STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffin, Circuit Court Judge

Appellate Case No. 2017-000549

THE STATE,

RESPONDENT,

v.

KATHY LEONARD REVAN,

PETITIONER.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I.

Did the lower court abuse its discretion in denying Petitioner's Motion for Immunity pursuant to the Protection of Persons and Property Act[1] where the testimony and evidence adduced during the hearing on Petitioner's claim of immunity pursuant to §16-11-440 clearly established that she was entitled to immunity?

[1] Hereafter, the Act.

STATEMENT OF THE CASE

Petitioner, 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 Petitioner 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 Petitioner 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)."

Petitioner 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 Petitioner served and filed a timely Notice of Appeal from his judgments and sentences. The South Carolina Court of Appeals subsequently affirmed Petitioner's judgments and sentences. *The State v. Kathy Leonard Revan*, 2016-UP-486 (S.C. Ct. App. Dated November 23, 2016). Petitioner filed her Petition for Rehearing, pursuant to Rule 221(a), SCACR, on December 8, 2016. Said petition was denied by Order filed February 1, 2017. She now ask that the Writ be granted, that this Honorable Court dispense with further briefing and vacate her judgments and sentences. In the alternative, she asks that the Writ be granted and that she be afforded the opportunity to more fully brief the issues summarized herein.

ARGUMENT AS ADVANCED IN THE S.C. COURT OF APPEALS

I.

The lower court abused its discretion in denying Petitioner's Motion for Immunity pursuant to the Protection of Persons and Property Act[2] where the testimony and evidence adduced during the hearing on Petitioner'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 Petitioner's General Sessions trial, she made a Motion for Immunity pursuant to the §16-11-440 of the Protection of Persons and Property Act. Petitioner 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 Petitioner'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[3], 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.

- 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.

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[2] Hereafter, the Act.
[3] Hereafter, Straley.

- 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[4] and Petitioner; approximately 100 pounds difference. ROA p. 11, l. 24.

- Not only was Petitioner 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. Petitioner fired a shot intended as a warning shot. It hit Shawn in the femoral artery and she died shortly thereafter.

TESTIMONY BELOW

Petitioner relies upon the detailed summary of the testimony presented during her immunity hearing as presented in the Final Brief of Petitioner at pp. 7-24.

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

[4] Hereafter, Shawn.

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 Petitioner 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 Petitioner 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 Petitioner was advancing a claim of accident and not self-defense. This argument fails for a very simply reason, Petitioner 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. Petitioner

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 Petitioner's attackers.

Fortunately for Petitioner, the trial judge did not deny immunity on the ground that Petitioner was asserting accident instead of self-defense. The express ruling of the Court is limited to the finding that Petitioner was no longer in imminent danger once the physical altercation had been broken up. Petitioner most respectfully submits that this finding constituted an abuse of discretion. First, Petitioner 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 Petitioner 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, Petitioner 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 Petitioner was not entitled to the presumption of reasonable fear, Petitioner 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. Petitioner heard Tammy screaming and cursing at him. Petitioner'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 Petitioner and she had every reason to fear that Tammy might lash out at Straley next, particularly since he had by that point backed Petitioner's wishes up and told them they needed to get out of Petitioner's home.

Petitioner 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, Petitioner bore no fault in bringing about the incident that lead to Shawn's death. Angry and resentful about being asked to leave Petitioner's home, Shawn and Tammy had been physically assaulting Petitioner at first by hitting the foot rest to her chair and deliberately causing her pain, and subsequently, when Shawn body slammed Petitioner causing her to lose her balance. There was no evidence that Petitioner laid a hand on Shawn until after she slammed into her and caused her to lose her balance. It is Petitioner'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 Petitioner; a women two decades her junior with a long list of medical problems. The unprovoked attack on Petitioner physically by Shawn, and the ferocity of the beating Petitioner subsequently received from Tammy, more than gave rise to a reasonable fear of peril. Likewise, given Tammy's hot headed and violent actions toward Petitioner, and her aggressive verbal attack on her father, Petitioner 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. Petitioner 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 Petitioner immunity from prosecution where she demonstrated that she met the elements of self defense by the preponderance of the evidence.

