

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON )

CASE NO: 2015-CP-10-2178

STACY SINGLETARY, individually and  
as personal representative of the Estate  
of Sheldon Singletary )

Plaintiff, )

ORDER

v. )

KELVIN SHULER, )

Defendant. )

**RECEIVED**

JUL 23 2018

SC Court of Appeals

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2018 JUN 12 PM 3:59

FILED

HEARING DATE:  
PRESIDING JUDGE:  
PLAINTIFF ATTORNEY:  
DEFENDANT ATTORNEY:

MARCH 29, 2018  
MIKELL R. SCARBOROUGH  
THAD J. DOUGHTY, ESQ.  
EDUARDO CURRY, ESQ.

This matter came before the court on March 29, 2018 on the Plaintiff's claims of wrongful death and survival action and the Defendant's Stand Your Ground Immunity Claim under S.C. Code Ann. §16-11-440.

Based upon testimony of the witnesses, exhibits offered into evidence, and arguments of counsel, the court makes the following findings of fact and conclusions of law.

**Facts**

The Plaintiff Stacy Singletary, individually and as Personal Representative of the Estate of Sheldon Singletary, alleges that on April 19, 2012, Defendant Kelvin Shuler wrongfully killed her husband, Sheldon Singletary.

On April 19, 2012, Sheldon Singletary had been invited to Defendant's home along with friends for a cookout. As the day progressed and the friends consumed alcohol, Mr. Singletary and Mr. Shuler got into a fight in Mr. Shuler's kitchen.

Mr. Shuler claimed to be hurt in the fight and suffered two broken ribs and a fractured right orbital (eye) bone and nose; however, no medical records were submitted to support this claim. In fear of further harm to his person and property, he demanded all his guests, and especially Mr. Singletary, to leave his home immediately. He then retrieved a knife from his kitchen and went outside to demand the guests leave his property. Then, he re-entered his home, went upstairs and retrieved a .45 handgun.

Mr. Shuler emerged from his house via a side door and began walking along the side of his house towards the front street. Mr. Singletary was on the front porch. When Mr. Shuler reached the front porch, he claims he saw a figure leap at him from the porch. He reached up and fired his weapon. The round hit Mr. Singletary in the abdomen mortally wounding him. Mr. Singletary cried out "help me" and then went unconscious. Emergency crews, police, and paramedics responded to the scene. The paramedics transported Mr. Singletary to the Medical University of South Carolina.

En route to the hospital his vital signs were taken and, upon arrival, he was placed into the trauma care unit for urgent treatment. The initial triage form indicates that Mr. Singletary was unresponsive upon arrival. The Patient Care Reports log his vital signs and each time the medical staff checked, Mr. Singletary remained unresponsive. The Trauma Resuscitation Flowsheet indicates that, although he received assisted breathing, he remained unresponsive.

During trial John Singletary, Mr. Singletary's brother, testified he was the first family member to reach Sheldon. While speaking to him, he stated that Sheldon squeezed his hands in



response to his voice. Plaintiff Stacy Singletary, Mr. Singletary's wife, testified he was not conscious, able to speak, or respond at any time she saw him. The medical records indicate Mr. Singletary was never conscious from the time EMS arrived on the scene and I so find.

Mr. Singletary ("Decedent") was taken into emergency surgery on two separate occasions but never regained consciousness. He was pronounced dead at 12:16 a.m.

### Law / Analysis

On April 15, 2015, Plaintiff filed this action against the Defendant for wrongful death, survival, and negligence. On May 22, 2015, Defendant filed an Answer denying the allegations of Plaintiff's Complaint. In addition, Defendant filed Counterclaims against Plaintiff for assault and battery, the tort of outrage, frivolous lawsuit, slander and libel, and interference with the enjoyment of property.

#### **I. Entitlement to Self-Defense**

It is well established that in order to support a claim of immunity under §16-11-440, there must be a valid case of self-defense. State v. Dickey, 394 S.C. 491, 499, 716 S.E. 2d 97, 101 (2011). The court considers the elements of self-defense in determining a defendant's entitlement to immunity.

