

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

AUG 29 2018

S.C. SUPREME COURT

Appellate Case No. 2018-001478

The State of South Carolina, ... Respondent,

v.

Marquez Devon Glenn, ... Petitioner,

APPENDIX

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INDEX

Record on Appeal	1
Brief of Appellant	309
Brief of Respondent	360
Unpublished Opinion No. 2018-UP-169 Heard February 6, 2018 – Filed April 25, 2018	406
Motion for Rehearing or <i>En Banc</i> Rehearing Pursuant to Rules 219 & 221, SCACR	410
Court of Appeals Letter Requesting Respondent to File a Return to Motion for Rehearing	414
Return to Motion for Rehearing and Suggestion for Rehearing <i>En Banc</i>	415
Order Denying Petition for Rehearing	426

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. 2015--001810

RECEIVED

NOV 21 2016

SC Court of Appeals

State of South Carolina.....Respondent,

vs.

Marquez D. Glenn.....Appellant.

RECORD ON APPEAL

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INDEX

PRETRIAL MATTERS

Defendant's Motion for Statutory Immunity.....	1
Defendant's Memorandum in Support of Motion for Statutory Immunity.....	4
Immunity Hearing Transcript (Tr. 13:1-222:14), Transcript of Record, Volume One of Two, August 3-4, 2015, for <i>State of South Carolina v. Marquez Devon Glenn</i> , 2013-GS-23-06789, In the Court of General Sessions of Greenville County, South Carolina	
Opening Statements on Motion for Immunity	19
Tivarius Henderson	
Direct.....	68
Cross.....	80
Redirect.....	90
Shelricka Duncan	
Direct.....	93
Cross.....	107
Redirect.....	113
Recross.....	114
Delni Nunez	
Direct.....	115
Cross.....	121
Redirect.....	126
Jamarus Smith	
Direct.....	128
Cross.....	136
Redirect.....	141
Terry Lee Glenn	
Direct.....	142
Cross.....	146
Marquez Glenn	
Direct.....	159
Cross.....	172

Redirect.....	187
Recross.....	190
Kiana Grayson	
Direct.....	195
Cross.....	199
Redirect.....	201
Recross.....	202
Dorsey Lay	
Direct.....	203
Cross.....	205
Eric Whaley	
Direct.....	207
Cross.....	211
Elfonso Bruster	
Direct.....	212
Cross.....	216
Argument on Motion for Immunity.....	219
Trial Court Ruling.....	229

TRIAL

Trial Transcript (Tr. 479–527), Transcript of Record, Volume Two of Two,
August 4–5, 2015, for *State of South Carolina v. Marquez Devon Glenn*,
2013–GS-23-06789, In the Court of General Sessions of Greenville
County, South Carolina

Jury Charge.....	232
Verdict of the Jury.....	266
Sentence of the Court.....	279
Sentencing Sheet for Marquez Devon Glenn.....	281

EXHIBITS

Court's Exhibit No. 1 (Rule to Vacate).....	283
Court's Exhibit No. 3 (Model Lease - 2010).....	287
State's Exhibit No. 3 (Aerial Photo of Spring Grove Apartments).....	303

APPELLATE MATTERS

Notice of Appeal filed August 17, 2015.....	304
Certificate of Counsel.....	306

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

State of South Carolina,

Plaintiff,

v.

Marquez Davon Glenn,

Defendant.

IN THE COURT OF GENERAL SESSION
THIRTEENTH JUDICIAL CIRCUIT

Warrant No.: 2013A2330203356,
2013A2330203357

Murder, Attempted Murder,
Weapons/Possession of a Weapon
During the Commission of a
Violent Crime

NOTICE OF MOTION AND MOTION
ASSERTING STATUTORY IMMUNITY
FROM PROSECUTION UNDER S.C.
CODE § 16-11-440(C) AND § 16-11-450
AND DEMAND FOR PRE-TRIAL
HEARING

2014 SEP -9 PM 2:11

TO: Ryan Holloway, Assistant Solicitor for Thirteenth Judicial Circuit.

YOU WILL PLEASE TAKE NOTICE that Defendant, by way of pre-trial hearing, will move the Court for an Order granting Statutory Immunity from Prosecution under S.C. Code Ann. §§ 16-11-440 and 450 in ten (10) days after the date of this Motion or as soon thereafter as the Court may determine.

COMES NOW the Defendant, Marquez Davon Glenn, by and through his undersigned counsel, moves the Court at a time convenient to be heard, but prior to trial, for an Order granting the Defendant immunity from prosecution for the above-referenced charges.

This motion is based on S.C. Code Ann. § 16-11-440(C), which states in pertinent part 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).

Furthermore, this motion is based on S.C. Code Ann. § 16-11-450(A), which states in pertinent part that:

“A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force.” (emphasis added).

In addition to the statutory basis above, the right to be heard pre-trial is based on plain meaning of the statute and the 14th and 4th Amendment guarantee of Due Process. See State v. Gregory Kirk Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011); People v. Guenther, 740 P.2d 971 (Colo. 1987); Peterson v. Florida, 983 So.2d 27 (Fla. 1st D.C.A. 2008); Bunn v. State, 667 S.E.2d 605 (Ga. 2008).

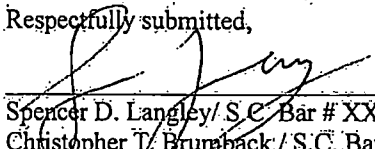
The facts of this case indicate that the Defendant was within his statutory right to use deadly force pursuant to S.C. Code Ann. § 16-11-440, the common-law of self-defense, and under the facts and circumstance attendant to the charges herein. See State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984)

As such, the Defendant is entitled to a hearing on this issue of immunity and the grant of immunity from prosecution pursuant to S.C. Code Ann. § 16-11-450 and the dismissal of this matter with prejudice.

WHEREFORE, DEFENDANT RESPECTFULLY REQUESTS a hearing pre-trial to determine the applicability of immunity from prosecution pursuant to S.C. Code Ann. §§ 16-11-440 and -450. Defendant will further offer in support of this Motion a memorandum of law to be submitted prior to the hearing, arguments of counsel, testimony of witnesses, supporting affidavits, and such other materials as may be properly submitted in support of Defendant's motion.

I SO MOVE.

Respectfully submitted,



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Greenville, South Carolina
Dated: September 8th, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

State of South Carolina)

Plaintiff,)

v.)

Marquez Davon Glenn,)

Defendant.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Warrant No.: 2013A2330203356,
2013A2330203357

**MEMORANDUM IN SUPPORT OF
STATUTORY IMMUNITY FROM
PROSECUTION UNDER S.C. CODE
§ 16-11-440(C) AND § 16-11-450**

I. INTRODUCTION

Defendant, Marquez Davon Glenn (hereinafter "Glenn") respectfully submits this Memorandum in support of his Motion for Statutory Immunity from prosecution pursuant to S.C. Code Ann. § 16-11-440(C) and § 16-11-450. On the night in question, Glenn exercised his statutory right to defend himself against a clear and present threat to his life. Despite the clear presence of each of the elements necessary to establish immunity from prosecution pursuant to S.C. Code Ann. §§ 16-11-440(C), - 450, the Prosecution persists in the prosecution of this case. Counsel for Defendant believes the Prosecution's insistence on prosecuting this clear case of self-defense is predicated upon the Prosecution's misunderstanding or misapplication of the statutory elements concerning whether Glenn was in a place he had a right to be and engaged in unlawful activity and whether Glenn was in a place he had a right to be on the night in question. Contrary to the Prosecution's position that Glenn was disqualified from exercising his statutory right of self-defense because he was allegedly subject to a Trespass Notice, Glenn was in fact a social guest of a resident of the apartment complex on the night in question and was, as such,

exercising his legal right of egress at the time he was attacked. Moreover, although Glenn was carrying a concealed weapon without a permit when he was attacked, the carrying of the handgun Glenn used to defend himself was not, and could not be, the cause of the incident because its existence was unknown by anyone other than Glenn prior to the instant Glenn used it to defend himself. Having the right to arm himself to respond to the deadly force with which he was presented, Glenn's carrying of a handgun does not disqualify him from statutory immunity. As such Glenn should be granted statutory immunity from prosecution.

II. FACTS

The allegations in this case arise out of an incident on the evening of April 12, 2013 at the Spring Grove Apartment Complex, located at 1900 Boling Road Extension, Taylors, SC 29687 (hereinafter "the Property"), in the County of Greenville, South Carolina. Spring Grove Apartment Complex is Section VIII, government-subsidized housing. The individuals involved in the events of that night are Glenn, who is 5'7" and 130 lbs. and on the night in question was a social guest of Sherricka Duncan, Kevin Bruster (hereinafter "Kevin"), who is 6'00" and 175 lbs., and Elfonzo Bruster (hereinafter "Elfonzo"), who is 6'4" and 265 lbs. Also involved in events earlier in the night that ultimately led Kevin and Elfonzo to attack Glenn is Tivarius Henderson (hereinafter "Tivarius").

On the evening of April 12, Kevin, who by his own statement was heavily abusing a number of substances at the time, was dropped off at the Property to see Gloria Duncan (hereinafter "Gloria"). At the time Kevin was angrily and intoxicatedly seeking Gloria, she was in the apartment of Sherricka Duncan with a number of other people, including Tivarius. Upon determining Gloria's location, Kevin forcibly entered Sherricka Duncan's apartment (hereinafter "27C"). After forcing his way into 27C uninvited, 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. After Tivarius got Kevin outside 27C and Kevin's attack abated, Kevin, as he moved away towards another part of the apartment complex, in a visibly agitated state, threatened that he would be back to "get" those "mother fuckers (sic)." In an effort to make good on his threat, Kevin went to his nephew's, Elfonzo's, apartment where he attempted to incite Elfonzo to violence, recruiting Elfonzo "to go get these mother fuckers." Law enforcement was dispatched to the Property in response to Kevin having attacked Tivarius, Glenn's brother, and forcibly entering 27C.

At approximately the same time Kevin was recruiting Elfonzo to attack Tivarius and his family, Glenn returned to the Property from driving several friends to the convenient store. Upon returning to the Property, Glenn was approached by the police officers that had reported to the scene as a result of Kevin's earlier actions. The police officers inquired as to Glenn's knowledge of the events that had just transpired at the Property involving Kevin, to which Glenn responded that he had no knowledge of any such events as he had been away from the Property at the time of their occurrence. While Glenn was assisting the police in their investigation, Glenn noticed, but did not think anything of, Kevin and Elfonzo lurking in the shadows of a nearby apartment building. Upon concluding his conversation with the police and the police departing the scene, Glenn retrieved his belongings with the intent to depart the Property. While returning to his car after obtaining his belongings, Kevin and Elfonzo, seeing Glenn alone, quickly and intentionally blocked Glenn's egress route and began forthwith threatening Glenn.

Immediately upon accosting Glenn, both Kevin and Elfonzo began aggressively yelling at Glenn about the prior altercation instigated by Kevin with Tivarius, in 27C. Having been at the

store during the time of the prior altercation involving Kevin, Glenn denied any involvement or knowledge of the subject about which Kevin and Elfonzo were berating him. Contemporaneous with Glenn responding to Kevin and Elfonzo in an attempt to extricate himself from what was now clearly a dangerous situation, Kevin verbally threatened Glenn's life, stating, "Man, who jump (sic) my uncle? Man, fuck this shit, [Elfonzo]; you just said, 'If we didn't get one of them, we was gunna get all of those mother fuckers [Glenn and Glenn's father and brother].'" Kevin then reared back and punched Glenn full-force in the neck. In addition to striking Glenn in the neck and knocking Glenn backwards and off-balance, Kevin's punch contacted a cup in Glenn's left hand sending the entire contents of Glenn's drink into Glenn's eyes, blinding him momentarily. As 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 Glenn yelled "GUN!" just in time for Glenn to see Elfonzo, who is known by Glenn to carry a gun, pulling a black handgun from his waistband. 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 only known to Glenn, and fired three (3) almost simultaneous shots in self-defense.

III. ARGUMENT

Pursuant to S.C. Code Ann. § 16-11-440(C), which states in pertinent part 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).

Furthermore, S.C. Code Ann. § 16-11-450(A), dictates that “[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force.” (emphasis added). Accordingly, Glenn has a clear right to be heard pre-trial on the issue of immunity based on the plain meaning of the statute as well as the 14th and 4th Amendment guarantees of Due Process. See State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011); Colorado v. Guenther, 740 P.2d 971 (Colo. 1987); Peterson v. Florida, 983 So.2d 27 (Fla. 1st D.C.A. 2008); Bunn v. Georgia, 667 S.E.2d 605 (Ga. 2008).

Defendant Was Within His Statutory Right To Meet Deadly Force With Force Pursuant to S.C. Code Ann. § 16-11-440 And Is Entitled To Immunity From Prosecution.

When a defendant such as Glenn moves for immunity prior to trial he must merely demonstrate beyond a preponderance of the evidence that each statutory element for self-defense and immunity are met. See Duncan 392 S.C. at 411 (holding “when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence.”). The facts of the events in question clearly establish beyond a preponderance of the evidence each of the statutory elements necessary to establish immunity from prosecution pursuant to S.C. Code Ann. § 16-11-440(C). Because Glenn was without fault in inciting the incident in question, reasonably believed he was in danger of imminently losing his life, had no other probable means of defending himself, was not engaged in unlawful activity, was attacked in a place where he had a lawful right to be, and was presented with deadly force, Glenn had no duty to retreat and acted within his statutory right to defend himself from a clear and present threat to his life. See State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011) (noting “the legislature intended to establish a true immunity and not merely an affirmative defense” and affirming defendant’s grant of statutory immunity); State v.

Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014) (granting defendant immunity from prosecution for murder and possession of a weapon during the commission of a violent crime pursuant to the South Carolina Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-440(C), -450). Upon a defendant's establishment of each of the requisite elements for immunity pursuant to S.C. Code Ann. § 16-11-440(C), the burden moves to the Prosecution to prove beyond a reasonable doubt that one of the necessary element for statutory immunity is absent. 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.").

Based on the substantial clarity of the issues and facts concerning Glenn's statutory claim of self-defense, Counsel for Glenn believes that the Prosecution's dispute of immunity in this case must be focused on: (a) whether Glenn was somewhere he was lawfully permitted to be when he was forced to defend himself, and (b) whether Glenn was engaged in an unlawful activity that was the proximate cause of the incident in question. Contrary to the Prosecution's position on these issues, both the facts and the law applicable to this case strongly indicate that Glenn is in fact entitled to immunity from prosecution in this case.

A. Glenn's status as a guest and licensee of a resident of the apartment complex imbued Glenn with a license to ingress and egress through the common areas of the complex such that Glenn, while reasonably exercising his license to egress, was "in [a] place where he ha[d] a right to be." S.C. Code Ann. § 16-11-440(C).

From the evidence disclosed by the Prosecution pursuant to Rule 5, SCRCrimP, it appears that it is the Prosecution's position that Glenn is disqualified from the use of self-defense and the protections of S.C. Code Ann. §§ 16-11-440(C), -450 because he was allegedly on a Trespass Notice for the Spring Grove Apartment Complex from a prior owner of the complex. Although the Prosecution's position that a trespasser cannot use S.C. Code Ann. § 16-11-440(C)

as a shield from prosecution may well be correct, the Prosecution's analysis completely ignores the undisputed fact that Glenn was a social invitee of Shelricka, a resident of the complex, on the night in question, and as such had a license to ingress and egress the Property to effectuate that visit. As a social invitee of Shelricka, Glenn was bestowed with the rights to ingress and egress through the common areas of the apartment complex without being considered a trespasser; even assuming arguendo that he was subject to a Trespass Notice from a prior owner of the Property.

Consistent with the position that Glenn had a right to lawfully ingress and egress the Property despite any objection of Shelricka's landlord is a recent and well-reasoned opinion by South Carolina Attorney General (hereinafter "AG"), which was written 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). The AG's opinion provides in-depth and persuasive analysis of the respective property rights of landlords and tenants in housing complexes and the ability of tenants to lawfully invite persons to a complex over objection of the landlord. Specifically the AG opinion, analyzing and taking into consideration statutory and attendant case law from numerous other jurisdictions, reconciles various South Carolina statutes regarding placement of trespass notice by a property manager with tenant's rights to possession and use of 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) ("Particularly instructive here, the courts of one state have held that a person placed on trespass notice with regards to an apartment complex or housing project is not guilty under a statute similar to § 16-11-620 if the person

enters the property at the invitation of a tenant and the person's presence in the common areas of the property is limited to the that which is necessary for the purpose of entering and leaving the tenant's residence.").

As discussed in the Attorney General Opinion, Massachusetts v. Richardson is acutely illustrative and instructive, as it holds that an individual placed on trespass notice for an apartment complex is not guilty under a statute similar to § 16-11-620 when that person enters the property as an invited guest of a tenant, and where that social invitee's presence in the common areas is limited to that required for reasonable ingress and egress from the tenant's residence. See 48 N.E.2d 678 (Mass. 1943); see also Mass. v. Nelson, 909 N.E.2d 42 (Mass. App. Ct. 2009). The Richardson court based its holding on the tenants' property rights:

"It is settled that, when a landlord lets a property to be occupied by several tenants, although he retains for certain purposes control of the common doorways, passageways, stairways and the like, he grants to his tenants a right of way in the nature of an easement, appurtenant to the premises let, through those palaces that afford access thereto It is also settled that this easement extends to members of the tenant's family and to all his guests and invitees."

Richardson, 48 N.E.2d at 682 (citations omitted and emphasis added).

Furthermore, a landlord generally does not have the right to deny entry to social guests a tenant has invited to come onto the property. See Right of third person to enter premises against objection of the landlord, 6 A.L.R. 465.¹ In addition, courts have held that each tenant's easement is equivalent to a license by which tenants and their social invitees may pass through

¹ Consistent herewith, 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)). As a landlord has given up "exclusive possession" of a leased property by having bestowed upon the tenant a portion of the landlord's bundle of property rights, and specifically 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 of ingress and egress.

the complex's common areas in order to access the tenant's apartment.² The landlord or owner "could not revoke the license any more than he could an invitation extended by the tenant to one calling upon any legitimate business." Richardson, 48 N.E.2d at 683. "[I]t is important to stress that tenants, not landlords, have the right to choose who may enter the property in order to visit a tenant in her place of residence. Since a tenant may determine who shall be allowed to enter her home, persons who enter a building with the permission of a tenant cannot be deemed a trespasser, even if they have been forbidden from entering by the landlord. The same analysis applies to persons using roads or walkways to reach a tenant's apartment pursuant to an invitation." Elena Goldstein, Responding to Public Housing No-Trespass Policies, 38 HARV. C.R.-C.L. L. REV. 215, 221 (2003) (emphasis added).

The Nelson court broadened the application of Richardson to include tenants of public housing developments. The Appeals Court of Massachusetts specified that the identity of the landlord (i.e., public versus private ownership) is irrelevant to the tenants' property rights and thus,

"residential tenants have a right to admit a visitor to the common areas of a building for purposes of approaching their apartment because such use of the common areas is within the customary 'usages of the community.' . . . [A] conviction for trespass cannot stand against a defendant who is found to be passing through the halls of a [] property in order to reach a tenant's apartment at the tenant's invitation."

Nelson, 909 N.E.2d at 45-46 (citations committed).

"Thus, a tenant's invitation supersedes any landlord bar on visitors and prevents a nonresident from being deemed, or convicted as, a trespasser." Goldstein, supra at 222. See In re Jason Allen D., 733 A.2d 351 (Md. Ct. Spec. App. 1999) (holding the housing authority's no-

² A licensee is a person who is privileged to enter or remain upon land by virtue of the possessor's consent. Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986).

trespass order did not supersede the defendant's invitation given by a resident of the housing complex); L.D.L. v. Fla., 569 So.2d 1310, 1312 (Fla. Ct. App. 1990) ("One who . . . comes upon the premises upon the invitation of a tenant, although expressly forbidden to do so by the landlord, is not guilty of criminal trespass."); see also Todisco v. Tishman Realty & Const. Co., 62 N.Y.S.2d 458, 459 (Sup. Ct. 1946) (holding that tenants' invitees have the right to reasonable use of the tenants' means of ingress and egress of the building without being considered a trespasser); Pa. v. Burford, 73 A. 1064, 1067 (Pa. 1909) (holding an apartment rental grants a right of way appurtenant to the unit for lessee and lessee's guests who visit the apartment for any lawful purpose); Vt. v. Dixon, 725 A.2d, 920 922-23 (Vt. 1999) (holding that a landlord cannot prevent a tenant's invitees from passing through common areas in order to access the tenant's residence); City of Bremerton v. Widell, 51 P.3d 733, 739 (Wash. 2002) (holding that a landlord cannot prohibit a tenant's invitees from passing through common areas in order to access the tenant's residence).