In Reply to Respondent's Brief , Petitioner submitted the following.

ISSUE PRESERVATION

Respondent argued that Petitioner had not preserved the legal assertion that she was entitled to the presumption of *"reasonable fear of imminent peril or death or great bodily injury*

to himself or another person." Brief of Respondent, p. 16-17. Petitioner noted that she had repeatedly testified that she was in fear for her life and that she, having already been badly beaten, was afraid they were going to come back after her. ROA p. 139, l. 1- p. 141, l. 22. She testified that while she was in her bedroom she could hear Tammy cursing at her father. Petitioner stated that she was afraid that they were going to either come in her room and jump on her again, or, that they were going to jump on Straley. Because of those fears, she armed herself before going back out of her bedroom. ROA p. 129, l. 3 - p. 130, l. 15.

Petitioner submitted that the Court had a duty to apply the appropriate law once she moved for immunity pursuant to the act. Respondent argued that Petitioner would not be entitled to the presumption because the facts in her case did not meet the requirements of S. C. Code Ann. § 16-11-440 (Supp. 2010), which Respondent acknowledged is the central provision of the act. Petitioner submitted that Respondent's analysis on the issue was both flawed and incomplete.

Respondent argued first that Petitioner's argument that she was entitled to the presumption that she had a reasonable fear of imminent peril under § 16-11-440 was not preserved for appellate review. Petitioner urged the Court of Appeals to rule to the contrary. Petitioner moved for immunity pursuant to the act. This was a hearing not a jury trial. The cases cited by Respondent on the question of issue preservation all dealt with jury trials in General Sessions Court. In *State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003), this Honorable Court dealt with a pre-trial Motion to Suppress which was argued at trial purely on the general authority of both State and Federal constitutional provisions. Specifically, this Court found that *Dunbar* had not argued that the search warrant, and its supporting affidavit, failed to comply with *state statutory requirements*. Id, 356 S.C. at 142-143, 587 S.E.2d at 694. In Petitioner's case she expressly argued that she was entitled to immunity under the act.

In *State v. Freiburger*, 366 S.C. 125, 620 S.E.2d 737 (2006) the Court found *Freiburger* failed to preserve his objection to the admissibility of a pawn shop receipt and other records that indicated he had purchased a revolver where he failed to enter a timely objection to their admission. In so ruling, this Court found the following,

> Freiburger next contends the trial court erred in admitting certain pawn shop records pursuant to the Ancient Documents rule and the Business Records Exception, claiming *135 they were not properly authenticated by the state. We find this issue is not adequately preserved for review, and the record is, in any event, insufficient to enable this Court to make an intelligent review.
>
> It appears Freiburger primarily objects to admission of the Capital Loan and Pawn receipt and records which indicate Freiburger purchased the H & R revolver on February 28, 1961. However, there is no objection to their admission during the testimony of Ms. Russ, the then 77 year old daughter of the pawn shop owner. In fact, certain exhibits were specifically entered without objection. To the extent that Freiburger did object, the objections came long after the documents had been received into evidence, most of which had been introduced into evidence without objection.

Id, 366 S.C. at 134-135, 620 S.E.2d at 742. Here, Petitioner's counsel argued at the outset of her immunity hearing that the presumption of fear of imminent serious bodily injury or death, as provided for in the act, would apply to Petitioner.

