THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2018–001478

State of South Carolina.....Respondent,

vs.

Marquez D. Glenn.....Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Counsel for Petitioner certifies that the Petition for En Banc Rehearing was made and finally ruled on by the Court of Appeals by Order dated July 9, 2018.

QUESTIONS PRESENTED

I. In concluding that Petitioner was not in a place where he had a right to be when he was forced to defend himself, and was, accordingly, not entitled to immunity under the Protection of Persons and Property Act ("PPPA" or "the Act"), did the Court of Appeals improperly constrain the scope of immunity granted by the PPPA to bona fide individuals to defend themselves against attack?

II. In concluding that Petitioner was not entitled to PPPA immunity because he was not in a place where he had a right to be when he was forced to defend himself, did the Court of Appeals err by failing to analyze whether Petitioner's allegedly unrightful presence was the proximate cause of Petitioner being attacked?

III. Did the Court of Appeals err in affirming the denial of PPPA immunity to Petitioner on the ground that Petitioner was in violation of a three year old Trespass Notice for loitering where Petitioner, as an invitee of multiple tenants, was in fact in a place where he had a right to be when he was forced to defend himself?

IV. Did the Court of Appeals err in affirming the denial of PPPA immunity to Petitioner on the ground that Petitioner was in violation of a three year old Trespass Notice for loitering where possession of the property in question had changed at least once since the issuance of the alleged Trespass Notice?

STATEMENT OF THE CASE

This is an appeal from criminal proceedings in the matter of State v. Marqeuz Devon Glenn, and specifically concerns the denial of immunity to Petitioner at the conclusion of the pre-trial hearing that was held pursuant to S.C. Code Ann. §§ 16-11-450(A) and 16-11-440(C). See generally State v. Glenn, 2013A2330203357 and 2013A2330203356. The proceedings before the Greenville County Court of General

Sessions concerned charges for Attempted Murder and Possession of a Weapon During a Violent Crime, which arose out of an incident wherein Petitioner defended himself with the use of a handgun from an unprovoked attack by two (2) individuals while Petitioner was leaving an apartment complex. See Immunity Hr'g Tr., R. pp. 72:11–202:24.

Petitioner filed a pretrial Motion for Statutory Immunity based on S.C. Code Ann. §§ 16-11-450(A) and 16-11-440(C), on the grounds that Petitioner was immune from prosecution because he had a legal right to use a firearm in self-defense when he was attacked by two (2) assailants at the Spring Grove Apartment Complex. See Motion for Immunity, R. pp. 1-3; Immunity Hr'g Tr., R. pp. 219:18–229:2. The pretrial hearing was conducted outside of the presence of the jury and was considered and ruled upon by Judge John C. Hayes III.

On August 4, 2015, Judge Hayes ruled from the bench, orally denying Petitioner's Motion for Statutory Immunity because Judge Hayes found "that the immunity argument fail[ed] solely on the issue of whether or not [Petitioner] had a right to be there" at the time Petitioner acted in self-defense. Immunity Hr'g Tr., R. p. 230:15–17 (emphasis added). Judge Hayes concluded that Petitioner met the remaining criteria to qualify for Statutory Immunity under the protections of S.C. Code Ann. §§ 16-11-450(C) and 16-11-450. See id. R. at pp. 229:3–231:16 (concluding that Petitioner would be entitled to "immunity but for his not being allowed on the property").

Following the trial court's denial of immunity, Petitioner was tried by jury, which resulted in the jury acquitting Petitioner on the charge of Attempted Murder, but convicting Petitioner of the lesser included charge of Assault and Battery of a High and

Aggravated Nature and Possession of a Weapon During a Violent Crime. See Sentencing Sheet, R. pp. 281-82.

Petitioner's Notice of Appeal was properly and timely served upon all parties of interest in this matter on August 17, 2015 seeking review of the trial court's oral ruling denying Petitioner's Motion for Statutory Immunity "solely on the issue of whether or not [Petitioner] had a right to be [on the property]" at the time Petitioner was attacked and forced to act in self-defense. See Notice of Appeal, R. pp. 304-05; Immunity Hr'g Tr., R. pp. 230:15–231:14. The Court of Appeals affirmed the judgment of the circuit court. State v. Marquez D. Glenn, Op. No. 2018-UP-169 (S.C. Ct. App. filed Apr. 25, 2018). Petitioner seeks a writ of certiorari to review that decision.

RELEVANT FACTS

This appeal arises out of an incident on the evening of April 12, 2013 at the Spring Grove Apartment Complex, a Section VIII, government-subsidized housing complex, located at 1900 Boling Road Extension, Taylors, SC 29687 (hereinafter "Spring Grove" or "the Complex"). See Immunity Hr'g Tr., R. pp. 69:10–70:22, 203:15–209:2; see also 2010 Model Lease for Subsidized Programs, R. pp. 287-304.