There are four elements required by law to establish a case of self -defense:

1. the defendant must be without fault in bringing on the difficulty.
2. 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.
3. 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.
4. the defendant had no other probable means of avoiding the danger of losing his life or sustaining serious bodily injury than to act as he did in the particular instance.

*Id.* at 499.

Here, the Defendant does not have a valid case of self-defense for several reasons:

1. The Defendant must be without fault in bringing about the difficulty.

The court heard testimony from Sharnika Morris that Defendant started the confrontation with Decedent who defended himself after the Defendant had struck him several times. Furthermore, at the time the Defendant shot the Decedent, it was after their fight had ended. The Decedent was attempting to leave the residence when the Defendant went into his home, retrieved his gun, then went back outside and shot the Decedent. In State v. Wigington, 649 S.E.2d 185, 188, 375 S.C. 25 (S.C. App., 2007), the Court stated, “(a)ny act of the accused in violation of the law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.”

In Wigington, as here, the Court of Appeals found the Defendant had injected himself into an altercation, removed himself from the controversy, and then returned with a loaded gun. “Therefore, the Defendant’s conduct could be reasonably calculated to bring about the difficulty that arose.” *Id.* at 188.

2. The Defendant must have actually been or believed he was in imminent danger of losing his life or sustaining serious bodily injury.

The Defendant admitted that, after the altercation, he retrieved a knife to brandish at his houseguests, including Decedent, in order to get them to leave. When the guests went outside but did not leave the grounds, he went back into the residence and retrieved his handgun. He walked outside from the back of the house to the front armed with the handgun. Phillip Jones was walking beside him trying to get him to put the handgun down. Defendant refused and stated he did not know where the Decedent was at the time.

Ms. Morris stated that the Decedent was on the front porch waiting for her to retrieve his clothing and keys from inside the house. As Defendant approached the front porch, the Defendant stated he saw a figure out his (injured) right eye on the porch and he reached up, pulled the trigger and shot towards the figure. The Defendant stated he did not know who he was shooting at - he just saw a figure and shot.

Defendant cannot claim he shot the Decedent because he was in fear of him from their prior altercation because, according to him, he was unaware the Decedent was the individual he shot. Defendant was not in danger of imminent death or serious bodily injury at this time and could not have reasonably believed he was because he approached the Decedent, who was on the front porch attempting to leave the Defendant's residence while unarmed. The initial altercation was over until it was re-started by the Defendant.

3. Whether a reasonable prudent person would believe they were in imminent danger of death or serious bodily injury.

The court finds a reasonable prudent person would not have been in imminent danger of loss of life or substantial bodily injury under these circumstances and would not have to kill to save themselves from death or serious bodily injury. The Defendant made the decision to get a knife to scare his guests off and, when they were not frightened and did not leave, he made the decision to go back into the house. He went upstairs to his bedroom, walked back outside with the gun, walked from the back of his house to the front, and then shot the unarmed Decedent.

I find these actions are not the actions of a reasonable, prudent person. There is no evidence whatsoever that Defendant was in imminent danger when he walked outside with the knife, went back inside to get the weapon, walked back outside with the weapon, walked from the back of the house to the front of the house and shot the unarmed Decedent. The Defendant

admitted during cross-examination that he had suffered bodily harm; however, it was prior to retrieving his gun. Because I find the Defendant was not in imminent danger, there was no reason for him to take a life to protect himself from death or further serious bodily injury.

4. Whether the Defendant had any other probable means of avoiding the danger of losing his life or substantial/serious bodily injury.

The initial altercation, started by the Defendant, and in which he claims to have suffered injury, was over. The melee had ended when the Defendant got his gun. The Defendant was the only person armed and he pursued the Decedent who was outside the home and trying to leave the residence.


However, the duty to retreat is not required as an element of self-defense when the Castle Doctrine, or the Stand Your Ground Defense, applies. The court will discuss this next.