Although South Carolina courts have yet to address this issue directly, South Carolina real property jurisprudence is built upon the same touchstones as those illuminated in Richardson and Nelson. Richardson, 48 N.E.2d at 682-83; see Babb v. Lee County Landfill SC, LLC, 405 S.C. 129, 747 S.E.2d 468 (2013) ("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. . ."). To permit a landlord or property manager's placement of a resident's social guest on a trespass notice and thereby prohibit visitation by a tenant's invitees would breach tenant's fundamental rights to use and of quiet enjoyment of their leased premises. Id. Consequently, given the concord amongst the majority of states that have addressed this issue and the AG opinion finding the reasoning of Richardson and Nelson "to be

sound," this Court should hold that individuals placed on trespass notice by a landlord, but who are social invitees of tenants, possess a license to reasonable ingress and egress through a complex's passageways and common areas such that the invitee cannot be deemed a trespasser in the exercise of that license.

Analogous to the circumstances in the Nelson and Richardson cases, Shelricka, as a resident of the Property, had the right to bestow upon those persons she chooses to invite to the Property a right of way in the nature of an easement through such common areas, stairs, breezeways, and passageways which afford access to 27C. Having exercised her fundamental property rights and expressly invited Glenn to her apartment, Glenn was a social invitee of Shelricka that was, consequently, licensed and "entitled to use the means of ingress and egress to make such visitation possible" Minn. v. Hoyt, 304 N.W.2d 884, 890 (Minn. 1981). The license bestowed upon Glenn by Shelricka "was [one] for [her] to grant or withhold . . . notwithstanding objections of the landlord, who could not revoke the license any more than he could an invitation extended by [a] tenant to one calling upon any legitimate business. Richardson, 48 N.E.2d at 683. Therefore, despite the Model Lease for Subsidized Programs stating that tenants' guests that are placed on trespass notice by the landlord will be considered trespassers and will be arrested for future visits and the Prosecution's position that Glenn was consequently not in a place that he was lawfully permitted to be when he exercised his right of self-defense, Glenn, as a guest of Shelricka, had a right of ingress and egress such that he cannot be considered a trespasser while reasonably exercising that right. Accordingly, having only passed through the necessary common areas to visit and depart those of whom he was a guest and stopping only at the explicit request of law enforcement officers, Glenn was consequently,

"in [a] place where he ha[d] a right to be" when he was stopped and violently attacked by a visibly intoxicated and enraged Kevin and Elfonzo. S.C. Code Ann. § 16-11-440(C).

A. Glenn was entitled to arm himself in self-defense when Elfonzo pulled a handgun on Glenn such that Glenn's lack of a conceal and carry permit for the gun he used to defend himself is not a bar to statutory immunity on the grounds of self-defense.

Concealed carrying of a handgun without a permit does not preclude a party from exercising his statutory right of self-defense. Self-defense, and attendant immunity from prosecution, are only barred by a party's unpermitted conceal and carry of a handgun where the weapon is the proximate cause of the incident in question. "[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." State v. Burriss, 334 S.C. 256, 262 (1997) (emphasis added); see also Goodson, 312 S.C. at 280 (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.").

In stark contrast to Glenn's unpermitted carrying of a handgun, which was known only to Glenn until the instant he was forced to defend himself when presented with deadly force by Elfonzo, the court in State v. Slater held that a defendant could not assert self-defense where the defendant was unlawfully carrying a handgun because the defendant "carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement[.]" proximately causing the exchange of gunfire which led to the victim's death. 373 S.C. 66, 71, 644 S.E.2d 50, 53 (2007). As opposed to the facts in Slater, which plainly evidences that the defendant's carrying of the handgun affirmatively caused the incident that resulted in the shooting, the facts of this case clearly demonstrate that Glenn's unpermitted possession of a concealed firearm was not the proximate cause of the shooting on the night of April 12, 2013.

The facts herein inexorably demonstrate that since no one even knew of Glenn's possession of a firearm until the instant Glenn was forced to defend himself, Glenn's possession of a concealed firearm was not, and could not have been, the proximate cause of the shooting.

At the time of Kevin and Elfonzo's attack, Glenn, having become aware of some form of hostilities while he was away at the convenience store, was attempting to peaceably exit the apartment complex for the express desire to avoid any conflict or danger to himself and his family members. While attempting to peaceably depart the apartment complex, Glenn's efforts were thwarted by Kevin and Elfonzo (1) physically blocking Glenn's egress route, (2) verbally threatening Glenn's life by shouting, "Man, who jump (sic) my uncle? Man, fuck this shit, Ace [Elfonzo]; you just said, 'If we didn't get one of them, we was gunna get all of those mother fuckers [Glenn and Glenn's father and brother] (sic),'" and (3) ultimately physically attacking Glenn and pulling a handgun on him. As previously stated, Glenn did not brandish, show, reach for, or otherwise make known his possession of a handgun until the very last moment when, after being punched in the throat and temporarily blinded, and hearing a female scream "GUN!" as he saw Elfonzo pull a handgun from his waistband, he was forced to use his concealed handgun to save his own life.

But for Elfonzo and Kevin prohibiting and obstructing Glenn's peaceable departure from the apartment complex by viciously attacking and pulling a gun on Glenn there would have been no violent altercation and no subsequent necessity for Glenn to have to use his weapon in self-defense. In fact, but for Elfonzo and Kevin's actions, no one would have ever known that Glenn was in possession of a handgun on the night of April 12, 2013. Glenn's possession and concealment of a firearm simply had no causal impact on the events leading to Glenn's use of the handgun in self-defense. Rather, as described by the Court in Burriss, Glenn's possession and

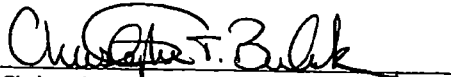
concealment of the firearm was merely incidental to Glenn's lawful arming of himself in self-defense when he was faced with deadly force. 334 S.C. at 262.

CONCLUSION

The facts of Glenn's case indicate that Glenn was squarely within his statutory right to meet deadly force with deadly force pursuant to S.C. Code Ann. § 16-11-440(C), and the South Carolina common-law of self-defense. On the night in question, Glenn was an invited social guest at the apartment complex who had a legal right to ingress and egress the premises. As such, Glenn was in a place he was lawfully permitted to be when he was attacked by Kevin and Elfonzo. Furthermore, although Glenn was carrying a concealed handgun without a permit, because Glenn's possession and concealment of a firearm was not the proximate cause of the incident resulting in Glenn's use of the handgun in self-defense, the possession and concealment does not bar Glenn's entitlement to statutory immunity on the grounds of self-defense. Engaging in no unlawful activity that was the proximate cause of Kevin and Elfonzo's attack and having been attacked in a place where he had a legal right to be, Glenn had no duty to retreat and had the right to stand his ground and meet force with force, as he reasonably believed was necessary to prevent a violent crime against himself. As such, the Defendant respectfully requests that this court grant Defendant immunity from prosecution pursuant to S.C. Code Ann. § 16-11-440(C) and § 16-11-450.

Respectfully submitted,

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August 3, 2015
Greenville, South Carolina

15 of 15

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MARQUEZ DEVON GLENN,)
)
 DEFENDANT.)
 _____)

2013-GS-23-06789

TRANSCRIPT OF RECORD
(VOLUME ONE OF TWO)

AUGUST 3 - 5, 2015
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. HAYES, III

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

RYAN HOLLOWAY, ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANT:

CHRISTOPHER BRUMBACK, ESQUIRE
SPENCER LANGLEY, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.MONDAY, AUGUST 3, 2015, VOLUME ONE OF TWO:

JURY QUALIFICATION AND SELECTION ----- 36

IMMUNITY HEARING:

TIVARIUS HENDERSON

DIRECT BY MR. BRUMBACK ----- 59

CROSS BY MR. HOLLOWAY ----- 71

REDIRECT BY MR. BRUMBACK ----- 82

SHELICKA DUNCAN

DIRECT BY MR. BRUMBACK ----- 84

CROSS BY MR. HOLLOWAY ----- 98

REDIRECT BY MR. BRUMBACK ----- 104

RECROSS BY MR. HOLLOWAY ----- 105

DELNI NUNEZ

DIRECT BY MR. BRUMBACK ----- 106

CROSS BY MR. HOLLOWAY ----- 112

REDIRECT BY MR. BRUMBACK ----- 117

JAMARUS SMITH

DIRECT BY MR. BRUMBACK ----- 119

CROSS BY MR. HOLLOWAY ----- 127

REDIRECT BY MR. BRUMBACK ----- 132

TERRY LEE GLENN

DIRECT BY MR. BRUMBACK ----- 133

CROSS BY MR. HOLLOWAY ----- 137

INDEXWITNESSPAGE NO.

MARQUEZ GLENN

DIRECT BY MR. BRUMBACK -----	150
CROSS BY MR. HOLLOWAY -----	163
REDIRECT BY MR. BRUMBACK -----	178
RE CROSS BY MR. HOLLOWAY -----	181

TUESDAY, AUGUST 4, 2015 - IMMUNITY HEARING CONT.

KIANA GRAYSON

DIRECT BY MR. BRUMBACK -----	186
CROSS BY MR. HOLLOWAY -----	190
REDIRECT BY MR. BRUMBACK -----	192
RE CROSS BY MR. HOLLOWAY -----	193

DORSEY LAY

DIRECT BY MR. HOLLOWAY -----	194
CROSS BY MR. BRUMBACK -----	197

ERIC WHALEY:

DIRECT BY MR. HOLLOWAY -----	198
CROSS BY MR. BRUMBACK -----	202

ELFONSO BRUSTER

DIRECT BY MR. HOLLOWAY -----	203
CROSS BY MR. BRUMBACK -----	207

1 Monday, August 3, 2015, Volume One of Two:

2 (Whereupon State's exhibits 1 - 21 and 29 - 106 had
3 previously been premarked for identification)

4 (Whereupon State's exhibits 22 - 28 had been withdrawn)

5 **THE COURT:** Thank you. Good morning. You may take
6 your seat. For those of you who do not know, I've just been
7 announced, I am John Hayes from York and assigned to hold
8 general sessions court. The first case is Marquez Devon
9 Glenn.

10 I've got some material indicating that the first issue
11 that has to be decided or at least there's a motion
12 regarding the immunity under the stand-your-ground law as
13 it's commonly called, 16-11-440 and 450. Mr. Holloway, good
14 to see you again.

15 **MR. HOLLOWAY:** Thank you, Your Honor.

16 **THE COURT:** Mr. Holloway was with our Solicitor's
17 Office in York. So I've known him very well for a good
18 while. And, counsel, who have I got as ...

19 **MR. BRUMBACK:** Christopher Brumback and my partner,
20 Spencer Langley, for the Defendant, Your Honor.

21 **THE COURT:** Brumback?

22 **MR. BRUMBACK:** Brumback, yes, Your Honor.

23 **THE COURT:** Your father wasn't a lawyer, was he?

24 **MR. BRUMBACK:** No, he was not as a matter of fact.

25 **THE COURT:** I had a classmate named Bill Brumback.

1 **MR. BRUMBACK:** It's not a very common name.

2 **THE COURT:** So that's why I thought ---

3 **MR. BRUMBACK:** Probably some relation somewhere.

4 **THE COURT:** It wasn't like Hayes, you know. There's
5 plenty of us around. All right. You may be seated. Now,
6 is this Mr. Glenn here seated with the tie, blue shirt?

7 **MR. GLENN:** (Affirmative nod).

8 **THE COURT:** All right. These -- the motion is that of
9 the Defense relying on statutory immunity, as I've already
10 said. I have briefly looked at the memorandum in support.
11 And I'll let Mr. Brumback or Mr. Langley start us off.

12 **MR. BRUMBACK:** Yes, Your Honor. May it please the
13 Court. We are moving for immunity in this case as we
14 believe the evidence will establish well beyond a
15 preponderance of the evidence that each of the requirements
16 for statutory immunity is present in this case.

17 That said, I think there's not that much dispute as to
18 the facts of the case, necessarily, however, I think there
19 is somewhat of a dispute as to the law. And those are the
20 main points that we have outlined in our memorandum, the
21 first of which being that Mr. Glenn was somewhere he was
22 lawfully permitted to be at the time that he was forced to
23 defend himself, and the second issue being whether he was
24 engaged in a lawful activity which was the proximate cause
25 of him ultimately having to defend himself.

1 With regard to that first question, I believe, and I'll
2 let the solicitor speak for himself, but from the discovery
3 I've seen in the case I believe it's the solicitor's
4 position that Mr. Glenn was not somewhere he was lawfully
5 permitted to be because he may or may not have been on a
6 trespass list from a number of years before this incident
7 from several owners before the current owner of the complex.

8 That said, regardless of whether a trespasser is
9 prohibited from using this statute as a shield, the facts,
10 we believe, will be shown clearly, Your Honor, that on the
11 night in question Mr. Glenn was an invitee of a tenant of
12 the complex and as such -- this is a question of first
13 impression here in South Carolina. I think the Attorney
14 General opinion in the discussion we provided in our
15 memorandum supports very effectively that an invitee of a
16 tenant cannot be considered a trespasser and can have a
17 license to reasonable ingress and egress of a complex to
18 effectuate a visit over the objection of the landlord.

19 That said, the second issue, which, I believe we will
20 focus on here today is the fact that Mr. Glenn on the
21 evening in question was carrying an unpermitted concealed
22 weapon. We don't dispute that. It was the weapon he had
23 used ultimately to defend himself.

24 However, the gun was concealed and not known to anyone
25 other than himself until the instant at which he ultimately

1 was forced to arm himself in self-defense. And we believe
2 that the statutes or the case law in South Carolina is clear
3 on the point that if you arm yourself, that is incidental,
4 if you arm yourself in the moment, you lawfully do so, then
5 the carrying of a concealed weapon without a permit does not
6 disqualify you from immunity under this statute.

7 And at this point, Your Honor, if you would have no
8 questions on these matters, I would like to begin with our
9 witnesses.

10 **THE COURT:** Okay. Mr. Holloway, anything you want to
11 add, or say, or have me on-the-look-out for or ...

12 **MR. HOLLOWAY:** Yes, sir, Your Honor. The State's
13 position is that the hearing is not even needed. The fact
14 of the matter is, the statute by its plain language is which
15 is how the court interprets the statute is -- it says the
16 person using the lethal force has to have had the right to
17 be there. If he didn't have the right to be there in the
18 first place, he doesn't have the right to stand his ground.

19 The fact of the matter is, in 2010 his family lived on
20 the property. He lived on the property himself with his
21 family. His mother was on the lease. She's in the
22 courtroom. I assume she may be available to testify if
23 necessary.

24 They were issued eviction paperwork in April of 2010,
25 which I'll hand up to the Court. We were marking them as

1 exhibits. They actually moved from the property -- it's a
2 certified true copy. I've given a copy to the Defense back
3 in October.

4 THE COURT: Have you seen this?

5 MR. BRUMBACK: Yes, Your Honor, we have.

6 THE COURT: Any objection to the Court considering it?

7 MR. BRUMBACK: No, Your Honor.

8 THE COURT: All right. So it'll be number ---

9 MR. HOLLOWAY: Number -- I believe we are at -- let's
10 just make it Court's exhibit 1.

11 THE COURT: Okay. You need to mark it?

12 MADAME COURT REPORTER: Yes, sir.

13 MR. HOLLOWAY: Judge, ---

14 THE COURT: Wait just a minute, she's marking it.

15 MR. HOLLOWAY: I'm sorry.

16 (Whereupon Court's exhibit 1 was marked)

17 MR. HOLLOWAY: And after they were issued that
18 paperwork the family actually moved from the property. I
19 don't think there's any dispute that he didn't live there at
20 the time of the shooting.

21 Five months later, and the State has the sheriff's
22 deputy prepared to testify, assuming we had the hearing,
23 that five months or six months after the Defendant moved
24 from the property per that eviction paperwork, the Defendant
25 was on the property. The sheriff's deputy checked his ID,

1 his driver's license, confirmed he was Marquez Glenn, and
2 the sheriff's deputy will testify that -- there's actually a
3 database that the sheriff's office maintains. And he called
4 -- he called dispatch once he identified Mr. Glenn and
5 confirmed who this guy was, and this guy is on no trespass
6 notice with the sheriff's office.

7 From there he then issued a verbal notice. Nothing's
8 required in our laws to have a written issue of no trespass.
9 So even in October of 2010, two and a half years prior to
10 the shooting, he knew he wasn't wanted by -- on the property
11 by the property owners, okay?

12 Now, I'm going to mark these as Court's exhibits 2 and
13 3. I've given copies to the Defense per discovery.

14 (Whereupon Court's exhibits 2 and 3 were marked)

15 **MR. HOLLOWAY:** These are copies of the lease provisions
16 for his property. The property manager is prepared to
17 testify, Tawanna Knighton. She's under subpoena. She would
18 testify that the -- a different corporation owned this
19 property. Spring Grove Apartments at the time, it was --
20 back in 2010 it was Oak View Apartments there in Taylors not
21 long -- about twenty minutes from here.

22 But the important thing to note, and she actually
23 marked this for the Court's convenience, the portions that
24 are most relevant to this matter. A current tenant cannot
25 invite a guest who would violate state or local laws. If

1 Mr. Glenn coming back to the property is a trespasser, he's
2 violating the trespass ordinance. Therefore, it's a
3 violation of a tenant's ability to delegate a right of a
4 guest to enter the property.

5 So that's the crux of this argument, does Mr. Glenn
6 have a right to enter the property, even as a guest? And
7 the lease provisions normally delegate some right to enter
8 the property, but within the bounds of the lease provision.
9 That's the scope of the tenant's power to delegate.

10 Ms. Duncan, who's also prepared to testify, had no
11 right to delegate that authority to Mr. Glenn to come to
12 this property. And that's the point of all this. I'm going
13 to hand up the lease provisions to the Court from 2010 and
14 2014.

15 **THE COURT:** Have you seen these, Mr. Brumback?

16 **MR. BRUMBACK:** I believe we ---

17 **THE COURT:** 2010 model lease and ---

18 **MR. BRUMBACK:** We do have a copy of the model lease.
19 What is the other document, Your Honor?

20 **THE COURT:** All right. And that's number 3 for the
21 State, I mean, Court. And 2014 model lease is number 2.
22 What's the date of the occurrence?

23 **MR. HOLLOWAY:** April 13th, actually April 12th, 2013 is
24 when he was actually shot, close to midnight.

25 **THE COURT:** Okay.

1 **MR. HOLLOWAY:** And, Your Honor, kind of ending my
2 argument here, Mr. Glenn actually has a conviction for
3 domestic violence, first offense. Under federal law he
4 can't possess a firearm. That's violating first federal
5 law.

6 And I would dispute the fact that he didn't arm himself
7 at the time of the perceived threat, not from our victim,
8 but from the uncle, Kevin Bruster. He didn't arm himself at
9 that moment in time based on this perceived threat.

10 Per his statement to the main investigator in this
11 case, Eric Whaley, he armed himself before entering the
12 property. He said to the investigator, I always carry a gun
13 when I go to Spring Grove Apartments. He armed himself
14 prior to entering the property, which goes toward, I would
15 say, the wrongfulness of his action, the first prong of the
16 stand-your-ground case law that's kind of defined and
17 fleshed out for us.

18 **THE COURT:** All right. You ready to call your first
19 witness?

20 **MR. BRUMBACK:** Actually, Your Honor, could I briefly
21 respond to that?

22 **THE COURT:** You may.

23 **MR. BRUMBACK:** First of all, Your Honor, I think as I
24 indicated previously, going in reverse order with regard to
25 the lawful arming of himself, I think if you'll refer to

1 page 12 of our memorandum, the case law in State v. Burriss
2 specifically says a person can be acting lawfully even if he
3 is in unlawful possession of a weapon if he was entitled to
4 arm himself in self-defense at the time of the shooting. I
5 don't know how that case can be read to make sense if
6 someone didn't already have a gun on them.

7 If it's saying you're unlawfully carrying a gun,
8 however, that would not disqualify you from claiming
9 statutory self-defense ---

10 **THE COURT:** All right. Well, that's different,
11 statutory self-defense and immunity ---

12 **MR. BRUMBACK:** Oh, I'm sorry. With regard to the
13 immunity question, I think that this applies equally with
14 regard to the question of immunity because was he doing
15 anything unlawfully? You cannot -- you can be considered a
16 person to be acting lawfully even if he is in unlawful
17 possession of a weapon if he is entitled to arm himself in
18 self-defense at the time of the shooting.