State v. Fleming, 254 S.C. 415, 175 S.E.2d 624 (1970), dealt with a challenge to the trial court's supplemental jury charge, in response to a jury question, in a case involving convictions for rape and assault and battery of a high and aggravated nature. In ruling that the appellate issues argued in *Fleming* were not preserved, this Court found that the errors argued on appeal had not been argued at trial. Specifically, the Court noted that at trial *Fleming* had argued that the trial court erred in recharging only *"on the single element of force"* as opposed to *recharging "the entire charge on the matter of rape and what constitutes rape."* As the Court ultimately found, on appeal *Fleming* argued two entirely different claims; trial court error *" (1) in failing to*

give a proper definition of force and justifiable fear, and (2) in his definition of force and fear he commented on the facts." For that reason, the issues argued on appeal in *Fleming* were found not to be *"preserved for consideration here by an appropriate exception ..."*. Id, 254 S.C. at 421, 175 S.E.2d at 627. In the case before the Court, Petitioner's lawyer moved for immunity under the act. While his arguments in support of that motion may not have been perfectly articulated, they nevertheless made out a claim for immunity under the act and specifically referenced her right to the presumption of fear of peril set forth in the act.

In this case, Petitioner made a Motion for Immunity pursuant to the Castle Doctrine. In arguing for a grant of immunity, Petitioner's counsel expressly addressed the ***"presumption of a reasonable fear of imminent peril"*** found in § 16-11-440. ROA p. 8, l. 6 - p. 9, l. 23. As set forth in detail in the Final Brief of Appellant, at the time of the shooting in this case, Petitioner had been badly beaten, and was facing continued jeopardy at the hands of two much younger women who not only outnumbered her, but also significantly outweighed her. One of these women was known to Petitioner to have been trained in hand to hand combat. These women had been asked to leave Petitioner's home. As she cleaned herself up after being savagely beaten, she heard Tammy cursing at her father who was dying of stage IV cancer. Petitioner testified that she feared these women were either going to *"come into my room and jump on me again or that they were going to jump on Lynn [Straley]."* ROA p. 130, ll. 1-11.[5] Photographs of Petitioner introduced during the immunity hearing illustrated her injuries. *See*, Defense Exhibits, No. 1-8. Thus, not only did Petitioner's counsel raise the presumption of reasonable fear of imminent peril, but Petitioner testified to her ongoing fear and presented evidence of the extent of her injuries prior to this shooting. Petitioner submits that this aspect of her argument was clearly preserved below. In addition, Petitioner would bring the Court's attention to the fact that

[5] State's Exhibits No. 33 and 33 B diagrams of the residence, were introduced during Petitioner's trial. Those exhibits document that there was no door to the outside in Petitioner's bedroom.

Respondent fails to even mention Petitioner's assertion that she was afraid not only for herself, but for her gravely ill companion who was dying from stage IV cancer. Thus, Petitioner not only asserted self-defense, but defense of others as well.

MERITS

Respondent argued that even if this issue is deemed preserved, Petitioner would not be entitled to the presumption because the Victims had a right to be in the residence as lawful residents of Petitioner's home within the meaning of § 16-11-440 (B) (Supp. 2010). Respondent's Brief, pgs. 17-18. In support of this position, Respondent states that, *"Petitioner herself acknowledged she gave permission for [Tammy] Morrigan and Victim* ***to stay at her house to visit Straley as long as possible before he died."*** Respondent's Final Brief, p. 1, para. 1, (emphasis added). The testimony referenced by Respondent actually stated, *"it was fine with me that they wanted to visit Lynn and I wanted him to have as much time with his children as he could before he died."* ROA p. 105, ll. 1-5. Thus, Petitioner did not extend the kind of open ended invitation argued by Respondent. Likewise, Respondent states that, *"Petitioner admitted she got up for her chair to help them carry things out, not to eject them."* Respondent's Final Brief, p. 18, para. 2. The exact testimony of Petitioner reflects that Straley's daughter and her girlfriend were taking a long time to pack their belongings and leave, after being told to leave. This prompted Petitioner to say, *"the hell with this, I'm going to help them carry it out ..."*. ROA p. 124, l. 1- p. 125, l. 8. While it is accurate that Petitioner testified that Straley attempted to get the two women to *"think it over and see how things are in the morning"*, that statement was made after the Victim confronted him and Petitioner about the conversation between Petitioner, Straley and Tammy during which they told Tammy they had concerns about Victim's motives for being involved with her. The record below reflects two important considerations on this point. The residence was owned by Petitioner and she and Straley were not a married couple.