The individuals involved in the events of the night in question are Marquez Glenn (hereinafter "Mr. Glenn"), who was a social guest of Spring Grove tenants Shelricka Duncan (hereinafter "Shelricka") and Kiana Grayson, Kevin Bruster (hereinafter "Kevin"), and Kevin's nephew Elfonzo Bruster (hereinafter "Elfonzo"). See Immunity Hr'g Tr., R. p. 159:10–23, p. 164:16–18, p. 189:4–12, p. 202:11-13. Tivarius Henderson (hereinafter "Tivarius"), who is Mr. Glenn's brother, was also attacked earlier in the

evening, which ultimately lead to Kevin and Elfonzo attacking Mr. Glenn. See id. at R. pp. 69:8–71:19.

On the evening of April 12, despite having been put on trespass notice less than twenty-four (24) hours prior for criminal activity, Kevin, who was heavily intoxicated at the time, came to Spring Grove to find and harass his ex-girlfriend Gloria Duncan (hereinafter "Gloria"), the mother of Shelricka. See Immunity Hr'g Tr., R. pp. 70:23–71:3, pp. 94:13–98:2, p. 109:4–20, p. 213:10–20, p. 218:15–18, p. 213:16–20. At the time Kevin was angrily and drunkenly seeking Gloria, she was in the apartment of Shelricka, her daughter, with a number of other people, including Tivarius. See id. at R. pp. 69:22–70:22, pp. 94:13–98:2, pp. 160:9–161:3, p. 197:11–24. The guests at Shelricka's apartment were there at Shelricka's invitation for a cookout. See id. Included in those social invitees was Mr. Glenn, who had been peaceably enjoying the company of friends at Shelricka's prior to sober-driving friends to the convenience store. See id. Having already left on the aforesaid errand, Mr. Glenn was not present at Shelricka's apartment (hereinafter "27C") when Kevin discovered Gloria's presence in 27C and made forcible entry thereto. See id. at R. p. 95:3–18, p. 96:11–12, pp. 98:23–99:16, pp. 160:7–161:14. After violently forcing his way into 27C, Kevin used a razor blade that he had concealed in his mouth to cut Tivarius in the eye and arm as Tivarius attempted to protect the inhabitants of 27C, leaving Tivarius bleeding and with a substantial laceration above his eye. See id. at R. pp. 70:23–71:20, p. 95:13–20. After Tivarius got Kevin outside 27C and Kevin's attack abated, Kevin went to the apartment of his nephew, Elfonzo, where he engaged in an effort to incite Elfonzo to violence. See id. at R. pp.

102:13–108:24, pp. 117:2–118:13, p. 124:1–7, p. 169:13–15, p. 213:12–214:7. In response to Kevin having attacked Tivarius and forcibly entered 27C, law enforcement was at some point contacted and dispatched to Spring Grove. See id. at R. p. 72:2–10, pp. 101:9–102:14, p. 161:9–14.

At approximately the same time Kevin was recruiting and urging Elfonzo to join him in attacking Tivarius and his family, Mr. Glenn returned to Spring Grove from sober-driving to the convenience store. See id. at R. pp. 160:9–161:3, p. 197:11–23. Upon Mr. Glenn returning to Spring Grove with a bag from the convenience store, Kiana Grayson (hereinafter "Kiana"), Shelricka's neighbor, called Mr. Glenn over to her apartment to let him know an altercation occurred in his absence. Speaking with Kiana at her apartment while also getting change back for a pizza Mr. Glenn had given Kiana money for earlier, Mr. Glenn set his convenience store bag down inside the door of Kiana's apartment prior to being approached by the police officers who had reported to the scene as a result of Kevin's earlier assault of Tivarius. See id. at R. p. 76:2–9, p. 101:9–16, p. 161:1–14, p. 162:1–21, pp. 163:20–164:5; p. 196:10–20, p. 202:11–13. The police officers inquired as to Mr. Glenn's knowledge of the events that had transpired at the Complex involving Kevin, to which Mr. Glenn responded that he had no knowledge of any such events as he had been away from the Complex at the time the assault in question transpired. See id. at R. p. 161:10–18. At no time did the police raise any objection to Mr. Glenn being at Shelricka or Kiana's apartments or inform Mr. Glenn he was exceeding the scope of his invitation to either Shelricka or Kiana's such that he was committing trespass after notice. See id. at R. p. 101:14–16, pp. 161:9–162:4, pp. 163:20–164:2.