19 I don't know how you'd reconcile those two statements
20 if someone does not have a gun on them ---

21 **THE COURT:** I haven't read the whole case, but the way
22 you present your argument is State versus Slater held that a
23 defendant could not assert self-defense where the defendant
24 was, quote, unlawfully carrying a handgun.

25 **MR. BRUMBACK:** However, Your Honor, if you continue

1 reading, the reason for that was because the carrying of the
2 gun was the proximate cause of the ultimate shooting,
3 because he carried the cocked weapon in open view into an
4 already violent attack in which he had no prior involvement.
5 That is not the situation in this case whatsoever.

6 Mr. Glenn -- the carrying of the handgun was unknown to
7 anyone that night but for the attack of Elfonso and Kevin
8 Bruster.

9 **THE COURT:** Well, but the basic question is did he have
10 a lawful right to carry the gun? And I know the first thing
11 that pops in my mind is proximate cause is whether or not
12 carrying an unlawful gun was the proximate cause, or not
13 proximate cause, but how that ties in? But still, the
14 statute says you can't be engaged in an unlawful activity
15 and seek immunity.

16 **MR. BRUMBACK:** Your Honor, I don't want to necessarily
17 disagree on that issue, but ---

18 **THE COURT:** You can disagree. That's why I like --
19 that's why I enter into dialogue ---

20 **MR. BRUMBACK:** Well, I ---

21 **THE COURT:** --- with lawyers and don't just sit here
22 and listen because I'm certainly -- the first few words, a
23 person who is, quote, not engaged in an unlawful activity.
24 You can tell me why that doesn't mean what it says, and I'll
25 be glad to listen.

1 **MR. BRUMBACK:** Well, Your Honor, and if I recall
2 correctly, the case law states that it is the burden of the
3 prosecution to establish -- and one of the other cases that
4 we've cited herein states that it is the prosecution's duty
5 to prove that the unlawful act was -- for purposes of the
6 statutory immunity of self-defense it is incumbent upon the
7 prosecution to prove that the unlawful act that they're
8 claiming excludes you from this right of immunity was the
9 proximate cause of the shooting.

10 So I think that that does really tie in with this
11 situation because the question is not whether you were
12 jaywalking at the time that you were forced to defend
13 yourself. That unlawful act has nothing to do with your
14 right to immunity for self-defense. It's a question of
15 whether the unlawful activity you were engaged in caused the
16 altercation, caused the ultimate shooting. And I think that
17 that's the -- based on the case law and the case law cited
18 in our memorandum, I think that's the proper way to view
19 that qualification under 440(c).

20 But with regard to the other issue on the entitlement
21 to be there, while I do understand that the lease does say
22 that they can say who and who can't come to the property, I
23 believe that as indicated in the Attorney General's opinion
24 finds that there are certain property rights that the
25 landlord gives up when they lease property to a tenant. And

1 part of that right is to invite whoever a tenant wants to
2 invite to a property.

3 On the night in question Mr. Glenn was not causing any
4 problems, was not engaging in any unlawful activity, as
5 we've already discussed that term, was not engaging in any
6 unlawful activity and so was visiting a resident lawfully at
7 the request of that resident. And we have Ms. Shelricka
8 Duncan here today to testify to that fact that Mr. Glenn was
9 an invitee to her apartment that night.

10 And so, Your Honor, I think that at the very least Mr.
11 Glenn has an opportunity to be heard on this. I don't think
12 the State's disagreement on either the facts or the law
13 precludes a hearing on immunity pretrial.

14 **THE COURT:** All right. I'll be glad to hear the
15 witnesses. And I'm just kind of looking real quick, you
16 rely a good bit on a Massachusetts case from 1943.

17 **MR. BRUMBACK:** Yes, sir, well, we do, but that opinion
18 was adopted in a 2009 opinion in Common Wealth versus Nelson
19 where that was broadened to include all owners, all land
20 owners regardless if it's a private or a public complex.
21 And I have copies of those cases as well, Your Honor, if
22 you'd like to see ---

23 **THE COURT:** Certainly.

24 **MR. BRUMBACK:** --- the Massachusetts cases.

25 **THE COURT:** Thank you.

1 **MR. BRUMBACK:** Thank you, Your Honor.

2 And, Your Honor, briefly, in the event that you have
3 not had the opportunity to get to -- get through the
4 Attorney General's opinion, I believe this is instructive.
5 The Attorney General's opinion concludes that it is the
6 opinion of this office that the owner, landlord, manager or
7 superintendent at an apartment complex or a public housing
8 project generally has the authority under 16-11-620, the
9 trespass statute, to place a person on trespass notice with
10 regards to the property of such developments.

11 This authority is not without limits, however. By its
12 expressed language the trespass statute does not apply to a
13 person who enters or refuses to leave the property after
14 notice with legal cause or good cause. Whether a person has
15 legal cause or good cause to enter or remain on property
16 after being put on trespass notice is a factual question,
17 which is beyond the scope of this opinion.

18 That being said, we believe the courts in this state
19 faced with this question -- faced with the questions
20 presented would follow the reasoning and conclusions of the
21 courts of another state that specifically address whether a
22 person placed on trespass notice with regards to an
23 apartment complex or housing project may enter upon such
24 property at the invitation of the tenant.

25 Consistent with those decisions we move the court would

1 hold that 16-11-620 may not be applied so as to infringe
2 upon a tenant's rights of access to his or her residence
3 including the right to admit an invited guest, which, I
4 think the testimony will be unequivocal here today that Mr.
5 Glenn was an invited guest on that evening.

6 **THE COURT:** All right. And, of course, this opinion
7 deals with 16-11-1620, not the statute we're dealing with.

8 **MR. BRUMBACK:** Your Honor, it does not deal with the
9 question of statutory immunity for self-defense, that is
10 correct, but I think this goes straight to the heart of the
11 matter of whether he was a trespasser and whether he was
12 lawfully permitted to be on the property. If he was not a
13 trespasser, he could not be considered a trespasser, then
14 the State's entire argument about him not being lawfully
15 permitted to be there is void.

16 **THE COURT:** Okay.

17 **MR. HOLLOWAY:** Your Honor, where does the logic go
18 ultimately? Can a tenant invite a sex offender on the
19 property? I mean, the tenant's right is not unlimited. It
20 is limited by the lease that person signs.

21 And what separates this case from the case that the co-
22 counsel has cited to is the Defendant armed himself, knowing
23 he's a domestic violence offender, and he can't possess a
24 firearm, and he entered the property on the front-end. What
25 is -- what kind of mindset is that of wrongfulness when

1 entering the property in the first place? Does he think
2 something's going to happen?

3 Why does he need -- feel it necessary that the only
4 place he carries a concealed gun is Spring Grove Apartments?
5 That's from his own statement. What kind of mindset is
6 that, the wrongful behavior he expects to happen?

7 And since we're offering cases from many decades ago,
8 I'm going to hand up a case out of Arizona, 1929, and a
9 couple of cases it cites to from 1981 and also 2014. And
10 I'll read the relevant part in just a second.

11 And I would say to the Court that -- would agree that
12 this law is so new in this State, there's not a lot of case
13 law to flesh these out. A lot of case law in dealing with
14 procedures and how it's handled pretrial didn't come out
15 until 2013/2014. So it is helpful to look at other states
16 that have examined this issue over the past several decades.

17 In the Macias case, it's Arizona Supreme Court, 1929,
18 ---

19 **MR. BRUMBACK:** Do you have copies of it?

20 **MR. HOLLOWAY:** I don't, I'm sorry. There is not and
21 never has been the law even in Arizona that a man who is a
22 trespasser in a place where he has no right to be may stand
23 his ground and slay his attacker and still claim self-
24 defense when by leaving such place he might avoid the
25 conflict.

1 He could have left the conflict. He wasn't even
2 involved in the altercation in the apartment earlier on that
3 set this whole thing in motion. He injected himself into
4 this situation.

5 MR. BRUMBACK: Your Honor, I ---

6 MR. HOLLOWAY: That ---

7 THE COURT: That will be facts ---

8 MR. BRUMBACK: That's way off, yeah.

9 MR. HOLLOWAY: Well, again, it goes to the wrongfulness
10 of his actions, which goes to his mindset, which goes to
11 claiming he has a right to be on this property in the first
12 place.

13 THE COURT: All right. Real quick, and then I'm going
14 to start witnesses.

15 MR. BRUMBACK: Yes, Your Honor.

16 THE COURT: The model lease of 2010 would be the
17 operable one in 2013.

18 MR. HOLLOWAY: According to the apartment manager, yes.

19 THE COURT: And ---

20 MR. HOLLOWAY: Because it was a different corporation
21 that owned it from 2010, at the very least, 2010/2013.
22 2014, the property was sold to a different corporation.

23 THE COURT: All right. And ---

24 MR. BRUMBACK: Was that the operable lease when they
25 lived there?

1 THE COURT: I'm just trying to figure out ---

2 MR. HOLLOWAY: According to her, yes.

3 THE COURT: --- which was the ---

4 MR. HOLLOWAY: Unless they signed it in 2009, it's just

5 ---

6 MR. BRUMBACK: Yeah, that's what I was wondering.

7 MR. HOLLOWAY: But this is the -- these are the
8 examples of paperwork that the manager gave me regarding
9 these lease provisions.

10 THE COURT: All right. And where in the -- it's very
11 lengthy. What provision disallows ---

12 MR. HOLLOWAY: Yes, sir.

13 THE COURT: --- invitation of people on trespass
14 notice?

15 MR. HOLLOWAY: I'm sorry. I should have -- it's
16 provision 19. She actually marked it for me, 15 and 19.

17 MR. BRUMBACK: Which one are you referring to?

18 MR. HOLLOWAY: I'm sorry. For the record, it's
19 State's exhibit -- Court's exhibit 3, model lease 2010. And
20 under paragraph 15, any resident may not invite any person
21 on the property or into a unit who's listed on the site's
22 trespass list.

23 Under 19, under federal regs, residents may not share
24 their property with anyone who's not on the lease.

25 Management has the right to prohibit anyone other than the

1 resident from coming on the leased premises or apartment
2 community, this shooting occurred in the parking lot, not
3 inside the apartment, in the commons area, for any length of
4 time once the resident receives a copy of the written notice
5 barring an individual from entering the property.

6 Now, we don't have any written notice given to the
7 tenant. But in this -- this would be -- if we were looking
8 at the tenants from the tenant's perspective, this document,
9 that would be more of a breach of contract issue. We're
10 looking at the mindset of Marquez Glenn when he entered the
11 property. He had been kicked off the property, had no right
12 to live there or even come there. He was told, leave.

13 And the apartment complex shouldn't have to go to
14 anybody on that no trespass list periodically and say, now
15 you know, don't come back. They shouldn't be -- they have
16 the right to say don't ever come back. And actually as of
17 April, I'm going to confirm this, but as of April he is
18 still on that no trespass list according to our sheriff's
19 deputy.

20 **THE COURT:** All right.

21 **MR. BRUMBACK:** Your Honor, I just -- again, I can put
22 whatever I want in the lease. It doesn't mean it's
23 operable, it doesn't mean it's lawful. In fact, you can.
24 All right. I mean, you just simply can.

25 People violate the law all the time. But the fact is

1 ---

2 **THE COURT:** The fact that people violate the law
3 doesn't lead logically to the fact that what they're doing
4 is not unlawful.

5 **MR. BRUMBACK:** No, no, no. And I'm not saying that,
6 Your Honor. But I'm simply saying that you can put a
7 provision in a lease that can ultimately be deemed by a
8 court at a later date not to be operable, not to be
9 permitted, not to be -- and so my point is they can put that
10 in there. I simply don't think that the landlord has the
11 right to tell someone that they cannot invite someone to an
12 apartment.

13 And with Ryan's argument about whether he was in the
14 parking lot or not, as we've indicated, and as the Attorney
15 General's opinion discusses, and as we've discussed at
16 length in our memo, you have a reasonable right to ingress
17 and egress.

18 And Ryan's right. Ryan, I'm sorry, Marquez was
19 attempting to leave the property to remove himself from what
20 had turned into apparently a dangerous situation. So he was
21 attempting to leave at the time this occurred, exercising
22 that reasonable right to egress from the people that he had
23 been invited to visit.

24 **THE COURT:** Okay. All right. You ready for your first
25 witness?

1 **MR. BRUMBACK:** Your Honor, I am. There is one issue I
2 would like to raise before we call the first witness. And
3 that is, my understanding that some of the individuals who
4 were subpoenaed to be here today were said not to come back
5 until 2:00. Is that right, Ryan?

6 **MR. HOLLOWAY:** There was -- I'm not even sure who he's
7 talking about because I don't have a witness list. But Ms.
8 Grayson was under subpoena and under State subpoena. I told
9 her to come back at 2:00.

10 **THE COURT:** Okay.

11 **MR. HOLLOWAY:** If anybody else he needs that's under
12 State subpoena, I can help him out.

13 **MR. BRUMBACK:** And Ms. Nunez, right, as well?

14 **MR. HOLLOWAY:** She's not been here this morning as far
15 as I know. I've been in jury qualifications since around
16 10:00.

17 **MR. BRUMBACK:** Okay. I think your investigator might
18 have told her to come at two as well.

19 **MR. HOLLOWAY:** Right.

20 **MR. BRUMBACK:** So we probably can work our witnesses
21 such that that works.

22 **MR. HOLLOWAY:** We're almost at 12:00. So ...

23 **MR. BRUMBACK:** Yes.

24 **THE COURT:** Okay.

25 **MR. BRUMBACK:** And, Your Honor, would you like to

1 proceed with the first witnesses ---

2 THE COURT: Please.

3 MR. BRUMBACK: --- or would we like to break for lunch
4 before starting with the witnesses?

5 THE COURT: No, let's start -- it's not even 12:00.
6 Let's go ahead and start with the witnesses.

7 MR. BRUMBACK: All right, Your Honor. In that case, we
8 ---

9 THE COURT: Excuse me. Madame Clerk?

10 MADAME CLERK: About the jury?

11 THE COURT: We won't need a jury before -- what time do
12 you think we'd need the jury?

13 MR. HOLLOWAY: If we can pick the jury today and then
14 -- or just have them come back tomorrow because I think this
15 hearing is going to go all afternoon.

16 MR. BRUMBACK: I believe it is, Your Honor.

17 THE COURT: All right. Why don't we have the jury --
18 we can go ahead and draw the jury now or we can do it at
19 two.

20 MR. BRUMBACK: A point on that, Your Honor, if we're
21 discussing having this immunity hearing, and it appears we
22 are going to have the immunity hearing, the immunity hearing
23 being, and I don't know what your position is on this, but
24 the immunity hearing being a pretrial hearing, ---

25 THE COURT: Well, we wouldn't swear them. We'd draw

1 them.

2 **MR. BRUMBACK:** Okay. That's fine. I just wanted to
3 address that if we swore them, obviously, you know, we'd
4 begun the prosecution, and I didn't want us to run into some
5 trouble with that. So ...

6 **THE COURT:** Well, you want to go ahead and draw the
7 jury now and ---

8 **MR. HOLLOWAY:** That's fine.

9 **THE COURT:** --- let them go til 9:30 in the morning?

10 **MR. BRUMBACK:** That's fine with me, Your Honor.

11 **THE COURT:** Okay. Can we do that?

12 **MADAME CLERK:** Okay. Thank you.

13 **THE COURT:** Let's see. The strikes will be -- on an
14 ---

15 **MR. HOLLOWAY:** I think ten and five.

16 **THE COURT:** Ten and five.. And we'll draw two
17 alternates. How many do you think we need to bring up? We
18 need fourteen to sit, possible strikes are fifteen. So
19 that's twenty-nine. Sixty.

20 **MR. HOLLOWAY:** Forty or fifty.

21 **THE COURT:** Yeah, fifty ought to be enough. Could we
22 bring sixty?

23 **MADAME CLERK:** I'm going to -- if you'll hold on.

24 **THE COURT:** Let's look real quick before we make that
25 final decision. We're going to look at the statute. My

1 peremptory strikes does not list attempted murder as one
2 that entitles the Defense to ten strikes.

3 MR. HOLLOWAY: I'm sorry, Judge, I thought it did. I
4 thought it was in that laundry list.

5 THE COURT: Murder is, but not attempted murder.

6 MR. HOLLOWAY: So it's five and five?

7 THE COURT: Yeah. Okay.

8 MR. BRUMBACK: All right.

9 THE COURT: Fifty then.

10 MR. BRUMBACK: I'll take ten.

11 THE COURT: Yeah, I know you will. We've got an awful
12 lot of spectators, which is fine, but I think we'll all have
13 to -- I don't know how we're going to get sixty jurors in
14 here. So ...

15 MR. BRUMBACK: Your Honor, I can ask them to wait
16 outside.

17 THE COURT: That might be best. I'm not trying to keep
18 them from -- it's certainly open to the public, but we're
19 just going to need some space. And also, is anybody other
20 than the -- anybody other than the court reporter doing any
21 recording?

22 REPORTER: I can cut it off.

23 THE COURT: Yeah. You with the media?

24 REPORTER: Yes, sir.

25 THE COURT: And I've signed your request, but don't

1 record. But you certainly can -- I think you wanted to take
2 some pictures.

3 **REPORTER:** Okay.

4 **THE COURT:** Does either side have any voir dire?

5 **MR. BRUMBACK:** Yes, Your Honor.

6 **MR. HOLLOWAY:** No, sir, I don't.

7 **THE COURT:** Mr. Brumback, I have the State's possible
8 witnesses, which is very lengthy, but do you have a witness
9 list?

10 **MR. BRUMBACK:** Your Honor, since we were preparing for
11 trial tomorrow we didn't bring our witness list with us. We
12 were planning on doing the immunity hearing today. So I
13 apologize, Your Honor. I can certainly write up a witness
14 ---

15 **THE COURT:** Would you do that so -- I need to ask about
16 them.

17 **MR. BRUMBACK:** Certainly can.

18 (Pause)

19 (Whereupon the jury panel entered the courtroom).

20 **THE COURT:** Good afternoon. Members of the jury panel,
21 I'm John Hayes. I'm from Rock Hill. That's in York County.
22 And I'm assigned to hold general sessions, that is criminal
23 court here in Greenville this week. I have held court here
24 many, many times and always enjoy my trip. I told one of
25 the bailiffs earlier, though, I'd much rather be invited

1 over in October than in August, but I'm here.

2 The first case we have to try this week is the State
3 versus Marquez Devon Glenn. He is charged with an attempted
4 murder, that is it's alleged that here in Greenville County
5 on or about the 12th day of April, 2013 he unlawfully, with
6 intent to kill attempted to murder Elfonso Bruster. That's
7 count one.

8 Count two alleges that on that date and at that time
9 and involved in that incident he displayed a handgun. It's
10 alleged that he displayed a handgun during the commission of
11 a violent crime. And under the laws of our State attempted
12 murder is a violent crime.

13 The date again is the 12th of April, 2013. And the
14 incident allegedly occurred at the Spring Grove Apartment
15 complex. Is that the correct name?

16 **MR. BRUMBACK:** Yes, Your Honor.

17 **MR. HOLLOWAY:** Yes, sir.

18 **THE COURT:** I don't know exactly where that's located.
19 I tell you that so that you'd be aware when I ask you some
20 follow-up questions.

21 I'm going to ask now Mr. Holloway, who is with the
22 solicitor's office, to please stand and introduce himself.

23 (Whereupon the clerk was conferring with the Court off
24 the record)

25 **THE COURT:** Well, I understand we've got more jurors

1 coming. So let me back up. You'll have to listen to me
2 again.

3 (Pause)

4 (Whereupon remaining jurors entered the courtroom)

5 **THE COURT:** Good afternoon. I had already started
6 talking to the panel that was already up. I didn't realize
7 we had more coming. I'm sorry it's so crowded, but this
8 will not take that long, and we just happened to be assigned
9 a small courtroom.

10 I'm John Hayes from Rock Hill. I've been on the bench
11 about -- a little over twenty-five years or right at twenty-
12 five years, held court in Greenville quite often and always
13 enjoy being over here. I'm assigned to hold criminal court,
14 general sessions court here this week.

15 Our first case is the case of the State versus Marquez
16 Devon Glenn. Mr. Glenn, if you'd please stand and let the
17 jury see who's -- this is Mr. Glenn. You may be seated.

18 He is charged with two counts. It's alleged in count
19 one that he attempted -- committed the act of attempted
20 murder by attempting to kill Elfonso Bruster on the 12th day
21 of April, 2013 at the Spring Grove Apartments here in
22 Greenville County.