Therefore, he had no legal authority to give these women permission to stay. More importantly, Petitioner's testimony confirms that *after* the verbal altercation, but *before* she was first physically assaulted, she told Tammy, *"it's time for you to get your s—t and get out of my d—n house."* ROA p. 121, l. 1- p. 122, l. 18. After Petitioner heard Straley urge his daughter to sleep on the decision to leave, Petitioner testified that she heard Tammy respond, *"no, they were gonna leave."* ROA p. 123, ll. -10. Petitioner therefore initially had reason to believe these two women were going to honor her demand that they leave notwithstanding any effort by Straley to change their minds. It was therefore, unnecessary for her to make an issue out of the fact that it was her residence and that Straley did not have the authority to override her demand for them to leave.

Petitioner's testimony reflected that after packing for approximately thirty (30) minutes, Tammy and Victim made multiple trips to their car with bags and that, in the process of doing so, they deliberately bumped the leg rest on her chair *"at least four"* times causing her pain. After Petitioner decided to help the women get their belongings to their car, she personally put two bags she found in the room they had been using outside. ROA p. 123, l. 11- p. 125, l. 15. The record therefore, clearly establishes that these guests had been firmly told to leave by the only person with the authority to give them permission to stay and that most, if not all, of their possessions had been packed and removed from the residence before the physical altercation began when the deceased *"took her body and knocked into"* Petitioner causing her to lose her balance. ROA p. 125, ll. 1-15. Therefore, Petitioner submitted that even if these women were entitled to adequate time to remove their belongings, that factor would be far outweighed by the fact that they had already removed most of their property from the residence and by the violent nature of their altercation with Petitioner. Petitioner submits that their right to pack and remove what little remained of their belongings certainly did not outweigh Petitioner's right to safety in

her own home.

Next Respondent argued that there was no evidence presented that the person against whom the deadly force was used was engaged in behavior hat would meet the requirements of § 16-11-440 (A)(1). Respondent's Final Brief , p. 18-19. Respondent however, totally ignored § 16-11-440 (A)(2) which provides for the presumption of fear of imminent peril if the person 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."* (Emphasis added). Petitioner would submit that her initial assault by Victim, and her subsequent beating by both women, constituted *"an unlawful and forcible act"* which had occurred before this shooting. She submitted that there was ample evidence in this case that she had every reason to fear for her safety and that of Straley, and therefore, that she had the right to stand her ground and not retreat pursuant to S.C. Code Ann. § 16-11-440 (C). As previously noted, Petitioner had been seriously injured, her assailants were not leaving her home despite being told to vacate, and one of these women could be heard continuing to scream at her frail, dying companion. On the facts of this case Petitioner had every right to retrieve her gun and use it to protect herself, and her companion, Straley.

With regard to Respondent's assertion that Petitioner was not entitled to the protections of the act because she testified that she didn't *deliberately* shoot Victim, Petitioner submitted that argument bordered on being just plain silly. Such an analysis is not only illogical, it would lead to absurd results. Petitioner *is not* claiming the first shot was *accidentally fired.* She asserted that the shot she fired deliberately, as a warning shot, accidentally hit Victim. Simply put, if in any situation a person would have the right to use deadly force in self-defense, it is ridiculous to suggest that an individual prudent enough to try and avoid shooting someone by firing a warning shot would not be eligible for immunity under the act. Likewise, the evidence in this case, when viewed under the preponderance of the evidence standard, indicated that the

second shot was not deliberately fired at all, but rather went off accidentally while Petitioner and Tammy were tussling for control over the weapon. ROA p. 64, ll. 16-18. Once again, Petitioner submitted that she had good cause to defend herself by resisting allowing Tammy to gain control over this pistol. Petitioner submitted that she was acting in self-defense when both shots were fired and should not be penalized by an interpretation of §16-11-440 would not allow her to try and minimize harm by firing a warning shot.