While Mr. Glenn was assisting and cooperating with the police in their investigation, he noticed, but did not think anything of, Kevin and Elfonzo lurking in the shadows of a nearby apartment building. See id. at R. p. 162:10–24. Upon concluding his conversation with the police and the police departing the scene, Mr. Glenn, out of concern over what the police had just told him transpired in his absence, retrieved his belongings from Kiana's apartment with the intent to depart from Spring Grove. See id. While walking to his car after obtaining his belongings, Kevin and Elfonzo, seeing Mr. Glenn alone, quickly and intentionally blocked Mr. Glenn's path and began threatening Mr. Glenn. See id. at R. pp. 118:16–122:8. Upon Kevin and Elfonzo's approach of Mr. Glenn and throughout escalation of the confrontation, Elfonzo had his hand in his waistband as one would do when concealing a handgun. See id. at R. pp. 84:1–86:13, pp. 133:8–135:16, pp. 170:11–171:15.

Immediately upon accosting Mr. Glenn, both Kevin and Elfonzo began aggressively yelling at Mr. Glenn about the prior altercation instigated by Kevin with Tivarius, in 27C. See id. at R. pp. 102:11–103:9, p. 104:1–7, pp. 164:15–165:7. Having been at the store during the time of the prior altercation involving Kevin, Mr. Glenn denied any involvement or knowledge of the subject about which Kevin and Elfonzo were berating him. See id. at R. p. 80:14–21, p. 169:3–24. Contemporaneous with Mr. Glenn responding to Kevin and Elfonzo in an attempt to extricate himself from what was now clearly a dangerous situation, Kevin verbally threatened Mr. Glenn's life, stating, "Man, fuck that, [Elfonzo], let's do what we said—what you just said what we came to do. You said we gonna get one of these niggers in this white Lincoln right here, we

gonna get all these niggers right here, so let's do what we came to do." Id. at R. p. 165:2–6; see also id. at R. p. 74:13–18. The car to which Kevin was referring, the white Lincoln, was Mr. Glenn's vehicle. See id. at R. p. 77:12–14.

At that point Kevin violently attacked Mr. Glenn, punching him full-force in the throat and neck. See id. at R. p. 198:11–16. In addition to striking Mr. Glenn in the neck and knocking him backwards and off-balance, Kevin's punch struck a cup in Mr. Glenn's left hand, sending the entire contents of Mr. Glenn's drink into Mr. Glenn's eyes, blinding him momentarily. See id. at R. p. 165:11–19. As Mr. Glenn regained his balance and struggled to regain his vision by wiping his drink from his eyes with his left coat sleeve, a female witnessing Kevin and Elfonzo's attack of Mr. Glenn yelled "GUN!" just in time for Mr. Glenn to see Elfonzo, who by all indications was carrying a gun and who is known to do so by Mr. Glenn, pulling a handgun from his waistband. See id. at R. p. 85:6–25, p. 133:8–18, pp. 166:13–167:20, pp. 170:11–171:15. Mr. Glenn, in response to Elfonzo pulling a handgun and in reasonable fear for his life and that of his family, pulled a handgun of his own, which until that moment had been concealed and known only to Mr. Glenn, and fired three (3) almost simultaneous shots in self-defense. See id. at R. pp. 73:24–87:1, pp. 134:14–135:1, pp. 164:13–172:7.

ARGUMENT

I. Introduction

Petitioner respectfully requests the Court grant Certiorari in this case not only to ensure justice for Mr. Glenn, but more importantly to ensure proper interpretation of the PPPA and to thereby provide clarity for every individual in South Carolina regarding

one's right to act confidently in self-defense. In addition to several novel questions of first impression being raised by this appeal and the fact that both the trial court and the Court of Appeals' decisions conflict with prior Supreme Court jurisprudence, the outcome of this appeal will directly and materially impact every South Carolinians' right and ability to defend themselves and their property.

This Court recently held in State v. Jones, 416 S.C. 283, 296, 786 S.E.2d 132, 139 (2016) that the PPPA is to be interpreted in view of its "clearly enunciated" intent, which consequently expressly dictated the rejection of an artificial constraint of geographical circumstances. Rather than applying this statutorily sound principle, the Court of Appeals' decision neglects this Court's focus on relative rights as between the parties in favor of the random circumstance of physical boundaries set by third parties. The Court of Appeals' decision, which conflicts with and undermines the Jones Court's "find[ing] [that] the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographical restriction," will undoubtedly have a chilling effect on the right and ability of every individual in South Carolina to defend themselves without fear of prosecution pursuant to the PPPA.

As clearly contemplated by the legislative intent of the Act, and as set forth in Jones, the right to self-defense should not be dictated by the threshold of a doorway, a sign stating that a city park closes at a specific time, or an arbitrary property line that is crossed by mistake or under a bona fide claim of right. Determining whether the Legislature's expansion and codification of the doctrine of self-defense was intended to move the doctrine of self-defense from one limited by the concept of territorial boundary-

crossing to a more expansive focus on the violation of individual's rights to remain unmolested by attackers is certainly a question deserving review and determination by this Court.