23 He's also charged with an additional offense. And
24 that's alleged that on that date at that time and on that --
25 at that place when he attempted to murder Mr. Bruster, that

1 being a violent crime, that he at that time possessed a
2 firearm during the commission of a violent crime. To these
3 charges he has entered pleas of not guilty.

4 Now before I go further I'm going to ask Mr. Holloway
5 with the State to introduce who he -- himself and who he
6 thinks needs to be introduced with him.

7 **MR. HOLLOWAY:** Good morning. I'm one of the
8 prosecutors here. My name is Ryan Holloway. My assistant
9 who you may see going in and out of the courtroom is Kelly
10 O'Donald. The chief investigator in the case is Eric
11 Whaley.

12 **THE COURT:** All right. And Mr. Glenn is represented by
13 Mr. Brumback and Mr. Langley. And I'm going to let Mr.
14 Brumback introduce who he feels needs to be introduced with
15 him.

16 **MR. BRUMBACK:** Good afternoon. My name is Christopher
17 Brumback. I represent Mr. Glenn. To my left is my partner,
18 Spencer Langley, and our trial team with us, Kristin Adams
19 and Brian Haskins.

20 **THE COURT:** All right. Thank you. I now am going to
21 go over several questions regarding this case to determine
22 if we can get a fair and impartial jury in this case. These
23 questions may be similar to the ones that you were asked
24 downstairs.

25 And I don't know exactly how it was handled downstairs,

1 but what I want you to do here, if you hear a question and
2 you need to stand in response to it, just stand. Don't -- I
3 won't have you come up here, I'll just have a dialogue with
4 you from where you are.

5 First, if any of you are related by blood or marriage
6 or are you -- if you're a close, personal friend of Marquez
7 Devon Glenn, please stand at this time.

8 (No response)

9 **THE COURT:** No one stands.

10 Have any of you heard about this case from any source
11 whatsoever or do you have any knowledge, or bias or
12 prejudice involving this particular trial? If so, please
13 stand.

14 (No response)

15 **THE COURT:** No one stands.

16 Were any of you members of the Grand Jury, which passed
17 on this indictment at an earlier time? If so, please stand.

18 (No response)

19 **THE COURT:** No one stands.

20 If any of you or a member of your immediate family are
21 involved in law enforcement at any level, anything from
22 military police, Judge Advocate General, solicitor, district
23 attorney or any kind of prosecuting authority, please stand.

24 All right. Yes, sir, your name and number.

25 **MR. MOTES:** My name is Thomas Motes. My number is 138.

1 And my dad is an investigator with Greenville County.

2 THE COURT: All right. This is a County case or a City
3 case?

4 MR. HOLLOWAY: County.

5 THE COURT: All right. Well, I'll have to excuse you.
6 Don't leave, but I'm going to excuse you from serving
7 because of that relationship.

8 MR. MOTES: Okay.

9 THE COURT: Just remain with us.

10 Yes, ma'am, your name and number?

11 MS. DAVIES: Sheila Davies, 52. My son's with the
12 military police.

13 THE COURT: All right. Would that affect your ability
14 to be fair and impartial in this trial?

15 MS. DAVIES: (Negative nod). No.

16 THE COURT: You've got to say yes or no.

17 MS. DAVIES: I don't ---

18 THE COURT: Okay. I know you're shaking your head, but
19 we have a court reporter, we have to take this down so we'll
20 have a record. But thank you. You'll remain with us.

21 Yes, sir, your name and number?

22 MR. MOSS: George Moss, 137. I have a son-in-law
23 working at the detention center.

24 THE COURT: All right. Would that affect your ability
25 to be fair and impartial in the trial of this case?

1 **MR. MOSS:** No, sir.

2 **THE COURT:** All right. You can remain with us. Thank
3 you.

4 Any of you or a member of your immediate family members
5 of or contributors to organizations such as Mothers Against
6 Drunk Drivers, Students Against Drunk Drivers, Citizens
7 Against Violence, Troopers Association, Sheriff's
8 Association or Paternal Order of Police? If so, please
9 stand.

10 (No response)

11 **THE COURT:** No one stands.

12 And I've already asked if any of you heard anything
13 about this case or know anything about it from any source
14 whatsoever. I believe I've already asked that. But if you
15 have heard anything about this case from work, news
16 coverage, if there was any, and I don't know whether there
17 was or was not, please stand.

18 (No response)

19 **THE COURT:** No one stands.

20 Have any of you ---

21 **JUROR:** I have a question, Your Honor. I got a
22 question. What you mean by if you've heard about it? As
23 far as like the neighborhoods or something like that?

24 **THE COURT:** I couldn't understand.

25 **JUROR:** Do you mean through our neighborhoods or

1 anything like ---

2 THE COURT: Yeah, if you've heard about it from any
3 source whatsoever. If somebody's come up to you and say did
4 you hear about what happened at Spring Grove Apartments the
5 other night?

6 JUROR: I mean, yeah, but I don't know ---

7 THE COURT: All right. Well, stand back up. Your name
8 ---

9 JUROR: I don't know the names or anything. I'm just
10 saying I've just heard about it.

11 THE COURT: Okay. But your name and number?

12 MR. LANTEON: Adrian Lanteon, 252.

13 THE COURT: All right. Would that affect your ability
14 to be fair and impartial in this trial?

15 MR. LANTEON: Yes, sir.

16 THE COURT: Okay. It would affect your ability or ---

17 MR. LANTEON: Yeah, I wouldn't want to be a part of
18 that.

19 THE COURT: Okay. Well, ---

20 MR. LANTEON: I mean, I heard about it ---

21 THE COURT: --- if you've heard about it, I'm going to
22 excuse you. Just have a seat. And don't leave, but you'll
23 be excluded. Thank you. You did exactly what I want you to
24 do.

25 Have any of you been involved with our Solicitor, Mr.

1 Wilkins, or anyone from his office? That is, if you've been
2 a victim and been represented by that office, or you've been
3 prosecuted by that office, or if you've been a witness on
4 behalf of the State in any matter, if so, please stand.

5 (No response)

6 **THE COURT:** No one stands.

7 If any of you have been represented by Mr. Brumback or
8 Mr. Langley at any time in the past, if so, please stand.

9 (No response)

10 **THE COURT:** No one stands.

11 Violent crime is in our State defined by statute. I'm
12 not going to go over what constitutes a violent crime other
13 than I've told you that attempted murder and obviously
14 murder, but have any of you been the victim of, you or maybe
15 immediate family, victim of what you considered to be a
16 violent crime, if so, please stand.

17 (No response)

18 **THE COURT:** No one stands.

19 Have any of you ever appeared, not just for Mr.
20 Wilkins, but in any court as a witness for a prosecuting
21 authority? If so, please stand.

22 (No response)

23 **THE COURT:** No one stands.

24 Do any of you have any philosophical, religious,
25 theoretical thoughts or positions that would prevent you

1 from being fair and impartial in the trial of Mr. Glenn for
2 these charges? If so, please stand.

3 (No response)

4 **THE COURT:** No one stands.

5 Now, I have a long list of witnesses. I'm told they
6 will not all testify, but I have to go over this list in
7 case they do. So if any of you know any of these -- if you
8 know any of these witnesses, particularly, of course, if
9 you're related to them, but if you know any of these
10 witnesses or a social friend of any of these witnesses,
11 please stand.

12 Deputy Conley Jumper, Shelricka Duncan, Deputy Jason
13 Cassel, C-a-s-s-e-l, Deputy Dorsey Day -- Lay, L-a-y,
14 Tawanna Knighton, Rene Beauford, Ashley Banks, Tivarius
15 Henderson, Kiana Grayson, Maria Mills -- Maria Miles, from
16 EMS, Anthony Stephens and Amanda Hargett, Delnie Nunez, D-e-
17 i-n-i-e Nunez, N-u-n-e-z, EMS Kurt Brown, Detective Eric
18 Whaley, Former Detective Hobart Lewis, Elfonso Bruster, Dr.
19 Megan Straughan, James Armstrong, Charles Moore.

20 And I may repeat some of these. Tivarius Henderson,
21 John Henderson, Gloria Duncan, Kiana Grayson, Maria Miles,
22 Delnie Nunez, Vante Gilliam, Jamar Smith, Shelricka Duncan,
23 Marquez Glenn, of course, Terry Lee Glenn and Elfonso
24 Bruster.

25 Any of you know any of those individuals or any of you

1 related to those, if so, please stand.

2 (No response)

3 **THE COURT:** No one stands.

4 Anything further from the State?

5 **MR. HOLLOWAY:** No, Your Honor.

6 **THE COURT:** Defense?

7 **MR. BRUMBACK:** Nothing, Your Honor.

8 **THE COURT:** Do any of you know any reason whatsoever
9 why you could not or should not serve as a fair and
10 impartial juror in the trial of this particular case? If
11 so, please stand.

12 (No response)

13 **THE COURT:** No one stands.

14 Now, the way we draw a jury, your names will be called
15 at random. If you hear your name called, please just stand
16 where you are and face first the table where Mr. Holloway is
17 seated. And he will say either present the juror or excuse
18 the juror. If he says excuse the juror, simply have a seat.

19 If he says present the juror, turn and face the table
20 where Mr. Glenn and his attorneys are seated. One of his
21 attorneys will say either excuse the juror, which means you
22 may return to your seat, or swear the juror. If you hear
23 those words, please walk over, the bailiff will show you
24 where to have a seat in the jury box.

25 We'll draw twelve jurors and two alternates. And,

1 counsel, if you want to spin around and sit on the other
2 side of the table so you can see better, that's certainly
3 fine. So stand up if you hear your name called, please.

4 **MADAME CLERK:** Juror number 191, Dwight Smith.

5 (Whereupon juror 191, Dwight Smith, a white male stood)

6 **MADAME CLERK:** What says the State?

7 **MR. HOLLOWAY:** Please seat the juror.

8 **MADAME CLERK:** What says the Defendant?

9 **MR. BRUMBACK:** Please swear the juror.

10 **MADAME CLERK:** Sir, you may bring your things and have
11 a seat in the jury box.

12 Juror number 228, Christopher Watson.

13 (Whereupon juror 228, Christopher Watson, a white male,
14 stood)

15 **MADAME CLERK:** What says the State?

16 **MR. HOLLOWAY:** Please seat the juror.

17 **MADAME CLERK:** What says the Defendant?

18 **MR. BRUMBACK:** Please swear the juror.

19 **MADAME CLERK:** Please bring your things and have a seat
20 in the jury box.

21 Juror number 245, Susan Bright.

22 (Whereupon juror 245, Susan Bright, a white female,
23 stood)

24 **MADAME CLERK:** What says the State?

25 **MR. HOLLOWAY:** Please seat the juror.

1 **MADAME CLERK:** What says the Defendant?
2 **MR. BRUMBACK:** Please excuse the juror.
3 **MADAME CLERK:** You may take your seat.
4 Juror number 15, William Birckbichler.
5 (Whereupon juror 15, William Birckbichler, a white
6 male, stood)
7 **MADAME CLERK:** What says the State?
8 **MR. HOLLOWAY:** Please excuse the juror.
9 **MADAME CLERK:** You may take your seat.
10 Juror number 58, Jenny Duvall.
11 (Whereupon juror 58, Jenny Duvall, a white female,
12 stood)
13 **MADAME CLERK:** What says the State?
14 **MR. HOLLOWAY:** Please seat the juror.
15 **MADAME CLERK:** What says the Defendant?
16 **MR. BRUMBACK:** Please excuse the juror.
17 **MADAME CLERK:** You may have a seat.
18 Juror number 53, Timothy Delaney.
19 (Whereupon juror 53, Timothy Delaney, a white male,
20 stood)
21 **MADAME CLERK:** What says the State?
22 **MR. HOLLOWAY:** Please seat the juror.
23 **MADAME CLERK:** What says the Defendant?
24 **MR. BRUMBACK:** Please swear the juror.
25 **MADAME CLERK:** You may bring your things and have a

1 seat in the jury box.

2 Juror number 192, Katherine Smith.

3 (Whereupon juror 192, Katherine Smith, a white female
4 stood)

5 **MADAME CLERK:** What says the State?

6 **MR. HOLLOWAY:** Please seat the juror.

7 **MADAME CLERK:** What says the Defendant?

8 **MR. BRUMBACK:** Please seat the juror.

9 **MADAME CLERK:** You may bring your things and have a
10 seat in the jury box.

11 Juror number 73, William Garrett.

12 (Whereupon juror 73, William Garrett, a white male,
13 stood)

14 **MADAME CLERK:** What says the State?

15 **MR. HOLLOWAY:** Please seat the juror.

16 **MADAME CLERK:** What says the Defendant?

17 **MR. BRUMBACK:** Please swear the juror.

18 **MADAME CLERK:** You may bring your things and have a
19 seat in the jury box.

20 Juror number 165, Joe Price.

21 (Whereupon juror 165, Joe Price, a white male, stood)

22 **MADAME CLERK:** What says the State?

23 **MR. HOLLOWAY:** Please seat the juror.

24 **MADAME CLERK:** What says the Defendant?

25 **MR. BRUMBACK:** Please swear the juror.

1 **MADAME CLERK:** You may bring your things and have a
2 seat in the jury box.

3 Juror number 216, Joseph Vanderhorst.

4 (Whereupon juror 216, Joseph Vanderhorst, a white male,
5 stood)

6 **MADAME CLERK:** What says the State?

7 **MR. HOLLOWAY:** Please seat the juror.

8 **MADAME CLERK:** What says the Defendant?

9 **MR. BRUMBACK:** Please swear the juror.

10 **MADAME CLERK:** You may bring your things and have a
11 seat in the jury box.

12 Juror number 153, Brian Parker.

13 (Whereupon juror 153, Brian Parker, a white male,
14 stood)

15 **MADAME CLERK:** What says the State?

16 **MR. HOLLOWAY:** Please seat the juror.

17 **MADAME CLERK:** What says the Defendant?

18 **MR. BRUMBACK:** Please seat the juror.

19 **MADAME CLERK:** You may bring your things and have a
20 seat in the jury box.

21 Juror number 29, Sylvia Burns.

22 (Whereupon juror 29, Sylvia Burns, a white female,
23 stood)

24 **MADAME CLERK:** What says the State?

25 **MR. HOLLOWAY:** Please seat the juror.

1 **MADAME CLERK:** What says the Defendant?

2 **MR. BRUMBACK:** Please excuse the juror.

3 **MADAME CLERK:** You may have a seat.

4 Juror number 202, Joseph Stone.

5 (Whereupon juror 202, Joseph Stone, a white male,
6 stood)

7 **MADAME CLERK:** What says the State?

8 **MR. HOLLOWAY:** Please seat the juror.

9 **MADAME CLERK:** What says the Defendant?

10 **MR. BRUMBACK:** Please swear the juror.

11 **MADAME CLERK:** You may bring your things and have a
12 seat in the jury box.

13 Juror number 138, Thomas Motes.

14 (Whereupon juror 138, Thomas Motes, a white male,
15 stood)

16 (Whereupon this juror had been previously excused by
17 the Court)

18 **MADAME CLERK:** I'm sorry. I didn't relate that was his
19 number. You may have a seat.

20 Juror number 248, Samuel Clark.

21 (Whereupon juror 248, Samuel Clark, a white male,
22 stood)

23 **MADAME CLERK:** What says the State?

24 **MR. HOLLOWAY:** Please seat the juror.

25 **MADAME CLERK:** What says the Defendant?

1 **MR. BRUMBACK:** Please swear the juror.

2 **MADAME CLERK:** You may bring your things and have a
3 seat in the jury box.

4 Juror number 234, Lisa Wolf.

5 (Whereupon juror 234, Lisa Wolf, a white female, stood)

6 **MADAME CLERK:** What says the State?

7 **MR. HOLLOWAY:** Please seat the juror.

8 **MADAME CLERK:** What says the Defendant?

9 **MR. BRUMBACK:** Please excuse the juror.

10 **MADAME CLERK:** You may take your seat.

11 Juror number 218, Patrick Vermillion.

12 (Whereupon juror 218, Patrick Vermillion, a white male,
13 stood)

14 **MADAME CLERK:** What says the State?

15 **MR. HOLLOWAY:** Please seat the juror.

16 **MADAME CLERK:** What says the Defendant?

17 **MR. BRUMBACK:** Please swear the juror.

18 **MADAME CLERK:** If you would, bring your things and have
19 a seat in the jury box.

20 Juror number 182, Jack Schappell.

21 (Whereupon juror 182, Jack Schappell, a white male,
22 stood)

23 **MADAME CLERK:** What says the State?

24 **MR. HOLLOWAY:** Please swear the juror.

25 **MADAME CLERK:** What says the Defendant?

1 **MR. BRUMBACK:** Please swear the juror.

2 **MADAME CLERK:** Bring your things and have a seat in the
3 jury box.

4 **THE COURT:** All right. We'll draw two alternates. The
5 State will have one strike on each and the Defense two.

6 **MADAME CLERK:** Juror number 213, Dean Trantham.

7 (Whereupon juror 213, Dean Trantham, a white male,
8 stood)

9 **MADAME CLERK:** What says the State?

10 **MR. HOLLOWAY:** Please seat the juror.

11 **MADAME CLERK:** What says the Defendant?

12 **MR. BRUMBACK:** Please excuse the juror.

13 **MADAME CLERK:** You may take your seat.

14 Juror number 128, Elizabeth McMillan.

15 (Whereupon juror 128, Elizabeth McMillan, a white
16 female, stood)

17 **MADAME CLERK:** What says the State?

18 **MR. HOLLOWAY:** Please seat the juror.

19 **MADAME CLERK:** What says the Defendant?

20 **MR. BRUMBACK:** Please swear the juror.

21 **MADAME CLERK:** You may bring your things and have a
22 seat in the jury box.

23 Juror number 40, Christopher Clayton.

24 (Whereupon juror 40, Christopher Clayton, a white male,
25 stood)

1 **MADAME CLERK:** What says the State?

2 **MR. HOLLOWAY:** Please seat the juror.

3 **MADAME CLERK:** What says the Defendant?

4 **MR. BRUMBACK:** Please swear the juror.

5 **MADAME CLERK:** You may bring your things and have a
6 seat in the jury box.

7 **THE COURT:** Anything from the State involving the
8 striking of the panel?

9 **MR. HOLLOWAY:** No, sir.

10 **THE COURT:** Anything from the Defense involving the
11 striking of the panel?

12 **MR. BRUMBACK:** No, sir.

13 **THE COURT:** Those of you who were not chosen, I'm going
14 to allow you now to quietly leave and go back downstairs to
15 the jury assembly room. Thank you for assisting us in this.

16 (Whereupon the remaining jurors exited the courtroom)

17 **THE COURT:** Members of the jury panel, we're actually
18 not going to start into the trial until in the morning. We
19 have certain legal issues to discuss and talk about. And
20 it'll take all afternoon, I'm sure, having discussed this
21 earlier with the attorneys.

22 So we're not going to start the actual trial until 9:30
23 in the morning. I'm going to ask you to be back at 9:30 in
24 the morning. I will appoint a foreperson at that time. And
25 that foreperson will take this first seat, and the two

1 alternates will always sit in those seats. There is no
2 other assigned seating.

3 Now, even though we're not swearing you in at this
4 time, we'll do that first thing in the morning, you are on
5 this jury panel. So you are subject to the rules of jurors,
6 one of which is do not discuss the case among yourselves
7 until I instruct you to jointly deliberate and return a
8 unanimous verdict. Do not even try to make up your own mind
9 until we reach that point. You will not have all the tools
10 you need to make a fair and reasoned decision until I
11 instruct you to jointly deliberate and return a unanimous
12 verdict.

13 Do not let anyone discuss this case with you outside
14 the courtroom. If anyone tries to discuss this case with
15 you, tell them you cannot as you are serving as a juror on
16 the trial and report back to me, hopefully giving me that
17 person's identity if anyone tries to discuss the case with
18 you because I'll have to take action against anyone who
19 tries to talk to a seated juror.

20 Do not let yourself be exposed to any news coverage if
21 there is any. Do not let yourself be exposed, as I said, to
22 any writing, television or radio. That is, if you hear, see
23 anything that would remotely deal with this trial, do not
24 let yourself be exposed to it.

25 Do not do any independent research on this case. Do

1 not go to the apartment complex unless you live there. Do
2 not access any Google, or any electronic media, or any form
3 of research to find out anything about Mr. Glenn, about the
4 attorneys involved, about me, about courtroom procedure,
5 about evidence rules. That is, do not use any electronic
6 device or use any other means of obtaining information to
7 obtain anything -- information that would remotely deal with
8 this trial. You must base your verdict solely on the law
9 and the evidence as it's developed here in this courtroom.