Respondent additionally argued that Petitioner did not meet the element of self-defense which requires that she be without fault in bringing about the difficulty. Respondent's Final Brief, pgs. 22-23. In support of that position, Respondent argued that Petitioner admitted the fact that Tammy testified she didn't punch Petitioner until after Petitioner kicked her, and that she never heard Victim threaten Petitioner. Respondent's Final Brief, pg. 22, para. 2. Respondent's analysis ignores key factual issues. Tammy was outside taking luggage to the car when this event escalated into a physical fight after Victim shoved Petitioner with her body causing Petitioner to lose her balance and begin to fall. Once that happened, Petitioner had every right to defend herself, and under the circumstances, to view these two women as acting together and as jointly posing a clear and present danger to her safety and that of Straley as well. Furthermore, Respondent argued that Petitioner further failed to meet this requirement for a valid claim of self-defense because she armed herself after she, Victim and Tammy were separated, and she had gone into her bedroom. Once again, Petitioner most respectfully submits that Respondent's argument is flawed. These two women did not leave Petitioner's home after they were all physically separated by Straley, despite have been told to go. The diagrams of the residence introduced by Respondent at trial verify that there was no exit to the outside in Applicant's bedroom. *See*, ROA, pp. 302-303; State's Exhibits 33 and 33B. Even if Petitioner could have crawled out a window, which she had no legal obligation to do, she perceived her companion,

Straley, to be in danger. She testified that she could hear Tammy cursing at him in the other room before she made the decision to arm herself. While Petitioner could arguably have protected *herself* by staying in her bedroom armed against any effort by the women to come in her bedroom to attack her further, she could not have protected Straley by doing so. Petitioner could hear a heated discussion between Tammy and Straley during which he was being cursed at by his daughter. Straley was in a very delicate physical condition due to his advanced cancer.

At some point during the scuffle between Petitioner, Tammy and Victim, Straley's feeding tube had been ripped out and he was bleeding. He went to the kitchen to reinsert the tube and when he came back out, Victim and Petitioner were on the floor. According to Straley's deposition he thought Victim pulled his feeding tube out. He stated that he actually went in the kitchen to fill a Ziploc with ice for Petitioner's face. He looked up when he heard Tammy say, "***are you crazy***" and at that point he saw Defendant had a gun in her right hand. ROA 64, ll. 6-15 and ROA 157, l. 19 – p. 159, l. 22. Given the events which had just taken place, Petitioner submitted that it was not unreasonable for her to have believed it necessary to go back out of her bedroom to demand that these women leave her residence. Considering the beating she had already suffered, it was not unreasonable for Petitioner to arm herself in self-defense before going back out to demand their departure. Once Tammy lunged at her, Petitioner was within her rights to defend herself with that weapon. She should be no less entitled to immunity because she tried to avoid actually shooting anyone by firing a warning shot. The decision to fire a warning shot when Tammy ran toward her was perfectly understandable since Tammy was her dying companion's daughter.

