defendant's entitlement to the Act's immunity. This includes all the elements of self-defense, save the duty to retreat." *State v. Curry*, 406 S.C.364, 371, 752 S.E.2d 263, 266 (2013). In *State v. Grantham*, 224 S.C. 41, 45, 77 S.E.2d 291, 292 (1953), our Supreme Court found that the Castle Doctrine is "predicated on the absence of aggression or fault on the defendant's part in bringing on the difficulty..." The immunity provided by the Act, "is predicated on an accused demonstrating

the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.” *State v. Curry*, 406 S.C.364, 372, 752 S.E.2d 263, 267 (2013). The State argued *Curry, supra*, for the proposition that Appellant was not entitled to the presumption of reasonable fear of imminent peril of death or great bodily injury found in §16-11-440(A) where Shawn was a person with an equal right to be in the dwelling or residence . S.C. Code Ann. §16-11-440(B). ROA p. 180, l. 24 - p. 184, l. 10. This analysis overlooks the fact that Tammy and Shawn had been told to get out of the residence. Their status as guests had been terminated. By Tammy’s own admission she had loaded their bags in the car. While §16-11-440(B) may deprive a homeowner from claiming the benefit of the presumption of reasonable fear, it would not have applied to the facts of this case where both Tammy and Shawn had been told to leave the premise. Furthermore, as emphasized in *Curry*, under the common law Castle Doctrine, the absence of a duty to retreat “does not extent to a visitor or social guest in the home of another unless ‘the attacker in an intruder.’ *Curry*, 406 S.C at 374, 752 S.E2d at 267-268., citing *State v. Brown*, 321 S.C. 184, 467 S.E.2d 922 (1996).

Interestingly, the State also argued that Appellant wasn’t really claiming self-defense where she said she fired a warning shot that hit the victim. It was the State’s position that Appellant was advancing a claim of accident and not self-defense. This argument fails for a very simply reason, Appellant did not claim she accidentally discharged the firearm. She firmly asserted that she deliberately fired a warning shot, not aiming at anyone, with the intent warn her attackers away from either jumping on her again, or jumping on her partner, Straley. She was in her room when she heard Tammy angrily cursing at her father. She stated quite plainly that she was afraid they would either, come in her room and resume beating her, or, attack Straley. The record demonstrated that Straley was in fact gravely ill

and physically vulnerable. Appellant would respectfully argue that it makes no common sense, much less sound legal analysis, to claim that a death or injury inadvertently flowing from a warning shot, would not fall with the protections of the Act, particularly where the victim was in fact one of Appellant's attackers.

Fortunately for Appellant, the trial judge did not deny immunity on the ground that Appellant was asserting accident instead of self-defense. The express ruling of the Court is limited to the finding that Appellant was no longer in imminent danger once the physical altercation had been broken up. Appellant most respectfully submits that this finding constituted an abuse of discretion. First, Appellant would respectfully note that the operative question is whether a reasonably prudent person, of ordinary firmness and courage would have entertained the belief that they were in imminent danger, not whether she actually was. *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). The trial court did not ever expressly find that Appellant was not entitled to the presumption of reasonable fear found in §16-11-440(A) due to the fact that Tammy and Shawn had been guests before this incident. As previously argued, Appellant believes that where everyone, including Tammy, acknowledged that they had been told to get out of the residence well before the shooting, §16-11-440(B) would not apply. Assuming, arguendo, that Appellant was not entitled to the presumption of reasonable fear, Appellant asserts that the evidence and testimony from this immunity hearing establishes by the preponderance of the evidence that she had a reasonable fear that either she, or her companion Straley, were in peril of grave bodily injury or death. Appellant heard Tammy screaming and cursing at him. Appellant's fear that Tammy, or Shawn, or both women might come after her in the bedroom was not irrational on the facts of this case. Straley was greatly debilitated with stage 4 cancer.