10 Do not even go on Facebook, or tweet or do any of those
11 things regarding the fact that you're serving as a juror.
12 It may seem very innocent to, say, go on a jury -- to go on
13 a Facebook page and say I'm serving on a jury. The reason I
14 ask you not to do that is even if you don't explain what the
15 case is, which would be a violation of what I just told you,
16 do not -- someone may Facebook you back, or tweet you or
17 send some message back to you that would not be healthy for
18 you to hear while you're serving as a juror. So just do not
19 do that.

20 Now, when you come back in the morning -- when you
21 leave now, the bailiff will show you how to ingress and
22 egress the building as you're serving as a juror. And I'll
23 have some more things to talk to you about as far as my role
24 in the trial, your role in the trial and a few little
25 housekeeping matters when we reconvene in the morning.

1 Anything else that the State believes I need to cover
2 before we let them go for the day?

3 MR. HOLLOWAY: No, sir.

4 THE COURT: Mr. Brumback?

5 MR. BRUMBACK: No, Your Honor.

6 THE COURT: All right. Have a pleasant afternoon and
7 evening. We'll see you back at 9:30. Just follow the
8 bailiff and he'll tell you how to get in and out as you are
9 serving as a juror. Everyone else remain seated.

10 (Whereupon the jury exited the courtroom at 12:36 pm)

11 THE COURT: All right. Counsel knows better how to
12 best use our time. It's about twenty til one. Should we
13 break for lunch until, say, two or ...

14 MR. HOLLOWAY: I think so, Your Honor.

15 MR. BRUMBACK: I think that would work well, Your
16 Honor.

17 THE COURT: Okay. Well, we'll break for lunch til 2:00
18 then.

19 MR. BRUMBACK: Thank you, Your Honor.

20 THE COURT: Have a pleasant lunch.

21 MR. HOLLOWAY: Thank you, Your Honor.

22 THE COURT: And is Mr. Glenn on bail?

23 MR. HOLLOWAY: That's what I was going to say. We
24 couldn't decide what to do with him. He's on bond. I never
25 consent to letting them out once the trial begins.

1 **THE COURT:** Well, what's Mr. Glenn's situation as far
2 as prior record or anything? I mean, obviously, he's got a
3 domestic violence.

4 **MR. BRUMBACK:** Correct.

5 **MR. HOLLOWAY:** A couple of priors, resisting arrest,
6 the CDV had a companion charge, child cruelty. Not a major
7 record, Judge.

8 **MR. LANGLEY:** He's currently on house arrest, on an
9 ankle bracelet.

10 **MR. BRUMBACK:** And he's here with his mother and
11 grandmother and grandmother. I don't think he's going
12 anywhere.

13 **THE COURT:** All right. Well, Mr. Glenn, I'm going to
14 allow you to remain out. I usually require individuals to
15 be incarcerated, but you came today.

16 **MR. GLENN:** Okay.

17 **THE COURT:** Now, this case is going to go forward. If
18 you for some reason decide that you don't want to come back
19 and participate, that would not be wise because the case
20 would go forward. You won't be stopping the trial. You'll
21 be tried in your absence.

22 The case would be presented to a jury even if you're
23 not here. The jury would return a verdict. If that verdict
24 is a verdict of guilt, then I would impose a sentence and
25 seal that sentence. No one in the world but me would know

1 what that sentence is. And a bench warrant would be issued
2 for your arrest.

3 Upon your arrest you would be brought back to court,
4 appear before a judge. It probably wouldn't be me since I'm
5 not here all the time. But whatever judge it is would open
6 that sealed sentence and impose it on you at that time.

7 So even though I'm allowing you to remain out, it's
8 incumbent upon you to be here. I'm sure your attorneys have
9 told you that. If you're not, that's not going to stop the
10 case. The case would still go forward without you. You
11 understand that?

12 **MR. GLENN:** Yes, I understand, Your Honor.

13 **THE COURT:** Okay. All right. We'll be at ease then
14 til 2:00.

15 **MR. HOLLOWAY:** Thank you, Your Honor.

16 (Whereupon court was in recess at 12:40 pm)

17 (Whereupon court reconvened at 2:05 pm)

18 **Immunity Hearing:**

19 **THE COURT:** Thank you. You may take your seats. All
20 right. You ready to call your first witness?

21 **MR. BRUMBACK:** Thank you, Your Honor. The Defense
22 would like to call Tivarius Henderson to the stand.

23 **THE COURT:** Place your left hand on the Bible and raise
24 your right hand and face that lady.

25 **Tivarius Henderson, being**

1 duly sworn testified as follows;

2 **MADAME CLERK:** Please come around and have a seat. And
3 could you spell your first name for the court reporter?
4 Tell us your name.

5 **MR. HENDERSON:** My name is Tivarius Henderson. That's
6 T-i-v-a-r-i-u-s.

7 **Direct Examination by Mr. Brumback:**

8 Q. Mr. Henderson, thank you for being here today. I'm
9 going to start off with a couple of general questions and
10 then ask you about the events of April 12th, 2013 about
11 which we are here today. Could you please state your
12 relationship to the Defendant in this case.

13 A. I'm Marquez's brother.

14 Q. Okay. All right. And what is your age?

15 A. Twenty-one.

16 Q. Okay. So at the time of this you were nineteen years
17 old?

18 A. Uh-huh (affirmative).

19 Q. Okay. All right. Now on the night in question could
20 you please tell me about your recollection thereof.

21 A. Could you -- like as far as what?

22 Q. So let's start with the beginning of the night. How
23 did y'all end up at Spring Grove Apartments? What happened
24 that evening?

25 A. I got a call from Shelricka asking if we wanted to come

1 over and chill. We got drinks and stuff and was just

2 chillin'.

3 Q. Who did she ask to come over?

4 A. I was sitting at home, me and my brother, Jamar, my
5 father was with us.

6 Q. Okay. So it's your testimony that she asked you, your
7 brother Marquez, ---

8 A. Um-hum (affirmative).

9 Q. --- Jamar -- and what is Jamar's last name?

10 A. Smith.

11 Q. Jamar Smith and your father. And his name is?

12 A. John Anderson.

13 Q. To come over to Spring Grove Apartments, correct?

14 A. Um-hum (affirmative).

15 Q. Okay. Thank you. Okay. So you proceeded over to the
16 apartments on the evening of April 12th, 2013. What
17 happened when you got there?

18 A. We got there, we was just chillin', playing card games.
19 And Derisha asked my brother if he would go to the store
20 with her because she had gotten intoxicated and he hadn't
21 been drinking yet. So he went to the store I'd say about
22 10:45, 11:00.

23 All I know is Kevin, I didn't know him then, but Kevin
24 Bruster came busting in the door. And he threw a beer can
25 and he was yelling that the was going to kill Shelricka's

1 mother. So he went to the room -- he was trying to go to
2 the room where she was at. She was asleep in Shelricka's
3 room.

4 And when he got there Shelricka tried to stop him. And
5 I -- what I seen, I seen him hit her. So I got up from the
6 table where I was sitting at and went around there and
7 grabbed him. In the midst of me grabbing him and trying to
8 get him out the door, he pulled out a razor blade and sliced
9 me across my eyebrow.

10 After that me -- Jamar, he was still -- he helped me
11 get him out of the house. He was helping me. When they
12 seen the razor blade, that's when he took initiative and got
13 up. My father, he came and was helping me, too.

14 We was going around the couch and then the door -- my
15 father opened the door. So me and Jamar was taking him out.
16 That's when he got me with the razor blade. Well, they seen
17 the razor blade. I didn't never see the razor blade.

18 Q. Um-hum (affirmative).

19 A. I wiped my face. I was bleeding. After that, my
20 brother -- I went -- we went to my grandmother's house.
21 When we came back -- 'cause Marquez was gone to the store.
22 So we was coming back. I didn't have a phone at the time.
23 So he didn't know nothing about it.

24 So when we got back -- I was in the car, he was pulling
25 up. So I told him to come on, let's go. He seen that my

1 eye was bleeding. He asked me what happened. I told him
2 that Kevin had came in and did that. Well, we were leaving
3 'cause my grandma told me to go get him to make sure that
4 nobody tried to do nothing or hurt him. So I was letting
5 him know.

6 And as we was leaving my brother just said he was just
7 going to walk to my grandmother's house. And in the midst
8 of that a officer pulled up and asked me was anybody
9 fighting. I told him, no, it wasn't nothing, you know,
10 'cause we were leaving.

11 So after the officer pulled off, Elfonso and his uncle
12 approached my brother. I turned around 'cause I was pulling
13 off. I had got in the car, and I was pulling off. My
14 brother had told me he was going to walk over there. So
15 it's just the next court over where my grandma stay.

16 So when I -- I seen some individuals coming around the
17 corner. So I pulled right up in front of them and cut on
18 the high beams, and it was Elfonso and his uncle.

19 So his uncle was like, you said we was gonna get one of
20 these N-word in this car, if not all of them. I seen
21 Elfonso the whole time under his shirt. After his uncle
22 said that, he just turned and hit Quez.

23 By this time -- I know Elfonso 'cause I have known him
24 from the neighborhood. He turned, instead of this hand, he
25 switched over to this hand. And that's when I seen the gun.

1 I was still in the car. So I'm trying to get out of
2 the car right after he hit him 'cause it's like I felt his
3 uncle was fixin to hit him. So I was jumping out of the
4 car, and it was still in reverse. I put it in park.

5 And then my brother had a cup of drink in his hand and
6 it went in his eyes. So he was blinded. And he was getting
7 stuff trying to get it out of his eyes and things. And
8 Elfonso and his uncle was rushing off to him. So when I got
9 around the car, I pushed Elfonso. And then me and his uncle
10 got into a bad fight. We got into another fight.

11 So in the midst of that I just heard like a female
12 voice say there was a gun out. So after that I turned and
13 looked at Elfonso. Elfonso was getting himself back
14 together. He was drawing again. Now this time I actually
15 seen it out in his hand.

16 Q. Um-hum (affirmative).

17 A. I turned back and looked at my brother, and he was
18 still wiping it out of his eyes. So it's like Elfonso was
19 being that way. My brother was still getting it out of his
20 eyes. I looked, paying attention to that.

21 So I just heard a female voice say gun. And then I --
22 I moved out of the way of his uncle 'cause I was still right
23 there with his uncle. But I seen him the whole time. So my
24 brother -- I didn't even know my brother had no gun. So
25 that -- at that time he barely got to look out of his eyes

1 before he could get his shot off, but Elfonso was going in
2 to shoot him.

3 And my father and Jamar at that time was stuck in the
4 car 'cause the right passenger door and the back passenger
5 door didn't work. He hadn't opened the window. And then --
6 I was the only one that could do the window. So they was
7 stuck in the car. And pretty much that's how it went.

8 Q. Okay. All right. Now, how would you describe the
9 demeanor of Kevin and Elfonso when they approached your
10 brother?

11 A. Hostile.

12 Q. Hostile?

13 A. Kevin, he was acting real irate. Elfonso, he just --
14 he approached my brother with the words of who put their
15 hands on my uncle? But he said MF uncle. So then at that
16 point, that's when his uncle spoke out after that, I thought
17 you said we was gonna get one of these in this Lincoln or if
18 not all of them.

19 Q. Okay. All right.

20 A. But they demeanor, they was coming to do something.

21 Q. Okay. All right. Did you hear your brother say
22 anything back to them after there was some statements by
23 Kevin and Elfonso? Did your brother say anything?

24 A. Well, when Elfonso said who jumped my mother fucking
25 uncle, my brother just said one thing to him, and he ain't

1 got nothing to do with that, he ain't got nothing to do with
2 it. He was paying for the girl's pizza right there. So
3 really that's why -- he was waiting on his change from the
4 pizza. That's why he said he was gonna walk to my
5 grandmother's house.

6 Q. Okay.

7 A. But that's pretty much it.

8 Q. Okay. Just so the Court can have an understanding of
9 the area in which this happened, and I believe this is the
10 prosecution's exhibit over here. If you'll look with me at
11 that map, is that a map of Spring Grove Apartment complex to
12 the best of your knowledge?

13 A. Yes.

14 Q. Okay. Do you recognize from the aerial view, do you
15 recognize where you were when this transpired?

16 A. Um-hum (affirmative).

17 Q. Okay. Can you please point out to the Court where this
18 event took place?

19 A. As far as like what part?

20 Q. Well, actually if you'll indicate, please, where
21 Shelricka's apartment is that you were hanging out, and
22 let's start with that.

23 A. All right. It's this last court right here.

24 **THE COURT:** You can step down.

25 A. I can?

1 THE COURT: It might help us.

2 A. All right. It's this last court right -- Shelricka
3 stay like right here. The girl, Kiana and Marie, who he was
4 buying pizza for was over here.

5 Q. Okay.

6 A. So when he got back from the store, he had already gave
7 them the money ---

8 Q. Okay.

9 A. --- for the pizza. So it happened right -- this is
10 where the altercation in the apartment happened with Kevin.
11 And then when -- okay. Kevin ended up running off. So he
12 ran. And he came up here.

13 He had a car sitting right there waiting on him. So
14 when he ran out of Shelricka's apartment, he got like right
15 here in the middle of the court, and the car, it was a gold
16 Buick, it was right there, it pulled off. He tried to jump
17 on the back of it. So he fell. When he got up, he went off
18 through this way. Okay.

19 The altercation happened right here with the shooting,
20 right across the street like diagonal, really in front of
21 Kiana's apartment 'cause she stay right there. This is
22 where my grandmother stays right here.

23 Q. Okay.

24 A. And my father stay right here in this building.

25 Q. Okay. On the other side of the complex?

- 1 A. Um-hum (affirmative).
- 2 Q. Okay. All right. So all these events happened right
- 3 within proximity to the vehicle y'all brought to the
- 4 complex, to Spring Grove that night? You were close to your
- 5 vehicle this ---
- 6 A. Yeah.
- 7 Q. --- entire time?
- 8 A. Yeah. I had the vehicle crunk. We was actually
- 9 pulling back out like fixin' to leave ---
- 10 Q. Okay.
- 11 A. --- when they approached.
- 12 Q. Okay. So -- and I just want to be clear, the car you
- 13 pulled up, was that Marquez's car?
- 14 A. Yeah, it was Marquez's car.
- 15 Q. All right. So you pulled up Marquez's car. And he had
- 16 exited the car to do what?
- 17 A. No, Marquez was never in the car.
- 18 Q. Right, right, right. When he got back from the -- oh,
- 19 well, then whose car did you take to the store?
- 20 A. He took Derisha's.
- 21 Q. Okay. He took Derisha's car to the store.
- 22 A. And Derisha is Elfonso's baby mama sister.
- 23 Q. Okay.
- 24 A. We don't have no problem with them.
- 25 Q. Okay.

1 A. So he took her car. She was at Shelricka's house, too.

2 Q. Okay.

3 A. So he took her car, and he pulled back up in her car.

4 Q. Okay. So he pulled back up in her car and he exited
5 that vehicle to do what at that point?

6 A. Well, when -- he actually pulled up right before I
7 walked back over there from my grandma house.

8 Q. Okay.

9 A. So -- the other thing he was going to do is get his
10 change, get his money for the pizza ---

11 Q. Okay.

12 A. --- back. That's all he was really doing.

13 Q. Okay. And ---

14 A. And then we were going to leave.

15 Q. --- so when he was attacked was he returning from
16 getting his money or was he walking to get his money? At
17 what point did the attack occur?

18 A. I don't -- the pizza man had just left. So he was
19 going to get his money.

20 Q. Okay.

21 A. He was going to get the change -- he was getting the
22 change from her, from Kiana.

23 Q. Okay. All right. Now, I'd like to turn back to -- we
24 were talking about Kevin and Elfonso earlier.

25 A. Um-hum (affirmative).

1 Q. And you described their demeanor as hostile. In your
2 interactions with them that night did you sense that they
3 were -- had been drinking or intoxicated, had been -- and if
4 so, please tell me about their state of mind with regard to
5 that.

6 A. I really couldn't tell you about Elfonso, ---

7 Q. Okay.

8 A. --- how he was. But Kevin, I mean, when he bust in the
9 house, he could have been drunk, but it didn't seem as if he
10 was drunk. It's just he was real mad.

11 Q. Okay. And again, who was he mad at?

12 A. Shelricka's mother.

13 Q. Okay. And do you know the reason he was upset with
14 her?

15 A. No, I really don't know. I mean, what I got out of it
16 is I think she was trying to leave him alone.

17 Q. Okay.

18 A. And he wasn't going for it.

19 Q. By leave him alone, what do you mean?

20 A. She ---

21 Q. She would not see him?

22 A. Yeah, not see him.

23 Q. Okay.

24 **THE COURT:** She who?

25 A. Shelricka's mother. I think she was probably trying to

TIVARIUS HENDERSON - CROSS EXAMINATION BY MR. HOLLOWAY

71

1 break up with him ---

2 Q. Okay.

3 A. --- from what I seen.

4 Q. Okay. I got you.

5 MR. BRUMBACK: Your Honor, that's all the questions I

6 have for this witness at this time.

7 THE COURT: Okay. Mr. Holloway.

8 MR. HOLLOWAY: Thank you, Your Honor.

9 **Cross Examination by Mr. Holloway:**

10 Q. So you can't really testify how Elfonso was acting, can
11 you?

12 A. No.

13 Q. Okay.

14 A. I mean, as far as like him saying something to my
15 brother, he seemed mad about his uncle, you know, getting
16 into a altercation.

17 Q. But you testified that Kevin Bruster was hostile.

18 A. Um-hum (affirmative).

19 Q. Elfonso was not hostile, was he?

20 A. The first thing he said to my brother was which one of
21 you mother fuckers put your hands on my uncle?

22 Q. Okay. Well, when you testified on direct examination
23 you said that you can't say how Elfonso was acting. So
24 either you don't know or Elfonso was not hostile. Which is
25 it?

1 A. I'm telling you, I'm pretty much telling you he had a
2 problem.

3 Q. Okay. Do you remember giving a statement to the main
4 investigator in this case, Eric Whaley?

5 A. Yes, I do.

6 Q. Okay. And he informed you that it was -- he had it on
7 a CD or he was going to -- he preserved the interview on
8 audio, correct?

9 A. Yeah.

10 Q. Okay. Now, do you remember saying to Officer Whaley
11 the police asked me if I had seen anybody fighting, I told
12 him no and put my hat over my eye 'cause I was going -- I
13 was trying -- I wasn't trying to get in no trouble?

14 A. Okay. I said that to Chris.

15 Q. Okay. Did you say it to this officer, the officer who
16 was the main investigator in this case?

17 A. Yes, I told him that, too.

18 Q. Okay. So you actually -- there's a sheriff's deputy
19 who responded because of you, and Jamar, and JW kicking
20 Kevin Bruster out of the apartment, right? Like ---

21 A. I don't know where the officer came from. But, yes,
22 sir, he did come out.

23 Q. Okay.

24 A. I did speak with him. Like I told you, I wasn't trying
25 to get into nothing or nothing. So I just let it go.

1 Q. Okay. When you're talking to the deputy or when the
2 deputy is on the scene, at what point did you see Elfonso
3 and Kevin coming up?

4 A. The deputy had pulled off.

5 Q. Okay. Did you make any attempt to stop the deputy?

6 A. He was already gone. They waited for him to leave.

7 Q. But isn't it true that he only got to about right here
8 on Boling Road Extension? That's as far as he got?

9 A. The County?

10 Q. The sheriff's deputy?

11 A. No. He got to -- he was at the mailboxes.

12 Q. If you don't mind, come -- show the Court where ---

13 A. The mailboxes -- how I know he was right there because
14 when they approached, I seen him turn out of this court, and
15 the mailboxes -- these are the mailboxes, he was right here.

16 Q. Okay. Can you tell the Court, I mean, I know you said
17 you don't want to get Kevin in trouble. I mean, that's what
18 it was about, right?

19 A. What you ---

20 Q. The reason -- your stated reason on the record here
21 today is that you didn't want to tell the sheriff's deputy
22 because you didn't want to get nobody in trouble. Is that
23 right?

