

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

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

Case No. 2016-GS-38-0731
Warrant No. 2016A38107001253

RECEIVED

OCT 17 2016

S.C. SUPREME COURT

The State,

Appellant,

v.


Charles Thomas Riley

Respondent.

NOTICE OF APPEAL

The State hereby appeals the ruling by the Honorable Carmen T. Mullen granting immunity to the respondent following a Duncan hearing held on September 19, 2016 and final order filed on October 4, 2016. Due to one of the principal issues on appeal being the constitutionality of §16-11-410, *et seq.* of the S.C. Code (2006) this appeal is made directly to The Supreme Court of South Carolina pursuant to Rule 203(d)(1)(A)(ii), SCACR.

October 12, 2016
[Notice sent via U.S. Mail on this date]


Ashley B. Cornwell
Assistant Solicitor, First Judicial Circuit
P.O. Box 1525
Orangeburg, South Carolina 29116
(803) 533-6252
Attorney for Appellant

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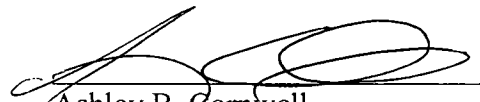
Charles Thomas Riley

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent, Charles Thomas Riley, by personally depositing a copy on October 12, 2016, to her attorney of record: C. Bradley Hutto, 1281 Russell Street, Orangeburg, South Carolina 29115.

October 12, 2016
[Notice sent via U.S. Mail on this date]


Ashley B. Cornwell
Assistant Solicitor, First Judicial Circuit
P.O. Box 1525
Orangeburg, South Carolina 29116
(803) 533-6252
Attorney for Appellant

Other Counsel of Record:
Mr. C. Bradley Hutto
Williams & Williams Attorneys at Law
1281 Russell Street
Orangeburg, South Carolina 29115
(803) 534-5218
Attorney for Respondent

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	1ST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG)	
)	INDICT. NOS.:
STATE OF SOUTH CAROLINA)	2016-GS-38-1070080 Murder
)	2016-GS-38-10700123 PWDVC
)	
vs.)	ORDER GRANTING IMMUNITY FROM
)	PROSECUTION
CHARLES RILEY,)	
)	
Defendant.)	
_____)	

The Defendant Charles Riley (Defendant) is charged with the murder of Lee Edward Green (Green) and possession of a weapon during the commission of a violent crime. These charges arose out of a shooting incident at Defendant's home on January 30, 2016.

This matter is before the Court on the Defendant's Motion for Immunity from Prosecution pursuant to the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410, *et seq.* and the common law Castle Doctrine. For the reasons set forth herein, the Defendant's motion for immunity is granted and the criminal charges against Defendant are dismissed.

The intended purpose of the Protection of Person's and Property Act (the "Act") is to codify the common law Castle Doctrine, "which recognizes that a person's home is his castle." S.C. Code Ann. § 16-11-420(A). The Act goes on to state, "[t]he General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution . . . for acting in defense of themselves and others." S.C. Code Ann. § 16-11-420(B). Further, the Act provides "persons . . . have a right to expect to remain unmolested and safe within their homes . . ." and "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.” S.C. Code Ann. §§16-11-420(D), (E). An individual “who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer . . .” S.C. Code Ann. 16-11-450(A). In other words, section 16-11-450 provides immunity from prosecution when an individual is found to be justified in using deadly force under the Act. *See State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). To be immune from prosecution, the Defendant must prove, by a preponderance of the evidence, his actions fall within the scope of the Act. *See State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 655 (2011).

Here, Defendant claims protection under section 16-11-440(A) and section 16-11-440(C) of the Act. Under subsection (A):

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

- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A). Subsection (C), referred to as the “stand your ground provision,” provides:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but

not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person

S.C. Code Ann. § 16-11-440(C). In other words, the “stand your ground” provision deals with the use of force by a person who is attacked in another place where he has a right to be. *Curry*, 406 S.C. at 370, 752 S.E.2d 266. “[A] valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity. This includes all elements of self-defense, save the duty to retreat.”¹ *Curry*, 406 S.C. at 371, 752 S.E.2d at 266.

This Court finds Defendant is entitled to immunity under the “stand your ground” protections of section 16-11-440(C).

The Defendant has met the burden of proving he was in reasonable fear of death or great bodily injury to himself or another person at the time he shot Green. The Defendant was not engaged in an unlawful act when the incident occurred and he was attacked in a place where he

¹ The four elements required to establish self-defense are as follows:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

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

had a right to be. *See State v. Jones*, 416 S.C. 283, 295, 786 S.E.2d 132, 138 (2016) (finding “another place” as stated in subsection (C) encompasses a person’s residence); *State v. Wiggins*, 330 S.C. 538, 548 n.15, 500 S.E.2d 489, 494 n.15 (1998) (noting the Court follows the general rule that the absence of a duty to retreat also extends to the curtilage of a home). Further, Defendant satisfies the requisite elements of self- defense. *See Curry*, 406 S.C. at 371, 752 S.E.2d at 266 (stating the elements of self-defense, save the duty to retreat, must be established in order to receive immunity under section 16-11-440(C) of the Act).

At the time the incident occurred, Green came on to Defendant’s property uninvited, initiated a verbal and physical altercation with Smith—a friend and guest of Defendant’s, refused to leave Defendant’s property when asked several times by Defendant and his wife, and threatened Defendant; thus, the Defendant was without fault in bringing about the difficulty. *See Davis*, 282 at 46, 317 S.E.2d at 453. Defendant actually believed he was in imminent danger of losing his life or sustaining great bodily injury—Defendant had been beaten by Green in the past; Green threatened Defendant when he demanded that Green get off his property; and Defendant believed he saw Green reaching for a gun after Green said “I’ve got something for you.” *Id.* Further, the Court finds a reasonably prudent person of ordinary “firmness and courage” would have entertained the same belief if in the position of the Defendant. *Id.* Therefore, Defendant had no duty to retreat from Green, and Defendant was justified in using deadly force because he believed such force was necessary to prevent death or great bodily injury to himself. Immediately following the incident, Defendant put down the shotgun, walked into his home and called 911 to report the incident. Defendant cooperated with law enforcement, made no attempt to conceal any evidence, did not request an attorney, and voluntarily gave both video and written statements to law enforcement.

After reviewing the testimony and evidence presented at the Hearing, and after considering the Parties' arguments and the relevant case law, it is THEREFORE ADJUGED, ORDERED, AND DECREED that Defendant Charles Riley is entitled to immunity from prosecution in this case pursuant to S.C. Code Ann. § 16-11-440(C). The charges against Charles Riley are hereby dismissed.

IT IS SO ORDERED.

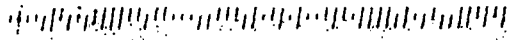


Carmen T. Mullen

Judge, First Judicial Circuit

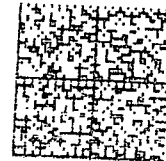
~~September 29, 2016~~

Oct 4

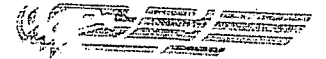


The State of South Carolina

OFFICE OF SOLICITOR
FIRST JUDICIAL CIRCUIT
P.O. BOX 1525
ORANGEBURG, S.C. 29116-1525



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The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211