II. The Court of Appeals improperly constrained the scope of immunity granted by the PPPA to bona fide individuals to defend themselves against attack.

For Mr. Glenn the evening of April 12, 2013 began like so many other unremarkable Friday nights, with an invitation from a friend who lived at the Spring Grove to come over for dinner with mutual friends. Immunity Hr'g Tr., R. pp. 69:22-70:14. Despite the violent assault perpetrated by Kevin while Mr. Glenn was sober-driving friends to the convenience store, Mr. Glenn's evening continued on its uneventful course upon his return from the store. See id. at R. pp. 70:18-72:7.

Unaware of the events that transpired in his absence, the danger of his soon-to-be assailants who were concealing themselves in the shadows and lying in wait, or that he allegedly did not have a right to be at the Complex, Mr. Glenn, after being called over by Kiana to her apartment, willingly cooperated with the the police officers investigating the reports of the assault perpetrated by Kevin with a razor blade. See id. at R. pp. 71:19-72:10, pp. 160:1-173:1 And, having concluded his conversation with the police, who neither raised objection to Mr. Glenn being on Spring Grove property, nor informed him he was exceeding the scope of his invitation to Shelricka or Kiana's apartments such that he did not have a right to be there, Mr. Glenn's visit to his friends' apartments would have concluded unremarkably but for the violent and criminal acts of Kevin and Elfonzo,

who without provocation attacked Mr. Glenn as he attempted to peaceably leave Spring Grove. See id. at R. pp. 171:1-178:20.

Despite the finding that neither Mr. Glenn's actions nor his alleged violation of a three (3) year old Trespass Notice on the night of April 12, 2013 in any way contributed to or caused him to be the target of Kevin and Elfonzo's criminal acts, the Court of Appeals, in direct opposition to the expressly stated legislative intent of the South Carolina Protection of Persons and Property Act (hereinafter "the PPPA") and prior decisions of this Court, nonetheless affirmed the trial court's denial of Mr. Glenn's Motion for Immunity, which was based "solely" on the ground that Mr. Glenn was not in a place where he had a right to be at the time he was attacked. See id. R. pp. 230:15-231:14 (finding that Mr. Glenn was not "engaged in an illegal activity[] which would prevent him from—from having immunity but for his not being allowed on the property.").

Although the question before the Court intertwines the interpretation of the PPPA and South Carolina trespass law, it is fundamentally a determination of the scope of a bona fide individual's right to defend himself against attack. Therefore the proper resolution of the issue, and ultimately whether Mr. Glenn is entitled to immunity, should turn on the intent of the General Assembly in enacting the PPPA.

The expressly stated intent of the General Assembly in passing the PPPA was to (1) codify the right of "law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others" and (2) ensure "that no person or victim of crime

should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack." S.C. Code Ann. §§ 16-11-420(B), (E) (emphasis added).

The purpose of the "another place where he has a right to be" statutory language is to raise the question of the parties' relative rights, thereby precluding criminal actors from attempting to justify their use of force against others regardless of location, not to impose technical geographic restrictions on the right of innocent people to defend themselves. Stated more simply, the PPPA is intended to extend the right to defend one's self to victims of crime and other bona fide persons indiscriminate of where an attack may occur and without obligation to flee when attacked. See Jones, at 296-98, 786 S.E. 2d at 139-40 (stating that the legislative intent of the PPPA was "to protect persons in South Carolina from violence being perpetrated upon them..."). As clearly contemplated by the legislative intent of the PPPA and this Court's interpretation thereof, the right to self-defense should not be based on the threshold of a doorway, or an arbitrary property line that is crossed by mistake or under a bona fide claim of right. See id. (holding the "Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographical restriction") (emphasis added). Given that "[t]he primary rule of statutory construction is to ascertain and give effect to the intent of the legislature," it is through this lens that a bona fide individual's right to self-defense as expanded by the PPPA must be construed. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662, 664 (2011).

Moreover, the canons of statutory construction further require that the language of the PPPA "must be construed in the light of the intended purpose of the statute" and in such a way as to avoid (1) "a result so plainly absurd that it could not possibly have been intended by the Legislature" or (2) an interpretation that "would defeat the plain legislative intention." State v. Douglas, 411 S.C. 307, 768 S.E.2d 232, 244 (Ct. App. 2015) (citation omitted; emphasis added). In essence, a "statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers, and the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." Id. (citation and internal quotation marks omitted). From the PPPA's "clearly enunciated" intent and the "broadly worded" language of S.C. Code Ann. § 16-11-440(C) it is apparent that the PPPA was enacted to provide broad protection for innocent persons who find themselves the victim of criminal activity to have the right to defend themselves without fear of prosecution by shifting self-defense laws away from protecting criminals to the side of victims through the extension of the common law principle that intruders enter the home at their own peril to attackers invade people's right to remain unmolested at their peril. Jones 416 S.C. at 296, 786 S.E.2d at 139.