24 A. It was over with as far as I knew. And ---

25 Q. The man cut you, didn't he?

TIVARIUS HENDERSON - CROSS EXAMINATION BY MR. HOLLOWAY

74

1 A. He cut me right here. You want to see the mark?

2 Q. He pulled a razor blade out and cut you, right?

3 A. Yes.

4 Q. You didn't say this guy cut me.

5 A. I don't want to worry about it.

6 Q. Okay. Did you worry about it about thirty minutes

7 later when your brother's shooting at least in Kevin

8 Bruster's general vicinity?

9 A. My brother defended himself.

10 Q. Okay. That's not my question. Did you worry about it

11 at that point?

12 A. Did I worry about it?

13 Q. Yeah. That maybe I should ---

14 A. I mean, I worried about it when I got cut, but it

15 wasn't -- as far as them attacking somebody that had nothing

16 to do with it, the situation or nothing.

17 Q. After the shooting that night did you tell the police

18 what happened?

19 A. We pulled right up on the police officer.

20 Q. I asked you did you say anything about Kevin Bruster

21 cutting you to that sheriff's deputy?

22 A. I told Detective Whaley as soon as he got in contact

23 with me.

24 Q. Okay. But that was three weeks later.

25 A. I didn't really talk to the officer.

- 1 Q. Okay. All right. You said in your statement that
2 Elfonso had a long, black gun, is that right?
3 A. Yes, sir.
4 Q. How long was that gun? Was it a rifle?
5 A. No. It was a handgun.
6 Q. Okay. Where was he hiding it?
7 A. When he first walked up his hand never left out from
8 under his shirt right here until after his uncle placed his
9 hands on my brother. His hands were right here. He
10 switched it. He -- he had it like -- he had it like this.
11 And amidst all of that, whenever my brother got hit ---
12 Q. By Kevin?
13 A. Elfonso is left handed. I know that because I know him
14 from the neighborhood.
15 Q. Okay.
16 A. That's his hand. I seen it with my eyes.
17 Q. Okay. Now, right there in that heat of the moment you
18 see Elfonso's hand moving here?
19 A. He started right there. Under the heat of the moment?
20 Q. Yeah, ---
21 A. Right after his uncle hit my brother, it was switched.
22 It was over there.
23 Q. So after -- it was after Kevin hit your brother is when
24 Elfonso switched hands?
25 A. Yeah.

- 1 Q. Okay. Going toward his gun?
- 2 A. Um-hum (affirmative).
- 3 Q. By this point Kevin has already hit him, is that right?
- 4 Is that right?
- 5 A. Yeah.
- 6 Q. Okay. By this point your brother has alcohol in his
- 7 eyes.
- 8 A. Um-hum (affirmative).
- 9 Q. Okay. And a female yells gun.
- 10 A. Um-hum (affirmative).
- 11 Q. And then your brother started shooting.
- 12 A. No.
- 13 Q. Okay.
- 14 A. I turned and seen Elfonso coming -- he was -- his gun
- 15 was raising up.
- 16 Q. Okay. But your brother, when this is happening, he has
- 17 alcohol in his eyes, doesn't he?
- 18 A. Yeah.
- 19 Q. Okay. And then he starts shooting.
- 20 A. No. He got the alcohol out of his eyes a little bit
- 21 where he was able to see.
- 22 Q. He got the alcohol out of his eyes a little bit? How
- 23 do you know?
- 24 A. I watched.
- 25 Q. Okay. But how -- you weren't inside his head. How do

TIVARIUS HENDERSON - CROSS EXAMINATION BY MR. HOLLOWAY

77

1 you know what he saw?

2 A. Ryan, ---

3 Q. First off, I'm Mr. Holloway, and I'm asking the
4 questions, okay?

5 A. Okay.

6 Q. Answer my questions.

7 A. I understand that, but could you reiterate your
8 question for me?

9 Q. Okay. Let's go back over this because I'm trying to
10 figure out whether you're testifying your brother is
11 shooting blindly or not. At the time when Elfonso's hand is
12 right here, this is after Kevin Bruster, correct, after
13 Kevin Bruster has hit him, ---

14 A. Um-hum (affirmative).

15 Q. --- correct?

16 A. (Affirmative nod).

17 Q. And your brother's still getting alcohol out of his
18 eyes?

19 A. If you had alcohol knocked in your eyes, you would be
20 blind.

21 Q. I ask the questions, sir. I'm asking you a question.
22 At the time that the female yelled gun, isn't it true your
23 brother still had alcohol in his eyes?

24 A. Yeah, but ---

25 Q. Okay. And then he starts shooting. Yes or no?

1 A. No.

2 Q. Okay.

3 A. No.

4 Q. Tell us what happened.

5 A. I told you. He wiped -- he was wiping it out of his
6 eyes. He had a shirt really all the way up and going like
7 this. And he got ----

8 Q. While he's doing that ---

9 A. --- he got a glimpse out of ---

10 Q. While he's doing that, someone ---

11 THE COURT: Whoa, whoa.

12 Q. --- yells gun.

13 THE COURT: Let him finish his answer ---

14 MR. HOLLOWAY: Yes, sir.

15 THE COURT: --- before you ask another question.

16 MR. HOLLOWAY: Okay.

17 Q. And when that happens and someone yells gun, he's still
18 wiping the alcohol out of his eyes, isn't that true?

19 A. Yeah, it's the truth. That part is -- that's the
20 truth. And whenever he got the liquor out of his eyes is
21 the truth.

22 Q. Okay. Do you remember telling Investigator Whaley that
23 Jamar Smith was in the house and didn't even come out of the
24 house?

25 A. Jamar didn't come out until it was time for us to

1 leave.

2 Q. So should he testify today that he saw what happened?

3 MR. BRUMBACK: Objection, Your Honor.

4 THE COURT: What's the objection?

5 MR. BRUMBACK: He has no personal knowledge of whether
6 this other individual has personal knowledge of this. The
7 solicitor can ask that witness himself.

8 THE COURT: Rephrase your question.

9 MR. HOLLOWAY: Okay.

10 Q. Your testimony today is that Jamar Smith -- I guess,
11 let me ask you this. Was he outside or not?

12 THE COURT: He who?

13 MR. HOLLOWAY: Jamar Smith, AKA 40.

14 A. Outside at the time of the shooting?

15 Q. Um-hum (affirmative).

16 A. Yes, he was.

17 Q. Okay. Do you remember telling ---

18 A. He was in the car, actually, stuck.

19 Q. But as I said earlier, as I asked earlier, you told
20 Investigator Whaley Jamar Smith was in the house, didn't
21 even come out of the house.

22 A. I didn't tell him that at the time of the shooting.

23 Q. Okay. Well, what were you talking about then?

24 A. Jamar was in the house when the deputy rode up and
25 asked me a question.

1 Q. Okay. Now, you testified on direct examination that
2 you were driving the vehicle, the white vehicle, this white
3 Lincoln?

4 A. Right.

5 Q. Okay. And you just took off, didn't you?

6 A. I was pulling off, out of the neighborhood. I left --
7 my brother said he was gonna walk to my grandmother's house.
8 And then when I seen the two individuals coming from around
9 the back, I turned around.

10 Q. After the shooting you then got -- you and your
11 brother, Mr. Glenn and JW got back in the vehicle; didn't
12 you?

13 A. JW never exited the vehicle. He was stuck in it.

14 Q. Okay. Because there was some trick button on the car
15 that wouldn't let him get out?

16 A. It's not no trick about it. It was messed -- the doors
17 was messed up.

18 Q. Okay. You guys -- you actually were driving and you
19 took off, didn't you? From the area of the shooting?

20 A. After the shots happened?

21 Q. Yeah.

22 A. Yeah, we pulled off and pulled right up on a officer
23 and told him a man was shot, needed to go help.

24 Q. So who said that?

25 A. Marquez.

1 Q. Okay. He said a man was shot?

2 A. He said -- he actually told him he actually did it.

3 Q. So now you're saying that he said I shot him. Is that
4 what you're saying today?

5 A. Yes.

6 Q. Okay.

7 MR. BRUMBACK: Your Honor, I'm going to object to the
8 relevance of this. This all transpired after the alleged
9 shooting by the solicitor's own questions. And I don't see
10 what relevance this has on to the state of mind or anything
11 that happened immediately prior or prior to this, you know,
12 this question of self-defense.

13 THE COURT: Well, I'm -- well, we're not really talking
14 about self-defense here. And I think it's kind of hard not
15 to talk about it when we're talking about the real issue
16 here, which is the statutory immunity. But it's cross, and
17 I'll allow him. But we don't need to go into things that
18 don't have to do with the immunity issue.

19 MR. BRUMBACK: Okay. Thank you, Your Honor.

20 Q. Okay. Your brother didn't say I shot him, I shot a
21 man?

22 A. Yes, he did.

23 Q. Okay. But you didn't say that before, did you?

24 (Whereupon a phone began ringing)

25 A. Say it to?

1 Q. Investigator Whaley.

2 A. Investigator Whaley was -- knew about it. He told --
3 my brother talked to him before I did.

4 **THE COURT:** That needs to be taken out of the courtroom
5 and put on mute. Go ahead.

6 **MR. HOLLOWAY:** Thank you, Your Honor.

7 Q. Your brother -- actually, where is that gun now?

8 A. I don't know.

9 Q. Okay.

10 A. He told me he threw it in the -- him and my father said
11 it was in the river.

12 Q. So he threw his gun away?

13 A. That's what I was told.

14 Q. All right. Thank you very much.

15 **MR. BRUMBACK:** Your Honor, I just have one recross
16 question, well, redirect.

17 **Redirect Examination by Mr. Brumback:**

18 Q. Tivarius, how long did these events take from Kevin and
19 Elfonso coming up to your brother to the shots being fired?
20 Please describe that -- I don't know that the Court and
21 everyone is necessarily getting a proper idea of how long it
22 took for these events to transpire.

23 A. Everything happened in a blink.

24 Q. So five, six, ten seconds? What are we talking?

25 A. You mean when like after -- tell me what you mean.

1 Q. Okay. Well, what I'm talking about is the whole
2 question here is really what happened between your brother,
3 Kevin and Elfonso. So from them coming up on him as he was
4 trying to leave to the shots being fired, how long did that
5 interchange take?

6 A. When they first walked up, exchanged a couple of words,
7 he exchanged a couple of words, in like thirty seconds his
8 uncle hit my brother, another like two minutes or so, from
9 my brother getting the liquor and stuff, three minutes to
10 get the liquor out of his eyes. It all happened quick.

11 Q. Now, I just want to be clear on this. Your testimony
12 is that this happened quickly, but you're saying two
13 minutes. I don't -- I don't want to sit here with the Court
14 and pull out a stopwatch on you, but two to three minutes is
15 a fairly substantial amount of time.

16 A. I mean, it all happened quick, like from the shots --
17 from his uncle hitting my brother to the shots fired, it was
18 really like all together like, I mean, I had enough -- I had
19 time to get -- I got out of the car, my brother was blinded,
20 then I don't -- a time-frame? I can't really just give you
21 no time-frame. I mean, it was quick 'cause they approached,
22 hit, blinded my brother, I tried to help, gun, it was all
23 just like ...

24 Q. One after the next?

25 A. Yeah.

1 Q. All right.

2 MR. BRUMBACK: Thank you, Your Honor. That's all I
3 have for this witness.

4 MR. HOLLOWAY: That's all I have, Your Honor.

5 THE COURT: You can step down. Thank you.

6 A. All right.

7 THE COURT: Appreciate your time. (

8 A. Uh-huh (affirmative).

9 MR. BRUMBACK: Your Honor, at this time the Defense
10 would call Shelricka Duncan.

11 Shelricka Duncan, being
12 duly sworn testified as follows;

13 MADAME CLERK: Please come around and have a seat.
14 Will you say your full name for the record and spell your
15 first name.

16 MS. DUNCAN: Shelricka Duncan, S-h-e-l-r-i-c-k-a.

17 **Direct Examination by Mr. Brumback:**

18 Q. Shelricka, thank you for being here today. Appreciate
19 you being here. Could you please tell me how you know the
20 Defendant, Marquez Glenn.

21 A. Friend of the family.

22 Q. Friend of the family?

23 A. Um-hum (affirmative).

24 Q. So do you know him in addition to his family members?

25 A. Um-hum (affirmative).

1 Q. Okay.

2 THE COURT: You got to say yes or no.

3 A. Yes, sir. Sorry.

4 Q. That's okay. So do you know any of the other people
5 involved in this case?

6 A. Yes, sir.

7 Q. Okay. Who all do you know?

8 A. I know Tivarius, Marquez, I know 40. And I had just
9 not too long ago met their father.. So I knew their father
10 as well.

11 Q. Okay. Do you know any of the individuals on the other
12 side of this case, being Elfonso, Kevin?

13 A. I know Elfonso through my best friend, Derisha. And
14 Kevin was my mom's boyfriend.

15 Q. Okay. All right. And your mom was involved in this
16 evening as well because she was around, correct?

17 A. Um-hum (affirmative). But she was asleep.

18 Q. Okay. So now that we've sort of established how you
19 know all the players in this, could you please tell me about
20 your recollection of the evening of April 12th, 2013?

21 A. Okay. We had all decided to get together and have a
22 little small shindig, cook, drink, play cards, just have a
23 night out. And we was all sitting around the table, me and
24 Derisha was at the table and Tivarius was, I believe, in the
25 kitchen in the process of going back and forth from the

1 kitchen to the livingroom. And the kids was in the other
2 room.

3 And before I know it we look up and Kevin was walking
4 in the door, which he was already put on no trespass the day
5 prior by the officer that patrols our area. So when he came
6 in he walked past everybody and came back out. That's when
7 he made an initiative to be extra angry.

8 So I was getting him out of my house because, like I
9 said, the day prior we had permission that he was put on no
10 trespass. And so he had to be removed from the premises
11 immediately. And so I was in the process of trying to get
12 him out. That's when Tivarius and 40 was helping me get him
13 out because it was just too much of a tussle for me.

14 And I noticed before I was moved out of the way that he
15 had a blade in his mouth and he was in the process of taking
16 it out. So I was trying to hold his hands as the guys was
17 guiding him out the door. That's when I was moved out of
18 the way.

19 And he was outside and they kind of got to tussling as
20 far as in that's when Tivarius got cut. And I had came back
21 in the house. I was still in the house, but it just sounded
22 like a whole lot going on out there because he was yelling
23 and fussing, Kevin was. And I just made sure that wasn't
24 nobody really seriously getting hurt because I did see him
25 with the blade and I didn't know what was going on because

1 everything was happening so fast.

2 So Kevin had ---

3 Q. Can I stop you right there?

4 A. Yeah.

5 Q. I just want to clarify before you continue on with your
6 story.

7 A. Okay.

8 Q. I just want to clarify a couple of things. A second
9 ago you said all of us got together and were hanging out.
10 Could you tell the Court who all is?

11 A. It was me, Derisha, Marquez was there prior, earlier,
12 but he had left, Tivarius was in the kitchen, his father was
13 at the table, and it was just the children in the other
14 room, and my mama was in the other room asleep.

15 Q. Okay. All right. And how did these people come to be
16 at your house?

17 A. Well, my mom was already over at my house. Me and
18 Derisha had talked earlier. So she had -- she stopped in.
19 And that's when we kind of did the exchange with who's going
20 to the store. Tivarius and them had all came over. It was
21 kind of before it got dark. So he had been over there for a
22 while.

23 Q. Okay. Did you invite those individuals ---

24 A. Um-hum (affirmative).

25 Q. --- into your home? Okay.

1 THE COURT: You got to say yes or no.

2 A. Yeah. I'm sorry. Oh, sorry. Yes, sir.

3 Q. That's okay. We'll try to remind you. So Marquez, his
4 father and brother were invited by you to the house?

5 A. Um-hum (affirmative). Yes, sir.

6 Q. Thank you. Now, when you said Kevin was placed on a no
7 trespass the day before, ---

8 A. Yes, sir.

9 Q. --- why was he placed on a no trespass?

10 A. Because my mom -- well, I had left to go get my uncle
11 so he can come over to our house 'cause, like I said, we
12 were all having a little get together, we were just getting
13 together. And in the midst of that happening Kevin had rode
14 over there on his moped and tried to steal my mom's phone.

15 And the deputy -- the deputy that be out there all the
16 time, he was on the scene. So one of my neighbors had
17 called the police for my mom to let them know he assaulted
18 her, took her phone and whatnot. And with that happening,
19 he did get my mom's phone. He called the phone back after
20 my mom was talking to Jumper. And Jumper had let him know
21 that he's immediately put on no trespass, and he's not
22 allowed back over there because the night before that he was
23 over at my house not welcome.

24 He was trying to talk to my mom through my screen. And
25 I had done left the house for a little while, and when I

1 came back. I seen him kind of like basically harassing her
2 through the window. And my mom talking like you need to
3 leave and everything. So I went on ahead and called the
4 police.

5 Q. Okay. All right. Now before we move on, how would you
6 describe Kevin's demeanor when he came to your house?

7 A. He was outright. He was already under the influence
8 because he had a bottle with him already, a 40 as a matter
9 of fact.

10 Q. Okay. All right.

11 A. Yes, sir.

12 Q. Okay. What was -- so your testimony is that he was
13 intoxicated?

14 A. Um-hum (affirmative).

15 Q. How would you describe -- was he -- you can be a lot of
16 different ways intoxicated. You can be happy, you can be,
17 you know, angry. How would you describe ---

18 A. He was really frustrated because he wasn't getting his
19 way. He was upset over the fact that my mom wasn't coming
20 back with him and that they were really on bad terms.

21 Q. Okay. All right. So now getting back to your story, I
22 didn't want to interrupt you, I just wanted to clarify those
23 couple of points. I believe you left off with Marquez had
24 gone to the store or was going to the store or ---

25 A. Um-hum (affirmative).

1 Q. --- something to that effect.

2 A. He was gone when Kevin got there.

3 Q. Okay.

4 A. When Kevin got there he was already gone. And it had
5 been a minute since he had been gone anyhow. And by the
6 time Tivarius and 40 got him outside the house, Kevin had
7 took off to try to catch his ride, but his ride was in the
8 process of trying to leave him. So he had ran up the
9 street.

10 And that's when I was kind of trying to figure out what
11 he was doing, if he was going to try to come back or not.
12 And in the midst of him running off I seen Marquez and them
13 coming back in. And I kind of like let him know, well, this
14 is what just happened, this is what's going on, and I'm not
15 sure like what else is going to happen or anything like
16 that.

17 So I didn't see Kevin for -- I'd have to give it at
18 least maybe about ten, ten maybe more minutes, but I'm not
19 sure. Isn't like I had a watch on or anything, but ---

20 Q. Right.

21 A. --- he was gone. He had cut through the curb. And I
22 know the only person that stay over that way -- the only
23 other person that he knows out here is his nephew.

24 Q. Okay.

25 A. So I'm assuming that's the first place he went because

1 I couldn't even see his ride anymore.

2 Q. And who is his nephew?

3 A. Elfonso.

4 Q. Okay. And do you know where his nephew lives in the
5 complex?

6 A. I believe they stayed in the second court.

7 Q. Okay. All right. Could you indicate where that is on
8 the map for us?

9 A. Right down here.

10 Q. Okay. All right. And where is your place?

11 A. No, right down here. I'm sorry.

12 Q. Okay. And in relation to your house, that is where?

13 A. Right here at the bottom.

14 Q. Okay. All right. Thank you. Okay. So once you saw
15 him walk off, what happened next?

16 THE COURT: Him who? We keep using pronouns. It gets
17 me confused.

18 MR. BRUMBACK: I'm sorry. You're right, Your Honor.

19 THE COURT: Him who?

20 MR. BRUMBACK: You see, we all have these problems.

21 Q. Once Elfonso walked off, or I'm sorry, once Kevin
22 walked off, what happened next?

23 A. I proceeded back in the house to make sure everybody
24 was okay because the kids had seen everything, everybody was
25 crying, nervous and my nerves are shot, and I'm just worried

1 about everybody's well-being. I had to go in there and
2 check on the kids and make sure my mom was okay. My mom was
3 still asleep and just trying to get everything back in
4 order.

5 Q. Okay. All right. And what happened next?

6 A. After that, I was in the house maybe every bit of like
7 a good ten or fifteen minutes, I'm not sure. Everything was
8 just going.

9 When I walked back outside I seen a deputy talking to
10 Marquez. And I walked up on the situation. And in the
11 midst of that, I guess all the words were exchanged and the
12 deputy was about to leave. That's when I seen Kevin and
13 Elfonso coming up.

14 And they waited -- well, Kevin waited until the officer
15 was fully gone. And that's when he had proceeded to hit
16 Marquez in the face.

17 **THE COURT:** He who?

18 A. Kevin Bruster. Sorry.

19 Q. And I do want to get that a little bit expanded there,
20 but I would like to determine first where did you see Kevin
21 and Elfonso?