Lastly, Respondent stated that Petitioner had largely ignored the standard of review in arguing that the lower court erred in denying her immunity on the facts of this case. Respondent's Final Brief, pgs. 24-25. In making his ruling in this matter, the presiding judge

ruled that Petitioner was no longer in imminent danger once the physical altercation broke up. Petitioner asserted that this ruling supported the conclusion that *the Court, not Petitioner*, failed to apply the proper standard. Specifically, the Court ruled as follows:

> I've read the statute very, very carefully this morning three times and I've read several cases that we've been referencing also this morning. I mean, where I have a problem with the testimony as far as what started what is once the fight breaks up, everybody goes back to each end of the house and then they come back, depending on who you hear, they come back in different orders, but understanding how the statute's written, I'm - - I'm gonna respectfully deny your motion for immunity. I - - ***I just don't believe that there was an imminent danger when they departed.*** Once they departed, they departed, and had it been an on-going thing, but I - - but there is conflicting testimony both ways as to what happened next, who came back in the room first. No question where the gun came from, but I do not believe that it's met the parameters outlined in the statute of, what, 16-11-440 and 430, 420. So, respectfully, your motion is denied on the immunity request.

ROA p. 184, l. 11- p. 185, l. 6, (Emphasis added). As argued by Petitioner in her Final Brief of Appellant, *"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 the Court believed she actually was. *See, State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). Applying that standard, Petitioner submitted the trial court abused its discretion in failing to grant immunity in this case. The question before the Court was not whether the trial judge thought Petitioner was still in peril, but rather she believed she was under the reasonable person standard. Victim and Tammy had been told to get out of Petitioner's home. They continued to act in an aggressive manner and failed to leave even after the conflict turned violent. Tammy was heard cursing at Straley who was literally a dying man. Petitioner acted reasonably in believing Tammy and Victim posed an ongoing threat. Immunity should have been granted.

Why this Appeal was wrongfully decided by the South Carolina Court of Appeals.

While it is somewhat difficult to ascertain with certainty the reasoning of the Court of Appeals in affirming the conviction and sentence of Petitioner from the Unpublished Opinion issued in this matter, it is clear that the decision was not rooted in a finding that any portion of the issue presented by Petitioner was not properly preserved for appellate review as asserted by Respondent. Petitioner notes that none of the authorities cited in this opinion deal with procedural default for failure to adequately preserve an issue for appellate review. Petitioner recognizes that a claim of immunity under the Protections of Persons and Property Act requires a pretrial determination using a preponderance of the evidence standard. Further, it is clear that on appeal the reviewing Court reviews the findings of the circuit court under an abuse of discretion standard of review. *State v. Curry*, 406 S.C. 364, 752 S.E.2d (2013).

Petitioner now most respectfully submits that in affirming Petitioner's judgment and sentence Court of Appeals appears to have either overlooked or misapprehended certain issues of material fact or law in reaching its decision. She asserts that it is clear from the ruling of the lower court that it misapprehended the facts in Petitioner's case. As previously noted, in denying her immunity, the lower court stated,

> I've read the statute very, very carefully this morning three times and I've read several cases that we've been referencing also this morning. I mean, where I have a problem with the testimony as far as what started what is once the fight breaks up, everybody goes back to each end of the house and then they come back, depending on who you hear, they come back in different orders, but understanding how the statute's written, I'm - - I'm gonna respectfully deny your motion for immunity. I - - ***I just don't believe that there was an imminent danger when they departed.*** Once they departed, they departed, and had it been an on-going thing, but I - - but there is conflicting testimony both ways as to what happened next, who came back in the room first. No question where the gun came from, but I do not believe that it's met the parameters outlined in the statute of, what, 16-11-440 and

> 430, 420. So, respectfully, your motion is denied on the immunity request.

Tr. p. 184, l. 11- p. 185, l. 6, (Emphasis added).