The court concludes as a matter of law the Defendant has no entitlement to self-defense.

## **II. Defendant's Immunity Claim**

The Defendant asserted a claim under the Protection of Person and Property Act, S.C. Code Ann. § 16-11-440, also known as the Castle Doctrine or the "Stand Your Ground" defense. The immunity clause is found at § 16-11-450(A), which states: "A person who uses deadly force as permitted by ... this article ... is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force...."

I conclude as a matter of law that this claim fails for several reasons. First, in order to assert this claim there must be a pre-trial determination that the Defendant is entitled to assert this claim. The Defendant has to bring a pre-trial motion and the court must find at a pre-trial hearing that the Defendant is entitled to assert this claim by a preponderance of the evidence and the court must issue an Order denying or granting the Motion to Dismiss on that basis. State v. Duncan, 392



S.C. 404, 411, 709 S.E.2d 662, 665 (2011). Immunity under the act is a bar to criminal or civil prosecution, upon motion of either party and must be decided prior to trial. A claim of immunity under this act requires a pretrial determination using a preponderance of the evidence standard. State v. Curry, 406 S.C. 364, 370, 752 S.E. 263, 266 (2013). State v. Duncan, 392 S.C. 404, 411, 709 S.E. 2d 662, 665 (2011). The Court in Duncan stated, by using the words “immune from criminal prosecution” the legislature intended to create a true immunity, and not simply an affirmative defense. Therefore, since the Defendant did not file for a pre-trial determination of immunity he cannot assert it as an affirmative defense.

Next, § 16-11-440(A) states the requirements for the use of deadly force:

- (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.

The victim in this case is similar to the victim in State v. Curry. The court stated Curry could not receive immunity under § 16-11-440(A), because the victim was found to be a social guest legally in Curry’s mother’s apartment. Therefore, although the victim lunged at Curry while he was holding a gun, Curry was not entitled to immunity.

It is undisputed that Sheldon Singletary was an invitee/social guest of Kelvin Shuler. Also, Sheldon Singletary committed no unlawful or forcible act. The Defendant started the altercation that occurred in the home as he slapped the Decedent more than once before the Decedent fought back against the Defendant. In addition, this altercation ended prior to the Defendant’s decision

to go into his kitchen, retrieve a knife, and demand his houseguests leave the premises. The Defendant then went back into his home, retrieved a handgun, walked from the back of the house to the front of the house, and shot the unarmed Decedent in the chest. During his walk from the back to the front of the house, another invitee, Phillip Jones, pleaded with him to put the gun down. The Defendant admitted he was not in danger during this time and he did not see the Decedent with any type of weapon.

Finally, where Section A of the statute is unavailable to him because the victim had a right to be where he was as a social guest, § 16-11-440(B)(1), the statute defaults to Subsection C, which states:

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

Consistent with the Castle Doctrine and the ... Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all the elements of self-defense, save the duty to retreat. (emphasis supplied)

Curry, 752 S.E.2d at 266, citing to Section 16-11-440(C).

The court in Curry goes on to state that the Castle Doctrine is "predicated on the absence of aggression or fault on the party bringing on the difficulty; the doctrine is for defensive, and not offensive, purposes." *Id.* at 267. Here, I find that the Defendant was at fault in bringing on the difficulty by going and getting his gun after his guests and Decedent had left his house.

Because I find the defendant has no valid self-defense claim, he cannot claim statutory immunity. As a further ground, the Defendant's failure to file a pretrial motion for immunity under §16-11-440 does not entitle him to consideration for immunity under the statute.