22 A. They were ...

23 Q. Yeah, that's fine. Where did you see Kevin and Elfonso
24 while Marquez Glenn was speaking to the police?

25 A. Marquez and the deputy were standing right here. And

1 Elfonso and Kevin were coming up through the passage way
2 right here.
3 Q. Okay.
4 A. Between that opening.
5 Q. Okay. Did they walk right up?
6 A. They did.
7 Q. Okay. Did they -- while Marquez was speaking to the
8 police?
9 A. Well, the police actually was walking off.
10 Q. Okay.
11 A. Yes, sir. And they had done left. The police officer
12 done got in his car. And they had walked all the way up.
13 And that's when Elfonso had asked Marquez what happened with
14 his uncle.
15 Q. Um-hum (affirmative).
16 A. And the altercation broke out.
17 Q. Okay. All right. When the altercation, as you
18 described it, broke out, did you hear Kevin say anything?
19 A. Well, from what I can recall, he said, I know we didn't
20 come up here for no reason, I know we're gonna get somebody.
21 I'm not -- I can't go verbatim, but that's the basis of it.
22 Q. Okay. And what did you think he meant by that?
23 A. He wasn't gonna leave without no fight.
24 Q. Okay. All right. So the altercation begins. And you
25 said -- I believe you said you saw Elfonso, I'm sorry, Kevin

1 strike Mr. Glenn?

2 A. Um-hum (affirmative).

3 Q. Okay.

4 A. Yes, sir. I'm sorry.

5 Q. Thank you. What happened after that?

6 A. After Marquez got hit, I took off running because I'm
7 not the type to be around no suspense. And I was really
8 paranoid because I just seen somebody get into a fight in my
9 own house. So ...

10 Q. Yeah.

11 A. I just took off running.

12 Q. Okay. On the night in question were you aware that Mr.
13 Glenn had a handgun on him?

14 A. No, sir.

15 Q. Okay. Did you ever see it?

16 A. Uh-uh (negative).

17 Q. Did he make it known to anyone?

18 A. (Negative nod).

19 Q. You have to answer.

20 A. No, sir, not that I know of.

21 Q. All right. Did you see anyone else that evening have a
22 handgun?

23 A. No, sir.

24 Q. Okay. All right. How would you describe Kevin or
25 Elfonso's demeanor when they came upon Mr. Glenn?

1 A. I think Kevin played it slick because when he came up I
2 know they seen the police when they were approaching the
3 scene, but after the police had left, that's when he kind of
4 got a little more agitated like the face, he was -- when he
5 first had came into the apartment.

6 Q. Um-hum (affirmative).

7 A. So he was amped and ready to try to do something.

8 Q. Okay. And how would you describe Mr. Glenn's demeanor
9 as he was approached and interacted with -- by Elfonso and
10 Kevin?

11 A. Very calm and still trying to figure out what's going
12 on as well.

13 Q. Um-hum (affirmative). So once Mr. Glenn was struck in
14 the face, from what you saw, did he have an opportunity to
15 disengage from the altercation?

16 A. Well, everything was happening so fast. I really don't
17 think he did have enough time because after he was hit in
18 the face, he got drink all in his face, he was disoriented
19 like as far as in trying to get himself situated. So after
20 that everything was just a big rush.

21 Q. Okay.

22 A. And from, like I said, when he got hit, I took off.
23 All I know is he was going back and he was doing this.

24 Q. Okay. And so that evening who would you describe as
25 the aggressors in this interaction between Mr. Glenn and

1 Kevin and Elfonso?

2 A. Kevin.

3 Q. Kevin?

4 A. Um-hum (affirmative).

5 Q. Okay. All right. If you'll bear with me for just one
6 second.

7 (Pause)

8 Q. I want to go back a little bit to when you said Mr.
9 Glenn left the apartment. Why did he leave the apartment
10 again?

11 A. From what I know it was a store run.

12 Q. Okay.

13 A. Yes, sir.

14 Q. All right. Was he getting stuff for the party,
15 essentially?

16 A. I'm assuming so. I'm not really sure. It's been a
17 while back.

18 Q. Was he -- did you expect him to come back to your
19 apartment?

20 A. I did.

21 Q. Okay. All right. Was he invited back to your
22 apartment?

23 A. Um-hum (affirmative). Yes, sir.

24 Q. And I guess the only other question I have is based on
25 what you viewed that evening did Mr. Glenn have any other

1 options to avoid serious bodily injury to himself other than
2 the actions that he took?

3 A. No, because basically it was put in his lap. He was
4 provoked because the whole situation was ceased as far as
5 the basis of the situation with Kevin coming into my house.
6 Other than that, everything was ceased until Kevin
7 reinitiated it, reset fire back to it. I just didn't
8 understand.

9 Q. Okay. Actually, one other question. Could you please
10 describe for the Court the stature of the individuals
11 involved in this? That being Kevin Bruster, Elfonso Bruster
12 and then Mr. Glenn, the physical appearance in stature.

13 A. Well, Kevin was very -- you could tell he was under the
14 influence. Tivarius -- Marquez was calm, collected. And
15 when Elfonso came up there you didn't kind of see much
16 agitation, I didn't, but other than that everybody was cool
17 besides Kevin.

18 Q. Okay. And I guess what I was actually trying to get at
19 ---

20 A. I'm sorry.

21 Q. No, no, no. I apologize for a bad question.
22 Physically, size, height, weight, how would you describe the
23 individuals involved?

24 A. Kevin, I mean, Marquez was the shortest one out of all
25 three. Kevin was probably maybe two inches higher than him.

1 But Elfonso was the tallest out there.

2 Q. Okay. And do you have any idea how much each of them
3 weighs relatively?

4 A. I give Quez, Marquez maybe about a buck fifty.

5 Q. Okay.

6 A. Kevin, maybe a buck seventy-five.

7 Q. Um-hum (affirmative).

8 A. And Elfonso maybe two and some change.

9 Q. Okay. All right. Thank you very much. That's all the
10 questions I have for you right now.

11 Cross Examination by Mr. Holloway:

12 Q. This is, I think, the second or third time we've
13 talked, right?

14 A. Um-hum (affirmative).

15 Q. Okay. I'm just going to ask you a few questions about
16 your testimony and your previous statement. Do you recall
17 giving a statement to the main officer in this case, Eric
18 Whaley, ---

19 A. Yes, sir.

20 Q. --- sitting right here in the courtroom? And that was
21 about three weeks after the shooting or was it the night of
22 the shooting?

23 A. Actually, I -- I believe it was within the week.

24 Q. Okay. And you recall when he asked you questions he'd
25 turn on kind of a tape player ---

- 1 A. Um-hum (affirmative).
- 2 Q. --- or some machine ---
- 3 A. Yes, sir.
- 4 Q. --- to record? Okay. You just testified that Kevin
- 5 Bruster's the one who kind of reinitiated what was going on.
- 6 It had calmed down after Jamar, and Vante and Tivarius got
- 7 him out of the apartment.
- 8 A. Yes, sir.
- 9 Q. Okay. Were you on the scene when Tivarius talked to
- 10 the sheriff's officer?
- 11 A. No, sir. I was in the house then.
- 12 Q. Okay. Did you know that Kevin was cut, I mean, excuse
- 13 me, that he had cut Tivarius?
- 14 A. I did after I kind of went back outside and I seen him.
- 15 I seen the blood on his face.
- 16 Q. Okay. Did you tell the officer that he'd been cut?
- 17 A. No, sir. I didn't have a chance to talk to the
- 18 officer.
- 19 Q. Okay. You said that Kevin said he wasn't going to
- 20 leave without a fight.
- 21 A. Yes, sir, something to that nature.
- 22 Q. Okay. Besides Elfonso asking who jumped on my uncle or
- 23 MF-ing uncle, what else did Elfonso say before the -- he was
- 24 shot?
- 25 A. Nothing else that I know of.

- 1 Q. Okay. When you saw him, Elfonso, can you describe how
2 he was presenting himself? His body language.
- 3 A. They just walking up on the scene.
- 4 Q. Okay. You said that the previous day, I guess that
5 would be April the 12th?
- 6 A. Um-hum (affirmative). Yes, sir.
- 7 Q. You could argue it was about twelve hours before the
8 shooting.
- 9 A. Yes, sir.
- 10 Q. You said that Kevin had -- there was an incident
11 involving Kevin Bruster at your apartment.
- 12 A. Yes, sir.
- 13 Q. And the police came out there and took him away.
- 14 A. Well, no, actually he left before the police got there.
15 He had took my mom's phone. And the only way that the
16 officer was able to talk to him, Kevin called my mom's
17 phone, well, actually called -- he had my mom's phone. He
18 called me from my mom's phone. And I gave him my phone, and
19 the officer talking to him to let him know that he was no
20 longer welcome out here.
- 21 Q. Okay. Do you know where he was at?
- 22 A. I am not sure. He was on his moped.
- 23 Q. Okay. Did you hear the wind and a little rattling from
24 the moped engine?
- 25 A. To be honest with you, I really didn't pay attention.

1 Q. So you weren't sure if he was tooting along on the
2 moped, hey?

3 A. I'm not sure.

4 Q. Okay. Did you see the shooting?

5 A. No, sir, 'cause when Marquez was hit, I turned around
6 and ran in the house..

7 Q. Okay. And you testified earlier, and just for the
8 record, for the sake of the record, every time someone has
9 referred to a map, it is State's exhibit 3. You testified
10 earlier, and I'm pointing on the exhibit, that everyone kind
11 of met right about -- is it right about here?

12 A. Come back just a little.

13 Q. Where?

14 A. Just a little bit further back. Yeah, right there.

15 Q. Okay. Do you remember how many shots were fired?

16 A. No, sir.

17 Q. Okay. Was it more than two?

18 A. To be honest with you, I'm really not sure.

19 Q. Okay. Do you know if a car, a white car, was struck
20 with bullets?

21 A. I'm not sure.

22 Q. Okay. Now, when Elfonso -- first off, were they
23 walking together like this or was it one at a time, in
24 tandem?

25 A. They was kind of in line with each other.

SHELICKA DUNCAN - CROSS EXAMINATION BY MR. HOLLOWAY

102

- 1 Q. Okay. Who was first?
- 2 A. Well, they was kind of ---
- 3 Q. Both ---.
- 4 A. --- walking at the same pace, yes, sir.
- 5 Q. Okay. At this point you're still watching what's going
- 6 on?
- 7 A. I was outside in the middle of the street.
- 8 Q. Okay.
- 9 A. Yes, sir.
- 10 Q. Did you see Elfonso with a gun?
- 11 A. No, sir, I didn't.
- 12 Q. Okay. At any moment of time that night?
- 13 A. No, sir, I didn't.
- 14 Q. So even when he's walking right here you didn't see a
- 15 gun?
- 16 A. No, sir, I didn't.
- 17 Q. Okay. Did he reach for his gun, ---
- 18 A. I don't ---
- 19 Q. --- like Clint Eastwood?
- 20 A. --- know. I'm not sure.
- 21 Q. Like ---
- 22 A. I'm not sure.
- 23 Q. Like draw, nothing like that?
- 24 A. I'm not sure.
- 25 Q. Okay.

1 A. I don't think so. I mean, I don't ...

2 Q. Okay. Do you remember in your statement to the
3 investigator, Investigator Whaley, that you told him that
4 after the shooting Marquez actually talked to you about the
5 shooting? He came -- and he approached you at some
6 situation and he told you about the shooting. Do you
7 remember that?

8 A. No, sir.

9 Q. Okay. Do you remember telling the investigator all I
10 know is that I seen Elfonso reaching in his waistband?
11 That's what the Defendant said to you.

12 A. Well, I'm not sure. I don't ---

13 Q. Okay.

14 A. I don't recall that.

15 Q. You don't remember him saying I assume he was reaching
16 for a gun?

17 A. No, sir, I don't.

18 Q. Okay. And you're a family friend of the -- of Mr.
19 Glenn?

20 A. Yes, sir.

21 Q. Does that include his entire family, Tivarius?

22 A. Yes, sir.

23 Q. Okay.

24 A. Me and his cousin are ---

25 Q. His mom?

1 A. --- best friends. Um-hum (affirmative).

2 Q. Okay. Did Marquez live out there at that time?

3 A. No, sir, he didn't.

4 Q. Okay. Did you know he had been kicked out?

5 A. No, sir, I didn't.

6 Q. Okay. Do you recall when his family moved from the
7 complex?

8 A. I remember when they left out of the apartment complex,
9 yes, sir.

10 Q. Okay. Did you learn why they moved out?

11 A. No, sir. I didn't feel it was my concern.

12 Q. Okay. All right. Thank you very much.

13 A. Yes, sir.

14 **MR. BRUMBACK:** Just briefly, Your Honor.

15 **Redirect Examination by Mr. Brumback:**

16 Q. And I may have covered this already. Did you already
17 testify as to how long it took from Kevin and Elfonso coming
18 up on Marquez to you hearing gunshots?

19 A. No, sir, I hadn't said anything about that. But with
20 them walking up, I know we might have been outside maybe a
21 minute and a half. And with them saying whatever they had
22 to say to each other, maybe, probably two at the most. But
23 with the hit, it might have been maybe four minutes at the
24 most because after they said their words, Kevin said what he
25 had to say, and then he hit him. And that's when I -- I

1 booked it.

2 Q. Okay. So between the strike, between the hit when you
3 ran -- did you hear the gunshots that night?

4 A. I think I did -- I know I heard gunshots, but I'm not
5 sure how many.

6 Q. Okay. Well -- and that's fine. But between you seeing
7 Kevin strike Mr. Glenn and you hearing the gunshots, what
8 was the time-frame there?

9 A. I'd give it a matter of seconds. Probably not even --
10 not even a whole minute.

11 Q. Matter of seconds?

12 A. Yes, sir.

13 Q. And to the best of your knowledge did Kevin and Elfonso
14 have any business down near your apartment ---

15 A. No, sir.

16 Q. --- other than to, as you put it, get up on someone?

17 A. No, sir.

18 Q. Thank you very much.

19 **MR. HOLLOWAY:** One quick question.

20 **Recross Examination by Mr. Holloway:**

21 Q. You testified just now that it was a matter of seconds
22 between the time Kevin struck Mr. Glenn and the shooting, is
23 that right?

24 A. It was a matter of seconds as far as me hearing the
25 shooting because after he got hit is when I ran into the

1 apartment because it don't take that long from where I was
2 standing to run into my apartment.

3 Q. So it was a longer period of time between the hitting
4 ---

5 A. Yes, sir.

6 Q. --- and the gunshots?

7 A. Yeah. From the -- from when they walked up, said what
8 they had to say, and then he hit him, that was maybe a
9 matter of about three minutes at the most.

10 Q. Okay. And from the time that he hit him, when Kevin
11 Bruster hits Mr. Glenn, ---

12 A. Yes, sir.

13 Q. --- how much time transpired? How long was that? A
14 matter of seconds?

15 A. Yes, sir, because like I said, after he got hit, I took
16 off in the house.

17 Q. Okay. Thank you.

18 A. Yes, sir.

19 **MR. BRUMBACK:** That's all I have for this witness.

20 **THE COURT:** You can step down. Thank you. Appreciate
21 your time. Call your next witness.

22 **MR. BRUMBACK:** All right, Your Honor. The Defense
23 would call Denise [sic] Nunez.

24 **Delni Nunez, being duly**
25 sworn testified as follows;

1 **MADAME CLERK:** Please step around and have a seat.

2 **THE COURT:** And I apologize for butchering your name
3 this morning.

4 **MS. NUNEZ:** Oh, that's fine.

5 **MADAME CLERK:** Will you please state your full name for
6 the record and spell your first.

7 **MS. NUNEZ:** Delni Nunez, D-e-l-n-i.

8 **Direct Examination by Mr. Brumback:**

9 Q. All right. Ms. Nunez, thank you for being here this
10 morning or afternoon as it may now be. Just would like to
11 start off as I have with the other witnesses. Would you
12 please tell me how you know the individuals involved in this
13 case, that being Mr. Glenn, his family members, if you do
14 know them, and any of the other parties in this case that
15 we've discussed so far.

16 A. I know Mr. Glenn used to stay in the apartment complex.

17 Q. Okay.

18 A. So -- and Elfonso is my friend baby's father.

19 Q. Okay. All right. So as you've heard so far, we've
20 been discussing the events of April 12th, 2013. Could you
21 please tell me what you remember of the events for that
22 night.

23 A. Okay. What I remember was I think I was between
24 thirteen and fourteen weeks pregnant. And we all was
25 outside of my neighbor's. And I was outside having fun,

1 basically.

2 And then I saw Elfonso uncle yelling somebody jumped me
3 from the fourth -- third court walking towards second court.
4 We didn't pay no attention because he looked like he was
5 drunk.

6 Q. Okay.

7 A. And he keep yelling. We keep -- didn't pay attention
8 until he got there. So when he got there he had blood on
9 his shoes and looked like a black eye. And he said,
10 somebody jumped me, you not gonna do nothing? He said, no,
11 you know, 'cause we was outside. And he keep telling him,
12 come on, let's go, come on, let's go. We didn't pay
13 attention until he walked with him. And like everybody
14 else, trying to be nosy, ---

15 Q. Um-hum (affirmative).

16 A. --- I walked with them. And then when we got there,
17 Fonso was trying to speak with Quez trying to see what
18 happened. And then that's when Kevin hit Quez in the face.
19 And when I saw that Kevin hit Quez, I turned my back because
20 I knew they was gonna fight.

21 Q. Okay.

22 A. And that's when a lady across the street had fell down,
23 and I went to help her. And then when I went and got to the
24 car, that's when I heard the four gunshots.

25 Q. Okay.

1 A. When I came back is when I saw Fonso laying on the
2 floor.

3 Q. Okay. All right. Okay. A second ago you testified
4 that Kevin was saying something to someone else and you said
5 him, I believe. Who was Kevin talking to?

6 A. Fonso.

7 Q. Okay. So Kevin was talking to Fonso. And what was it
8 that he said exactly?

9 A. That somebody jumped him in the fourth court.

10 Q. Okay. And he said something else, I believe. I just
11 want to get your testimony correct about ---

12 A. He was saying if Fonso wasn't going to do nothing about
13 it.

14 Q. Okay. And did Elfonso ---

15 A. He said no.

16 Q. Okay. All right. So now your testimony was that you
17 saw Elfonso and Kevin come up on Mr. Glenn, is that correct?

18 A. They was walking towards him.

19 Q. Okay.

20 A. They -- by my point of view, they wasn't trying to have
21 a argument or fight until Kevin hit Quez.

22 Q. Okay. So what was Mr. Glenn doing, what was Marquez
23 doing when ---

24 A. He was coming out of one of the apartments.

25 Q. Okay. And for purposes of us helping the Court

1 understand where he was, could you point on the map where

2 Mr. Glenn was coming out of?

3 A. I believe it was from over here.

4 Q. Okay. All right. And as he was coming out what was he

5 -- what was he doing? Was he ---

6 A. He was coming out to talk with Fonso.

7 Q. Okay. All right. And so as he was walking out how did

8 Elfonso and Kevin come up on Mr. Glenn?

9 A. They was right beside each other.

10 Q. Okay. All right. Now was Mr. Glenn's back to the

11 apartments at this point? How was he positioned with regard

12 to the apartments?

13 A. I think Fonso was on the left side and Kevin was on the
14 right side.

15 Q. Okay. All right. And was Mr. Glenn -- was Mr. Glenn

16 -- the best way to explain ---

17 A. He was right before -- in front of Marquez.

18 Q. Okay. They were in front of ---

19 A. Yeah.

20 Q. --- Marquez ---

21 A. In front of each other.

22 Q. Were they between Marquez and the parking lot, between

23 Marquez and the car?

24 A. It was on the sidewalk.

25 Q. Okay. All right. To get to the parking lot, would Mr.

1 Glenn have had to go through Kevin and Elfonso?

2 A. What you mean by that?

3 Q. Would he have to pass by them in some fashion to get to
4 the parking lot?

5 A. Yeah.

6 Q. Okay. All right. Now, how would you describe the
7 demeanor of Kevin and Elfonso on that -- when they were
8 interacting with Mr. Glenn?

9 A. They was really calm.

10 Q. Okay. Did you hear them say anything to Mr. Glenn?

11 A. No. I couldn't hear 'cause I was behind it.

12 Q. Okay. How far away were you?

13 A. It was like one feet or two.

14 Q. Okay. You were ---

15 A. Something around there.

16 Q. You were one or two feet? They were one or two feet
17 apart or you were one or two feet from ---

18 A. No, me.

19 Q. You were one or two feet from them?

20 A. Yeah.

21 Q. Okay. All right. But you didn't hear anything that
22 they said?

23 A. No.

24 Q. Okay. All right. From what you saw did Mr. Glenn
25 provoke the punch that he was the recipient of in any

1 fashion?