The decision of the Court of Appeals contains no ruling that Petitioner was not entitled to the "presumption of a reasonable fear of imminent peril" found in §16-11-440. The ruling of the circuit court was predicated entirely on the faulty factual conclusion that the altercation between Petitioner and her attackers was over and therefore, that Petitioner was no longer in peril at the time shots were fired. For all the reasons set forth in the Brief of Petitioner, and her Reply Brief, Petitioner respectfully asserts that the record before the Court of Appeals did not support that conclusion. Interestingly, in denying immunity, the lower court stated ***"I just don't believe that there was an eminent danger when they depart it. Once they deported, they departed, and had it been an on-going thing,..."*** ROA p. 184, l. 20-23. This factual finding is not supported by the record. Petitioner's argument, as presented in great detail in her Brief of Petitioner and her Reply Brief, was that the victim and Tammy had not departed. Despite having been expressly told to get out of Petitioner's home, despite the fact that the majority of their property had already been loaded into their vehicle, and the fact that Tammy's father had joined in Petitioner's position that they should leave, they remained in her home after Petitioner had gone into her bedroom to clean up her bloody face. While in her bedroom, she heard yelling and screaming between Tammy and Straley and was afraid not only for her own safety, but also for Straley, who was literally a dying man. She did not shoot anyone at that point, but rather took reasonable steps to arm herself for her protection, and in potential defense of Straley, who had already had his feeding tube ripped out once during this incident. As noted in Petitioner's Reply Brief, while she could have protected herself by staying in her room and using her weapon for protection if the two women made an effort to come into her bedroom to attack her further, such

action would not have protected Straley. The record supports Petitioner's claim that she fired a warning shot when Tammy advanced on her. Thus, the lower court's conclusion that these two women had "departed" and that Petitioner was no longer in eminent danger was not supported by the record before the circuit court. Likewise, the ruling of the circuit court denying immunity totally overlooked the fact Petitioner had a right, both at common law and under the Act, to act in defense of others, in this case Straley, in addition to protecting herself.

Petitioner most respectfully submits that the decision of the Court of Appeals overlooks the fact that Petitioner was entitled to the presumption of "reasonable fear of eminent peril or death or great bodily injury to himself or another person" found in §16-11-440(A). Clearly the ruling of the circuit court failed to take into account §16-11-440(A)(2), which provides for the presumption of imminent peril if the person who uses deadly force, ***"knows or has reason to believe that an unlawful and forcible entry or unlawful enforceable act is occurring or has occurred."*** Petitioner respectfully submits that in affirming the ruling of the circuit court the Court of Appeals overlooked relevant facts, as summarized above, and provided in more detail in the briefs that were filed in the Court of Appeals, which supported Petitioner's entitlement to this presumption based on her knowledge that these women had already badly beaten her just minutes earlier. *See*, ROA, pp.304-312. In the recent case of *State v. Jones*, 416 S.C. 283, 786 S. E.2d 132 (2016), our Supreme Court found that Jones' belief that she was an eminent danger of losing her life or sustaining great bodily injury was reasonable given the deceased's actions toward her earlier in the evening, "which included [the deceased] punching Jones, dragging her by the hair, and forcing her back into the apartment." Petitioner maintains that she was entitled to the presumption afforded her by §16-11- 440 (A)(1) and (A)(2) inasmuch as any right to be in her home previously extended to the victim and Tammy had been unequivocally rescinded at the time of the shooting. In addition, as noted above, she had knowledge of violent acts committed

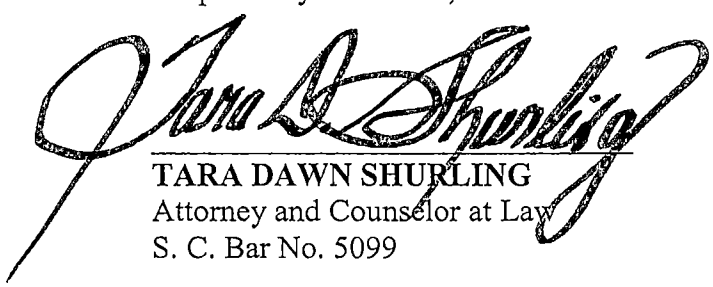
against her earlier which entitled her to the presumption pursuant to $16-11-440(A)(2). Nevertheless, even with out the presumption, Petitioner having just been violently beaten at the hands of these women moments earlier, and being aware of their ongoing refusal to leave her house, had ample justification for believing that she remained in imminent danger once she realized they had not left her home and that a violent verbal altercation was ongoing between Tammy and Straley.