The absurdity created by the Court of Appeals interpretation of the PPPA can be illustrated by example. A person who had been granted a permit for concealed carry could enter a business only to find that on another entrance the business posted a sign prohibiting concealed carry. Learning this, the patron promptly seeks to peaceably and lawfully leave the premises only to be attacked by a third-party prior to crossing the

business' threshold. Under the Court of Appeals' interpretation, the patron would be dined the protection of the PPPA even though the patron was (1) in the process of peaceably exiting the premises when attacked and (2) the patron's unrightful presence in the business was not related to the unprovoked attack. Certainly an interpretation that makes an individual's right to defend himself from attack without fear of prosecution pursuant to the PPPA dependent upon whether he had stepped back across the threshold of the business before being attacked is absurd and inconsistent with the intent of the PPPA. Similarly, a person peaceably jogging through Falls Park in Greenville at 8:59 p.m. would be entitled to defend herself from an attacker under the protection of the PPPA, but should the clock turn to 9:00 p.m., the time at which Falls Park "closes" and after which presence therein is prohibited by the Greenville Municipal Code, just as the jogger is attacked, then she is categorically barred from PPPA immunity and cannot defend herself without fear of prosecution due to her unrightful presence in Falls Park. Though examples of the absurdity of such an overly narrow and technical interpretation of the PPPA could fill the entirety of this Petition, by way of a final example, an individual subleasing part of a property unknowingly in violation of the master lease would never have the right to defend herself without fear of prosecution from a random armed burglar because her presence in the property, in unknowing violation of the master lease, was technically unrightful. See Jones 416 S.C. at 297, 786 S.E.2d at 140 (rejecting the State's interpretation of S.C. Code Ann. § 16-11-440(C) because it would "improperly limit the protection of the Act based on the geography of the incident and the identity of the assailant").

Given just these readily available examples, it is apparent that the Court of Appeals interpretation of the PPPA, which hinges innocent person's rights to defend themselves on arbitrary technicalities, leads to both (1) "a result so plainly absurd that it could not possibly have been intended by the Legislature" and (2) outcomes that "would defeat the plain legislative intention", Douglas, 411 S.C. 307, 768 S.E.2d at 244 (citation omitted), "to protect persons in South Carolina from violence being perpetrated upon them...." Jones, 416 S.C. at 298, 786 S.E.2d at 140. Such an interpretation is contrary to both the intent of the PPPA and the recent decision of this Court in Jones and would incorrectly and irrationally effect a regression of self-defense laws back towards protecting perpetrators of violence instead of the victims thereof.

In the present case the Court of Appeals decision offers protection not to Mr. Glenn, who by all accounts was the victim of an unprovoked violent attack by multiple assailants, but rather to Mr. Glenn's attackers on the nonsensical basis that Mr. Glenn had not completed the act of leaving the Complex, which even assuming he was in violation of an old Trespass Notice, he would have the right, and in fact the obligation, to leave. The untenability of the Court of Appeals' position is further brought into focus by the fact giving effect to technical geographical restrictions would create the nonsensical result in this case that Mr. Glenn would have been entitled to immunity had he been able to complete the act of entering his car prior to being assaulted, but because his attackers were able to prevent him from getting in his vehicle before he was attacked, he was not entitled to the protection of the PPPA. Jones, 416 S.C. at 295, 786 S.E.2d at 138 (agreeing with circuit court judge's assessment that a technical geography-based

interpretation of the PPPA that would create the result whereby "a person can defend themselves from attack by their spouse, lovers, or any other co-resident while outside of their home, but not inside of their home" was "nonsensical" and "absurd").

III. Even assuming arguendo that Petitioner was trespassing when he was attacked, the Court of Appeals erred in denying Petitioner self-defense immunity without determining whether Petitioner's allegedly unrightful presence was the proximate cause of Petitioner being attacked and having to defend himself.

Though the State sets up a straw man to prophesy that the expansive scope of S.C. Code Ann. § 16-11-440(C) intended by the Legislature would result in a shoot-first wild west, the State's argument, as tacitly adopted by the Court of Appeals, intentionally ignores the statutory requirement that an individual be "attacked" to be entitled to the protection of subsection (C).[1] Eschewing the "clearly enunciated" intent of the PPPA, the "broadly worded" language of subsection (C), and the prior decisions of this Court out of fear of everyday citizens being able to exercise their right to self-defense without the Solicitors Office looking over their shoulder lends itself to a hyper-technical interpretation of the PPPA that certainly avoids the specter of wild west shootouts, however it does so at the cost of denying persons forced to defend themselves from attack the protection of the PPPA unless they are in exactly the right location with the "right" assailant. Jones 416 S.C. at 297, 786 S.E.2d at 140 (rejecting interpretation of subsection

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[1]S.C. Code Ann. § 16-11-440(C) states that "[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 or to prevent the commission of a violent crime as defined in section 16-1-60." (emphasis added).