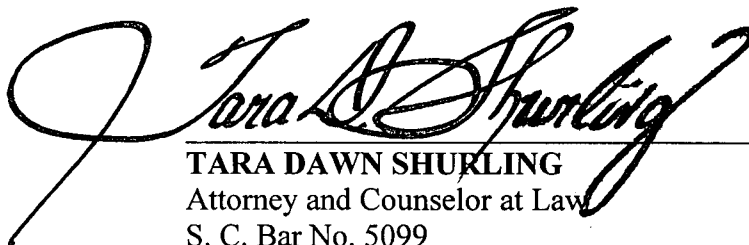
Tammy had just inflicted a serious beating on Appellant and she had every reason to fear that Tammy might lash out at Straley next, particularly since he had by that point backed Appellant's wishes up and told them they needed to get out of Appellant's home. Appellant had no duty to retreat from her own home, nor should she have been expected to remain in her room in fear when she had a reasonable fear that Straley was also in danger. To summarize, Appellant bore no fault in bringing about the incident that led to Shawn's death. Angry and resentful about being asked to leave Appellant's home, Shawn and Tammy had been physically assaulting Appellant at first by hitting the foot rest to her chair and deliberately causing her pain, and subsequently, when Shawn body slammed Appellant causing her to lose her balance. There was no evidence that Appellant laid a hand on Shawn until after she slammed into her and caused her to lose her balance. It is Appellant's position that she grabbed Shawn's hair in a bid to grab hold of something to regain her balance. In actuality, even if she had grabbed her hair on purpose, it certainly would not have justified the beating Tammy inflicted on Appellant; a woman two decades her junior with a long list of medical problems. The unprovoked attack on Appellant physically by Shawn, and the ferocity of the beating Appellant subsequently received from Tammy, more than gave rise to a reasonable fear of peril. Likewise, given Tammy's hot headed and violent actions toward Appellant, and her aggressive verbal attack on her father, Appellant had every reason to believe Straley was in peril as well. After all, father and daughter did not have a long history of closeness, having only recently reconnected after years of estrangement, and Straley was near death from stage 4 cancer. Appellant had already seen Straley's feeding tube ripped out while he was attempting to rescue her from Tammy. The trial court erred in failing to grant Appellant immunity from prosecution where she demonstrated that she met the elements of

self defense by the preponderance of the evidence.

## CONCLUSION

Based upon all the forgoing reasons and authorities Appellant asserts that the trial court abused its discretion in failing to find that she was entitled to immunity under the Act. Appellant seeks the ruling of this Court that immunity should have been granted on the facts of this case. Had Appellant been granted immunity under the Act, she could not have been prosecuted for the crimes for which she went to trial. Therefore, Appellant asks that her convictions and sentences be vacated.

Respectfully submitted,



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ATTORNEY FOR APPELLANT

This 20<sup>th</sup> day of July, 2016.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED  
JUL 20 2016  
SC Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of General Sessions

The Honorable Eugene C. Griffith, Circuit Court Judge

Appellate Case No. 2014-000161

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

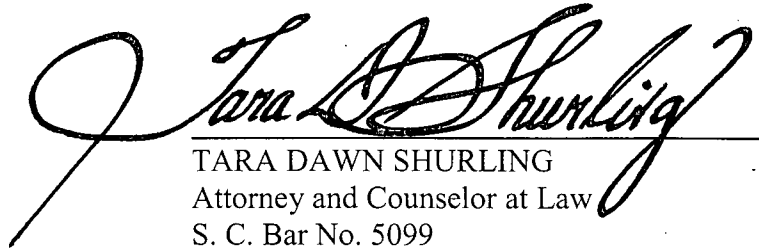
v.

KATHY LEONARD REVAN,

APPELLANT.

**CERTIFICATE OF COUNSEL**

The undersigned attorney hereby certifies that certificate that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.



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July 20, 2016

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of General Sessions

The Honorable Eugene C. Griffith, Circuit Court Judge

Appellate Case No. 2014-000161

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THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

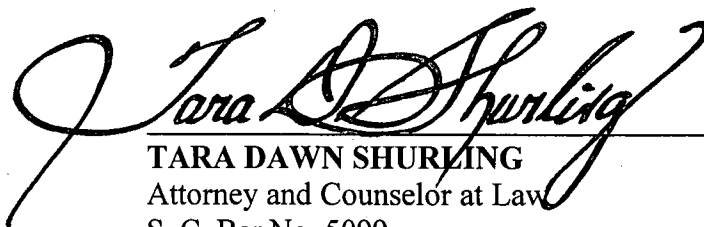
KATHY LEONARD REVAN,

APPELLANT.

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a copy of the Final Brief in the above-entitled case has been served upon opposing counsel by depositing in the U.S. Mail, postage prepaid, this 20<sup>th</sup> day of July, 2016, addressed as follows:

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SWORN TO BEFORE me this 20<sup>th</sup> day  
of July, 2016.

Sharon H. McCallister (L.S.)  
Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017