Petitioner now most respectfully submits that the decision of the Court of Appeals overlooked or misapprehended material facts which clearly supported her position that the ruling of the circuit court constituted an abuse of discretion based on an error of law or factual conclusions which were without evidentiary support. *State v. Pittman*, 373 S.C. 527, 647 SE2d 144(2007). Tammy and the Victim had not "departed" as found by the circuit court judge. They were still there and just outside Petitioner's bedroom door where they posed an ongoing threat to both Petitioner and Straley. The violent verbal altercation she could hear from her room between Straley and his daughter evidenced the fact that the threat had not abated. The articulated ruling of the lower court indicates that the Court failed to take into account both the presumption afforded by §16-11-440 and Petitioner's right to act in defense of Straley, as well as herself.

CONCLUSION

For all the reasons set forth herein, Petitioner prayers that the Writ be granted, that this Court dispense with further briefing and vacate her convictions and sentences. Alternatively, she asks that she be granted the opportunity to more fully brief the issues summarized herein.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 13rd day of March, 2017

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Laurens County
Court of General Sessions

Eugene C. Griffin, Circuit Court Judge

Appellate Case No. 2017-000549

The State,

Respondent,

v.

Kathy Leonard Revan,

Petitioner.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Writ of Certiorari in the above matter has been served on opposing counsel, J. Benjamin Alpin, Senior Assistant Deputy Attorney General, by mailing in an envelope properly addressed to the Office of the Attorney General, P. O. Box 11549, Columbia, SC 29211, with postage prepaid on this the 23rd day of March, 2017.

Tara L. Shurling

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ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 23rd day of March, 2017.

Suzanne Graham

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 2/28/24.

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
MAR 23 2017
S.C. SUPREME COURT

Appeal from Laurens County
Court of General Sessions

The Honorable Eugene C. Griffin, Circuit Court Judge

RECEIVED
MAR 27 2017
SC Court of Appeals

Appellate Case No. 2017-000549

The State,

Respondent,

v.

Kathy Leonard Revan,

Petitioner.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appendix in the above matter has been served on opposing counsel, J. Benjamin Aplin, Senior Assistant Deputy Attorney General, by mailing in an envelope properly addressed to the Office of the Attorney General, P. O. Box 11549, Columbia, SC 29211, with postage prepaid on this the 23rd day of August, 2017.

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ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 23rd day of March, 2017.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 10/31/24.

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March 23, 2017

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: State of South Carolina v. Kathy Leonard Revan;
Appellate Case No. 2017-000549

Dear Mr. Shearouse:

Enclosed for filing please find an original unbound set of the Record on Appeal and Briefs from the direct appeal perfected in this matter to South Carolina Court of Appeals and the original unbound Appendix to the Petition for Writ of Certiorari I will be filing by mail later today. In addition, I enclose one bound set of the Record on Appeal and briefs, as well as one bound Appendix. I also enclose my original Certificate of Service. I have also enclosed an extra copy of the Appendix which I would appreciate your staff clocking and returning to my courier. Opposing counsel was served with a copy of the Appendix, but was not served with a copy of the Record on Appeal or Briefs, inasmuch as those documents were served on opposing counsel during the direct appeal to the Court of Appeals. I will be mailing the Petition for Writ of Certiorari for filing later today. Thank you for your kind assistance in this matter as always. I remain,

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm
Enclosures
cc: The Honorable Jenny A. Kitchings, Clerk, SC Court of Appeals (w/out enclosures)
J. Benjamin Aplin, Senior Assistant Deputy Attorney General (w/enclosures)
Kathy Revan, 358569 (w/enclosures)
Brandon Revan (w/out enclosures)

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