(C) that would "improperly limit the protection of the Act based on the geography of the incident and the identify of the assailant"). To give proper effect to the intent of the PPPA and ensure that "no person or victim of crime should be required to surrender his personal safety to a criminal" a hyper-technical interpretation of the PPPA is neither necessary nor proper. S.C. Code Ann. § 16-11-420(E).

Rather, prior opinions of this Court indicate that proper interpretation of the Act dictates that the PPPA's invocation of location rights be viewed as relative rights versus an attacker as opposed to an exacting geographical restriction. See Jones, 416 S.C. at 292-98, 786 S.E.2d at 137-40 (interpreting the applicability of the PPPA based on relative rights of the attacker and victim and discussing the "broadly worded" language of subsection (C) and the Legislature's intent that the protection of subsection (C) not have a "geographical restriction"); State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (acknowledging implicitly that the PPPA's invocation of locations rights is a question of relative rights between a victim and attacker by holding "the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence"); see also Jeannie Suk, At Home In the Law: How the Domestic Violence Revolution Is Transforming Privacy 62-64 (Yale University Press, 2009) (discussing and interpreting the language "place where he has a right to be" as a question of the relative rights of each individual to peaceably exist and remain unmolested wherever he might be). Accordingly, looking to the prior decisions of this Court there already exists a proper and common sense framework by which to analyze whether an individual was in "another place where he had a right to be" for purposes of subsection (C). That framework is the

proximate cause analysis through which it is determined whether an individual is engaged in an "unlawful activity" that would disqualify him from immunity under subsection (C). See State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104 (1999) ("[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.") (emphasis added); State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1993) (holding the "burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.") (emphasis added).

Adoption of a proximate cause analysis for the "place where he has a right to be" element of subsection (C) avoids absurd and nonsensical results driven by technical and arbitrary geographical restrictions by asking and answering the fundamental and existential question of whether the individual exercising her right to self-defense pursuant to the PPPA had the right to remain unmolested in the place place were the difficulty transpired, wherever that may be. The proposed analysis not only avoids nonsensical and absurd results in each of the hypotheticals previously raised herein, but also in Mr. Glenn's case and across the board.

Having found that Mr. Glenn was entitled to immunity "but for his not being allowed on the property", it is clear that the trial court found that Mr. Glenn satisfied all other requirements for immunity pursuant to S.C. Code Ann. § 16-11-450(A). Moreover, the uncontroverted evidence in the record plainly establishes that Mr. Glenn, as he approached his car to depart from Spring Grove after having just spoken to the police who raised no objection to Mr. Glenn being at the Complex, was the victim of an

unprovoked attack by Kevin and Elfonzo. Given the trial court's findings and the evidence in the record, as between Mr. Glenn and Kevin and Elfonzo, it is clear Mr. Glenn's actions in egressing through the common area of Spring Grove were not the proximate cause of the attack by Kevin and Elfonzo. As the innocent victim of Kevin and Elfonzo's criminal attack, Mr. Glenn had the right to remain unmolested in the place where he was attacked by Kevin and Elfonzo, and, when made the victim of an unprovoked attack, to defend himself pursuant to the PPPA and without fear of prosecution thereafter.

IV. It was error for the Court of Appeals to find Mr. Glenn, while reasonably exercising his license as a social guest of Spring Grove tenants, was not "in [a] place where he ha[d] a right to be" when he defended himself from an unprovoked attack. S.C. Code Ann. § 16-11-440(C).

In addition to the Court of Appeals' opinion being directly contrary to the expressly stated intent of the PPPA, it also is contrary to proper interpretation of S.C. Code Ann. § 16-11-620, which states in pertinent part that:

> Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

(emphasis added). That the interpretation and application of S.C. Code Ann. § 16-11-620 resulting in the denial of immunity to Mr. Glenn under the PPPA constitutes clear error of law is supported by a recent and well-reasoned opinion of the South Carolina Attorney

General, well-settled and fundamental principles of South Carolina property law, and a wealth of persuasive jurisprudence and scholarly material.

The Attorney General opinion in question, which is on all fours with the central issue presented by this appeal, was promulgated by the current South Carolina Attorney General in 2013 to respond to a request for opinion from the Honorable Danny Singleton of Seneca on the subject of whether "a person placed on trespass notice with regards to an apartment complex or housing project may enter upon such property at the invitation of a tenant." See Op. S.C. Att'y Gen., p. 5 (June 5, 2013).