### III. Wrongful Death under S.C. Code of Laws § 15-51-10

I find the Plaintiff has met the burden of proof that Decedent's Estate is entitled to a wrongful death award in this case. It is clear and undisputed from the testimony of the witnesses the Decedent was killed at the hands of the Defendant. As this court has found, the Defendant has no valid claim for immunity or self-defense. The death of the Decedent was caused by the wrongful act of the Defendant as defined under SC Code of Laws §§ 15-51-10, *et seq.*

The Plaintiff, Stacy Singletary, as Personal Representative of the Estate of Sheldon Singletary is entitled to relief by an award of damages. The Plaintiff is entitled to compensation for medical bills and expenses, funeral expenses, lost wages and benefits, financial losses, pain and suffering, and mental anguish suffered as the surviving spouse. In addition, Plaintiff is entitled to damages for loss of the Decedent's care, companionship and protection.

Mrs. Singletary testified that medical bills totaled to \$203,251.25. As to loss of income and companionship, Sheldon Singletary worked as a bail bondsman and was 42 years of age at the time of death. Under the life expectancy tables, he is presumed to live another 32 years. While she testified that he earned about \$90,000 per year, she acknowledged that he was often paid in cash. Furthermore, income tax records were excluded from evidence as they were not complete. I find that the decedent would have earned \$50,000 per year for the remainder of his work life which would amount to \$1,250,000 before reducing to present value - although no economic evidence of this was presented by Plaintiff. Accordingly, I find that damages for the wrongful death claim should be set at \$1,500,000.00.

The court may award punitive damages in the event the court finds that the conduct which caused the death was deliberate and reckless. The court finds that, while the Defendant's actions

were negligent and unwarranted, they are unlikely to occur again and therefore there is no basis for an award of punitive or exemplary damages. S.C. Code Ann. § 15-51-40.

The Plaintiff has met her burden of proof and is hereby awarded One Million Five Hundred Thousand Dollars (\$1,500,000.00) in actual damages pursuant to her Wrongful Death Claim. The court finds that, under these facts, an award of punitive damages is not warranted.

**IV. Survival Action under S.C. Code Ann. §15-5-90**

Plaintiff is also entitled to an award and damages pursuant to the survival right statute. S.C. Code Ann. § 15-5-90. It is clear to the court from review of the medical records that, despite the testimony of the Decedent's family who were with him at the hospital, the Decedent was conscious for only a short period of time after being shot. The testimony of Sharnika Morris was that the Decedent was in extreme pain at the scene of the incident, cried out "help me," and then "his eyes rolled back."

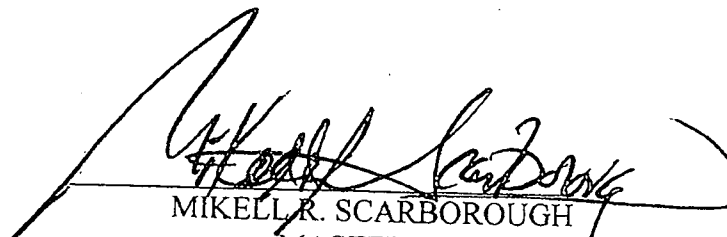
Decedent incurred severe pain and suffering at the scene. The testimony shows he was shot around 3 p.m. and died just after midnight - two operations could not stop his bleeding, and after multiple blood transfusions, he ultimately bled to death. The Decedent suffered conscious pain and suffering, severe personal injury and trauma for only a short time before his death. In this situation, I find Decedent's cries of "help me" sufficient to show conscious pain and suffering; however, his period of consciousness was apparently over by the time he was transported to MUSC hospital at 4:00 p.m.

The court finds that Plaintiff is entitled to an award of damages for pain and suffering, personal injuries and trauma, and compensatory damages and hereby awards the Plaintiff One Hundred Thousand Dollars (\$100,000.00) for her Survival Action Claim.

Based upon these findings and conclusions of law, the court concludes that all of Defendant's counterclaims fail as a matter of law and denies the same.

IT IS THEREFORE ORDERED that Plaintiff is awarded One Million Six Hundred Thousand Dollars (\$1,600,000.00) in actual damages. The court concludes no punitive damages are due to be awarded under the facts of this case.

IT IS SO ORDERED!



MIKELL R. SCARBOROUGH  
MASTER IN EQUITY  
CHARLESTON COUNTY

This 8 day of June, 2018

Charleston, South Carolina