Specifically the Attorney General opinion reconciles a property manager's ability to place individuals on trespass notice pursuant to S.C. Code Ann. § 16-11-620 with tenants' rights to possession, use, and quiet enjoyment of their property to conclude that while a property manager or owner possesses the right to place individuals on trespass notice, that right is limited, bound, and superseded by the right of the tenant to invite an individual onto the leased property for lawful purposes. See Op. S.C. Att'y Gen., p. 4 (June 5, 2013) ("[W]e believe a court would hold that § 16-11-620 may not be applied so as to infringe upon a tenant's right of access to his or her residence, including the right to admit an invited guest.") (emphasis added).

Although the trial court took apparent issue with the fact that the reasoning and conclusion of the Attorney General's opinion quoted heavily from just two Massachusetts cases (see Immunity Hr'g Tr., R. p. 230:3-7), cases from other jurisdictions espousing the same reasoning and underlying principals as those Massachusetts decisions are legion. See Or. v. Schneider, 265 P.3d 36 (Or. Ct. App. 2011) (holding that a tenant had the right

to invite guests to the common areas of an apartment complex and accordingly reversing a criminal conviction for trespass because the defendant was privileged to be in the parking lot at the time of his arrest); L.D.L. v. Fla., 569 So.2d 1310, 1312 (Fla. Dist. Ct. App. 1990) (holding that "[a] landlord generally does not have the right to deny entry to persons a tenant has invited to come onto his property[,] [that] [t]his law also applies to the common areas of the premises....[and that] [o]ne who thus comes upon the premises upon the invitation of the tenant, although expressly forbidden to do so by the landlord, is not guilty of criminal trespass.") (emphasis added); Albee v. Collins, 463 S.E.2d 922, 925 (Ga. App. 1995) ("The tenant's invitation to a third party...also carries with it the same rights enjoyed by the tenant to common areas in a multi-dwelling apartment complex to the extent the use of such common areas is connected to the purpose of the invitation.") (emphasis added; citations omitted); Folgueras v. Hassle, 331 F.Supp. 615, 625 (W.D. Mich., 1971) (holding that "[o]ne of the rights of tenancy with which the landlord may not interfere is the right to invite and associate with guests of the tenant's own choosing"); Right of third person to enter premises against objection of the landlord, 6 A.L.R. 465 (stating that a landlord generally does not have the right to deny entry to social guests a tenant has invited to come onto the tenant's property); see also In re Jason Allen D., 733 A.2d 351 (Md. Ct. Spec. App. 1999) (holding the housing authority's no-trespass order did not supersede the defendant's invitation given by a resident of the housing complex) (emphasis added); see e.g. Vt. v. Dixon, 725 A.2d 920, 922 (Vt. 1999); Anthony v. Chicopee Mfg. Corp., 147 S.E. 887, 888-89 (Ga. 1929); Bremerton v. Widell, 51 P.3d 733, 738-39 (Wash. 2002); D.L. v. Fla., 87 So. 3d 824. 825 (Fla. Dist. Ct. App.

2012); Conn. v. Schaffel, 229 A.2d 552, 562 (Conn. Cir. Ct. 1966); Pa. v. Burford, 73 A. 1064, 1067 (Pa., 1909); Todisco v. Tishman Realty & Const. Co., 62 N.Y.S.2d 458, 459 (Sup. Ct. 1946).

That a social guest of a tenant is not a trespasser is also supported by the Department of Housing and Urban Development (hereinafter "HUD") implementing regulations for the the United States Housing Act, 42 U.S.C. § 1437 (hereinafter the "Housing Act"), which substantively prohibits subsidized apartment complexes like Spring Grove from "unreasonably interfering with tenants' ability to entertain guests in the tenants' public housing apartments." Diggs. v. Hous. Auth., 67 F. Supp. 2d 522, 532 (D. Md. 1999); 24 C.F.R. § 966.4(d) (stating that a "lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased premises which shall include reasonable accommodation of the tenant's guests or visitors....").

Although the courts of South Carolina have yet to have the opportunity to join the chorus of courts that have properly concluded that an invitee of a tenant cannot be guilty of trespass so long as the invitee stays within the scope of the invitation, this Court has nevertheless hinted around the edges of such a principle when discussing related principles of South Carolina property jurisprudence.

For example, the South Carolina Supreme Court recently held that "[a] trespass is an invasion of the interest in the exclusive possession of land, as by entry upon it." Babb v. Lee County Landfill SC, LLC, 405 S.C. 129, 747 S.E.2d 468 (2013) (quoting Restatement (Second) of Torts § 821D (1979)). Implicit in the Babb holding is the corollary that where possession is not exclusive, an appropriate defense to a claim of

trespass is the assertion of license, privilege, invitation, or legality. See also Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) (holding that "[a] social guest is a licensee. A licensee is a person who is privileged to enter or remain upon land by virtue of the possessor's consent.") (emphasis added).

Accordingly, it logically follows that when a landlord has ceded a portion of his right to "exclusive possession" of a leased property by bestowing upon a tenant a portion of the landlord's bundle of property rights, and specifically the right to use and quiet enjoyment of property which necessarily includes the right to determine who may enter the property to visit the tenant, a guest of a tenant cannot be deemed a trespasser if the tenant is reasonably exercising his license within the scope of the invitation of the tenant. See Babb, 405 S.C. at 129, 747 S.E.2d at 468 ("A well-known principle of property law is that property consists of a bundle of rights. . .included in the value of property are the rights of exclusive possession and use and enjoyment. . . ."); Shramek v. Walker, 152 S.C. 88, 149 S.E. 331, 336 (1929) (citing the proposition that "[i]t is a well-settled principle that the occupant of any house, store, or other building, has the legal right to control it, and to admit whom he pleases")(citation omitted; emphasis added). Stated simply, the invitee's right to be on leased property over the objection of a landlord flows directly from the rights given up by the landlord to tenants in leasing a property. This premise is

the Diggs court which held that "it would be patently unreasonable to prohibit public housing tenants from entertaining guests." 67 F. Supp. 2d at 531.

It is clear that the Spring Grove trespass policy, in attempting to deny tenants the right to invite social guests to the Complex for lawful purposes, "unreasonably interfere[s] with tenants' ability to entertain guests in the tenants' public housing apartments." Diggs, 67 F. Supp. 2d at 532. As such the Spring Grove trespass policy should not have been enforceable against Mr. Glenn, as an invitee of Shelricka and subsequently Kiana, to prohibit him from visiting tenants at Spring Grove for lawful and peaceable purposes. Accordingly, given the initial invitation of Shelricka and the subsequent request by Kiana for Mr. Glenn to come to her apartment upon his return from the store, it was an error of law for the Court of Appeals to deny Mr. Glenn immunity based in any part of Spring Grove's trespass policy or the alleged Trespass Notice.

V. The Court of Appeals erred in affirming the denial of PPPA immunity to Petitioner on the ground that Petitioner was in violation of a three year old Trespass Notice for loitering where possession of the property in question had changed at least once since the issuance of the alleged Trespass Notice.

Violation of S.C. Code Ann. § 16-11-620 can only occur if a person "without legal cause or good excuse, enters into...the premises of another person after having been warned not to do so by the person in possession or his agent or representative." In this case, the company in possession of Spring Grove at the time of the alleged verbal trespass notice to Mr. Glenn was not the same company that possessed Spring Grove on the date the incident in question occurred. See Immunity Hr'g Tr., R. pp. 206:19–207:11. Significantly, the record contains no proof of a nexis between the original verbal notice and a re-publication or ratification by the new party in possession of Spring Grove.

Given that the right to place someone on trespass notice arises from a right to exclusive possession of property indicates that trespass notices are gross in nature because they benefit the interest of a particular person or entity and not the land itself. See Babb, 405 S.C. at 129, 747 S.E.2d at 468 ("[a] trespass is an invasion of the interest in the exclusive possession of land, as by entry upon it.") (emphasis added; citation omitted). Accordingly, given the gross nature of trespass notices, the trespass notice should no longer have had any force or effect after Spring Grove "changed hands a couple of times." See Immunity Hr'g Tr., R. pp. 206:19–207:11.

CONCLUSION

Petitioner Marquez D. Glenn respectfully requests that this Court GRANT A WRIT OF CERTIORARI to review the decision of the Court of Appeals.

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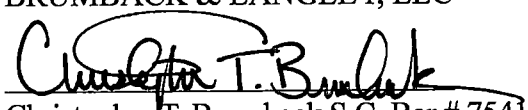

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Date: August 24, 2018
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
General Sessions Court
John C. Hayes, III, Judge

Appellate Case No. 2018–001478

State of South Carolina.....Respondent,

vs.

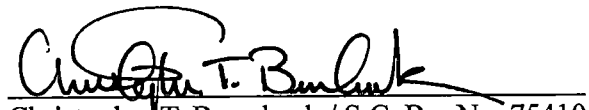
Marquez D. Glenn.....Petitioner.

PROOF OF SERVICE

I certify that I have served the Petitioner's Petition for Writ of Certiorari on Respondent, State of South Carolina, via UPS on August 28, 2018, addressed to Interim Senior Assistant Deputy Attorney General Ben Aplin.

August 28, 2018

BRUMBACK & LANGLEY, LLC



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