2 A. What you mean?

3 Q. Did he do anything to cause Kevin to punch him?

4 A. Not that I know.

5 Q. Okay. All right. But you did see Mr. Glenn get
6 punched by ---

7 A. Yes.

8 Q. --- Kevin, yes? Okay. And between the time from the
9 punch was landed and you heard the gunshots, what kind of
10 time-frame are we talking?

11 A. Seconds.

12 Q. Seconds?

13 A. (Affirmative nod).

14 Q. From what you observed did Mr. Glenn have any other
15 opportunity to avoid the attack?

16 A. No.

17 **MR. BRUMBACK:** That's all I have for this witness.

18 Thank you, Your Honor.

19 **Cross Examination by Mr. Holloway:**

20 Q. The opportunity to avoid the attack from Kevin Bruster
21 or Elfonso?

22 A. What you mean?

23 Q. Well, as Mr. ...

24 **MR. BRUMBACK:** Brumback.

25 Q. Brumback, ---

1 **MR. HOLLOWAY:** Thank you.

2 Q. --- just asked you, did Mr. Glenn have an opportunity
3 to defend himself from the attack? The attack from whom?

4 A. No.

5 Q. Okay. The attack from whom? Who was attacking him?

6 A. Kevin.

7 Q. Kevin Bruster.

8 A. Kevin Bruster.

9 Q. Did Elfonso attack him?

10 A. No.

11 Q. Okay. Did he say anything -- any threats ---

12 A. No.

13 Q. --- to Mr. Glenn?

14 A. No, that I know.

15 **THE COURT:** He who? Y'all use so many pronouns, it
16 drives me crazy.

17 **MR. HOLLOWAY:** Elfonso.

18 Q. Did Elfonso say anything that would -- any threats ---

19 A. No.

20 Q. Okay. You just testified that both Elfonso and Kevin
21 were really calm.

22 A. Yes, at the first.

23 Q. At first. But the person who got really mad was ---

24 A. Was Kevin.

25 Q. --- Kevin?

1 A. (Affirmative nod).

2 Q. Now, you testified that you -- at the time you were
3 thirteen weeks pregnant, is that right?

4 A. Between thirteen and fourteen.

5 Q. Okay. And you were in the stairwell with -- in the
6 second court ---

7 A. Yes.

8 Q. --- with whom?

9 A. My neighbors.

10 Q. Okay. And that would be who?

11 A. Sharon, Ashley, Fonso, myself and my baby's father.

12 Q. Okay. And Ashley Bank -- is it Ashley Banks?

13 A. I know her by Ashley.

14 Q. Do you know how she knows Elfonso?

15 A. That's her baby father.

16 Q. Okay. Was anybody doing drugs?

17 A. No.

18 Q. Any smoking of anything ---

19 A. No.

20 Q. --- out there? What about alcohol?

21 A. No.

22 Q. Okay. The person who was intoxicated that night that
23 you know was who?

24 A. Kevin.

25 Q. Kevin. Okay. I'm going to frame this question best I

- 1 can. Can you describe how much convincing it took for
2 Elfonso to come with his uncle?
3 A. It took a while.
4 Q. A while.
5 A. He kept begging, and begging, and begging.
6 Q. You say he. Who was begging?
7 A. Kevin. I'm not good with names.
8 Q. At the time of the shooting where were you?
9 A. I was helping the lady across the street ---
10 Q. Okay.
11 A. --- that had fell down.
12 Q. Now, did you follow Elfonso and Kevin?
13 A. Yes.
14 Q. Okay. Can you show where you followed them from, from
15 this map? This is State's exhibit 3. Can you come down
16 here and show us? It's okay.
17 A. Actually, I don't understand the map.
18 Q. That's fine. I'm going to get your bearings right.
19 A. Okay.
20 Q. This is Shelricka Duncan's building right here.
21 A. Okay.
22 Q. Okay? Can you from there get your bearings? It's sort
23 of like going to the mall, isn't it? You are here.
24 A. Okay. Right over here.
25 Q. Okay.

1 A. We was outside and we walked towards here, going
2 through there.

3 Q. Did you follow them both the entire way?

4 A. Yeah.

5 Q. Okay. At any moment in time that night in the
6 stairwell and all the way over did you see Elfonso Bruster
7 with a gun?

8 A. No.

9 Q. Okay. Did you see him make any of those, you know,
10 Clint Eastwood moves?

11 A. No.

12 Q. Okay. And for the record, I'm putting my hand on my
13 side, ---

14 A. No.

15 Q. --- just by the holster. What happened after the
16 shooting?

17 A. I just saw him laying over there.

18 Q. Okay. Did you see the Defendant, Mr. Glenn, leave?

19 A. No, but I know it was dark.

20 Q. Okay. What did you do? Did you do anything to help
21 Elfonso?

22 A. (Negative nod).

23 Q. Did you see anybody trying to help him?

24 A. Yeah, it was a lot of people trying to help out.

25 Q. How quickly did they get to him?

1 A. I really can't -- because I was across the street with
2 the lady.

3 Q. Okay. Where was -- as you were walking over to the
4 fourth court where this shooting occurred, where was Ashley,
5 Ashley Banks?

6 A. After they stopped fighting, I don't know where nobody
7 else was.

8 Q. But she was with you as you were walking along, is that
9 right?

10 A. She was behind me.

11 Q. All right. Did you see her take a gun ---

12 A. No.

13 Q. --- from Elfonso? Okay. Thank you.

14 MR. HOLLOWAY: That's all I have, Your Honor.

15 MR. BRUMBACK: Just a couple of questions to clarify.

16 **Redirect Examination by Mr. Brumback:**

17 Q. It was your testimony that when Mr. Glenn was punched
18 you turned away, correct?

19 A. Yes.

20 Q. So you ---

21 A. I turned my body -- I was pregnant and I didn't want to
22 get involved in any fight.

23 Q. Right. And so you don't have any clue what happened
24 after ---

25 A. No.

1 Q. --- the punch was landed?

2 A. No.

3 Q. Okay. All right. You stated at first Kevin and
4 Elfonso were calm. At first, that indicates that there was
5 a later. Were they not calm at a later point?

6 A. What you mean?

7 Q. You said at first Kevin and Elfonso were calm.

8 A. Yes.

9 Q. But at first suggests that there's another time. Were
10 they not calm at a later point?

11 A. I guess when they got to the point to meet Quez ---

12 Q. Uh-huh (affirmative).

13 A. --- on the sidewalk, that's when, I guess, Kevin got
14 mad and punched Quez.

15 Q. Okay. All right. Now you also testified that Kevin
16 had to try and convince Elfonso to ---

17 A. Yes.

18 Q. --- to go with him, correct? Okay. But Elfonso
19 eventually did go with Kevin?

20 A. He walked with him and he was insisting too much to see
21 what was going on with his uncle.

22 Q. Okay. All right. That's all I have. Thank you.

23 **THE COURT:** All right. You can step down. Thank you,

24 Ms. Nunez. Call your next witness.

25 **MR. BRUMBACK:** Your Honor, the Defense would call Jamar

1 -- Jamarus Smith to the stand.

2 Jamarus Smith, being duly
3 sworn testified as follows;

4 MADAME CLERK: Please have a seat. Will you state your
5 full name for the record and spell your first.

6 MR. SMITH: I'm Jamarus Smith, J-a-m-a-r-u-s, Smith,
7 S-m-i-t-h.

8 Direct Examination by Mr. Brumback:

9 Q. Jamarus, is it accurate you go by Jamar?

10 A. Yeah.

11 Q. Okay. Jamar, do you mind if I call you Jamar?

12 A. (Negative nod).

13 Q. Okay. Thank you for being here today. Would you
14 please state how you know the individuals involved in this
15 case, that being Mr. Glenn, his family members, the
16 Brusters, if you know them, or any of the other people that
17 you've heard testimony about here today.

18 A. Marquez and Tivarius is my homeboys. And they like my
19 brother.

20 Q. Okay.

21 A. And ---

22 Q. Do you know anyone else?

23 A. I don't know Kevin, but I knew Fonso around about the
24 neighborhood, from the neighborhood.

25 Q. Okay. All right. Do you know Shelricka or any of the

1 other ---

2 A. Yeah, I know all of them.

3 Q. Okay. How do you know them?

4 A. Oh, by Tivarius and Marquez.

5 Q. Okay. All right. Now, I'm going to start off the same
6 way I have with everybody else. Would you please tell me
7 what you remember about the events of April 12th, 2013.

8 A. We was -- we was in Shelricka's house playing cards or
9 whatever. And the next thing you know the uncle knocked on
10 the door or whatever. Kevin, he knocked on the door. So
11 she let him in or whatever. And he just came in there with
12 a rage like he gonna kill her.

13 So he went to the room -- he tried to go back. Me,
14 Tivarius and his daddy, we had him pinned up against the
15 wall. So when we had him pinned up against the wall, I seen
16 him took a razor blade out of his mouth, and he cut Tivarius
17 right here. So after that, him and Tivarius got to
18 wrestling outside. And that's about it.

19 Q. Okay. So who all was at the apartment at the time that
20 Kevin came in in a rage?

21 A. Me, Tivarius, Shelricka, her mama, and Tivarius' daddy.

22 Q. Okay. Where was Marquez?

23 A. Marquez, he was gone out of the picture. He went to
24 the store.

25 Q. Okay. Do you know why he'd gone to the store?

1 A. Yeah. He took my, like, they ain't my brothers, but I

2 call them my little brothers.

3 Q. Um-hum (affirmative).

4 A. He took them to Wal-mart or whatever to get some soda.

5 Q. Okay. All right. So after the altercation with Kevin

6 spilled out, he was removed from the apartment, what

7 happened at that point?

8 A. Quez had pulled back up. He didn't know what was going

9 on.

10 Q. Um-hum (affirmative).

11 A. He heard a lot of commotion. So really Quez really was

12 trying to see what was going on. And then -- and then he

13 was sitting on the sidewalk -- well, he was sitting on the

14 -- he was standing on the sidewalk.

15 **THE COURT:** He who?

16 A. Marquez. And so, I mean, he was sitting on the

17 sidewalk. I was standing beside Marquez. And I looked to

18 my left, I seen Kevin and Elfonso come from behind the

19 building. So when I seen that, Kevin was like four feet in

20 front of Quez, like to the side. And Fonso, he walked

21 towards, like at the end, like to the back.

22 Q. Okay.

23 A. So from Fonso to Quez, he was like eight feet from

24 Quez. Eight feet at the most, probably ten.

25 Q. Okay. All right. Now, you said that they came up on

1 you and Marquez.

2 A. Yeah.

3 Q. Had Marquez spoken to anyone else after he returned
4 from the ---

5 A. He was just talking to us, like, he tried to figure out
6 what happened. He ain't know what was going on.

7 Q. Okay. Did he speak to the police at any time?

8 A. See, I don't know, I was in the house. See, when we
9 was about to leave, that's when Tivarius came and kind of
10 like, Jamar, let's go. And there about that time, when I
11 walked outside, the police was leaving. So I seen Quez
12 standing on the sidewalk. So I walked where Quez was
13 standing. And that's when I seen Kevin and Elfonso come
14 from behind the building.

15 Q. Okay. All right. So when Elfonso and Kevin came from
16 behind the building where were you in relation to Mr. Glenn?
17 Were you beside him?

18 A. I was right beside him.

19 Q. Okay. To the left or to the right?

20 A. To the right.

21 Q. Okay. So you were to the right of Mr. Glenn. Now, I
22 know you've seen several other people refer to, I believe,
23 it's State's exhibit 3, is that right?

24 **MR. HOLLOWAY:** Yes.

25 Q. State's exhibit 3, which is a map of the Spring Grove

1 complex. Would you please indicate for the Court where you

2 and Mr. Glenn were approached by Kevin and Elfonso?

3 A. This the fourth court right here?

4 Q. I believe that's correct.

5 A. We was like on this side right here, about where that

6 building at. Right here, we was standing right there.

7 Q. Okay. All right. And were you -- what were you doing

8 there? Were you going to your car? What were you doing?

9 A. See, we was ready to leave, like, we was waiting on

10 Quez. He was getting his money from the girl he ordered the

11 pizza for. So we was waiting on Marquez for us to leave.

12 And before we can leave, that's when Fonso and Kevin came

13 around the building.

14 Q. Okay. All right. So when they came up, what was your

15 relation to the building? Did you all have your backs to

16 the building and ---

17 A. Nah, we was ---

18 Q. --- were facing the parking lot?

19 A. We was like facing this way. Like ---

20 Q. What is this way? So for purposes -- if you'll

21 actually -- if you can reflect that on the map and give us

22 an idea of which way you were facing, that would be helpful.

23 A. We were facing this way, like towards back here. We

24 were like right here facing this way.

25 Q. Okay. All right. And they came up in front of you?

1 I'm sorry, they being Kevin and Elfonso, came up in front of
2 you and Marquez?

3 A. Nah, they came beside. Like Quez on the left side of
4 me, they like walked towards on the left side of Quez, like
5 close to Quez.

6 Q. Okay. And how would you describe the demeanor of Kevin
7 and Elfonso when they came up on you and Marquez?

8 A. I don't know -- but Kevin, he had the demeanor like he
9 know what he was doing. I know what he was doing. If you
10 gonna get somebody else and you come back, and everybody
11 know in the neighborhood that Fonso keep a gun. So if you
12 coming back with him, you know what's going on and you know
13 what's gonna happen.

14 Q. Okay. Now, when they came up on you, who spoke first?

15 A. Kevin.

16 Q. Okay. And what did Kevin say?

17 A. He said we gonna get one of these N's in this white
18 car.

19 Q. Okay. All right. And what did you take that to mean?

20 A. Huh?

21 Q. What did you think he meant by we're going to get one
22 of these in that white car?

23 A. He was gonna get somebody, all of us in that white car.

24 Q. And by get, that's what I'm trying to -- because, you
25 know, for the purposes of the Court, we want to understand

1 exactly what you mean. Did you mean injure, hurt, kill?

2 What do you think -- what did you take that to mean?

3 A. I took it all like wanting to fight us, kill us.

4 Q. Okay. And so after that comment was made, what
5 happened next?

6 A. After that, the next thing we know he hit Quez.

7 Q. He being who?

8 A. Kevin.

9 Q. Kevin hit Quez? Okay.

10 A. Yeah. He hit Quez. And so Quez didn't know what was
11 going on. Quez ain't said nothing. He hit Quez. And Quez
12 had liquor in his left hand.

13 Q. Um-hum (affirmative).

14 A. So the liquor went in his eye. And then about the time
15 I was looking at Quez, he was wiping his eye like that. And
16 then I seen him just do like that. I didn't know what he
17 was reaching for. Then I seen about two shots, three shots.

18 Q. Okay.

19 A. Two or three shots.

20 Q. Okay. All right. Now, on the evening in question did
21 you know that Marquez had a gun on him?

22 A. No, sir.

23 Q. Did you ever see a gun on Marquez?

24 A. No, sir.

25 Q. Did he say anything about a gun?

1 A. No, sir.

2 Q. Okay. All right. And from the time of the punch where
3 Marquez was struck to the gunshots, how long a time are we
4 talking about?

5 A. It just happened fast, like fast.

6 Q. Okay. Did you hear -- did you hear anyone yell gun or
7 anything to that effect?

8 A. Yeah, I think I did. That what made Marquez shoot.

9 Q. Okay. All right. And so what was Marquez's demeanor
10 when he was approached by Kevin and Elfonso?

11 A. Chillin', wasn't bothering nobody, like minding his own
12 business. And they just came up to Marquez with that.

13 Q. Were you afraid for your life at that time when Kevin
14 and Elfonso came up?

15 A. I figured like if Marquez wouldn't have shot, one of us
16 would have been shot.

17 Q. Was there -- did you have any opportunity to avoid the
18 altercation that ensued between Elfonso or Kevin and
19 Marquez?

20 A. No, sir.

21 Q. Was there any other option for Marquez to leave the
22 premises without having to go through Kevin and Elfonso?

23 A. See, we was gonna leave, but when Elfonso and them
24 pulled up, walked up on us, that when everything happened.
25 When Kevin said that, we gonna get -- we gonna get one of

1 these N's in this white car, and that when -- by then, about
2 five, ten seconds, that's when he started on Quez, Marquez.
3 Q. Okay. Thank you, Jamar. That's all I have for you
4 right now.

5 **Cross Examination by Mr. Holloway:**

6 Q. Mr. Smith, you never actually saw Elfonso with a gun
7 that night, did you?

8 A. Nah, but everybody that know -- everybody in the
9 neighborhood know he keep a gun.

10 Q. Okay. What about Mr. Glenn, does he carry a gun out
11 there?

12 A. No.

13 Q. Okay. You've never seen him with a gun out there until
14 that night?

15 A. (Affirmative nod).

16 Q. Okay. When Elfonso and Kevin were walking toward the
17 fourth court, at what point did you see him? Or them? Them
18 both, Elfonso and Kevin?

19 A. They was like to the fourth court. Okay. We was right
20 here, me and Marquez. They was walking this way, coming
21 from that way.

22 Q. And this is State's exhibit 3 you're pointing at just
23 for the record. Did you see Elfonso wave his hands?

24 A. I seen him doing something. Like me, I be in the
25 neighborhood so long, when somebody doing like that,

1 reaching under your shirt, you know what they grabbing.

2 Q. Okay. At what point did he grab, like you said, or at
3 what point did Elfonso grab where you said?

4 A. See, when I seen him, like at the time, he was walking.
5 He was like ten feet in front of Quez. I seen him doing
6 like that, but I didn't know what he was doing. So I
7 figured he had a gun. So by then, Tivarius seen him. So he
8 put the car in drive, I mean, in park. That when he got out
9 of the car.

10 Q. Okay. The entire time, from the time Elfonso and Kevin
11 are walking toward you and Quez, you're right there, right,
12 with -- with ---

13 A. Marquez.

14 Q. Marquez. Okay. You never left, right?

15 A. Never left.

16 Q. Never got back in the car?

17 A. (Negative nod).

18 Q. Were you in the courtroom earlier when Tivarius was
19 testifying?

20 A. Who is Tivarius?

21 Q. His brother.

22 A. Tivar?

23 Q. Mr. Glenn's brother.

24 A. Yes.

25 Q. Tivarius. I'm from north Louisiana. I often butcher

1 names. Sorry.

2 A. Sure.

3 Q. Now, were you -- and you were in the courtroom when he
4 was testifying, correct?

5 A. Yes.

6 Q. Okay. Are you, I mean, you're aware -- he testified
7 earlier that you were stuck inside his car, right?

8 A. Yes.

9 Q. That you could not get out of the car. Is that right?

10 A. See, you can get out, but you've got to have a way out.
11 You got to know how to do his car. Like, ---

12 Q. But you ---

13 A. --- there's a lot of ways we can get out.

14 Q. You heard him testify that only he knew how to get out
15 of the car.

16 A. Yeah.

17 Q. Okay. In this case you provided an affidavit on behalf
18 -- for Mr. Glenn, is that right?

19 A. What you mean?

20 Q. I'm going to hand you ...

21 (Whereupon State's exhibit 107 was marked for
22 identification)

23 Q. I'm going to hand you what's been premarked as State's
24 exhibit 107. Can you identify that?

25 A. Yeah, I can try. That what I said.

1 Q. Right. I'm going to point you to page 2. And I'm
2 going to have you start right here. It says there were
3 approximately how many? Just ---

4 A. Four feet between Elfonso Bruster and Marquez Glenn.
5 Kevin Bruster was continuing to move forward toward Marquez
6 Glenn to continue attacking him. Yeah, that's right.

7 Q. Okay. Keep going.

8 A. As Elfonso Bruster was pulling out his gun, Marquez
9 Glenn was attempting to clear the drink from his eye with
10 left hand. That's correct. At the same time, female voice
11 yelled gun. That's correct. At the time Marquez pulled his
12 gun with his right hand and fired at Elfonso Bruster in
13 self-defense. Yeah, that what happened.

14 Based on the word and answer of Elfonso and Kevin
15 Bruster, I firmly believe that had Marquez Glenn not
16 defended himself, Elfonso and Kevin Bruster would have
17 killed Marquez Glenn and possibly his brother. Yeah, all
18 that's right.

19 Q. You actually didn't see Elfonso with a gun, though, is
20 that right?

21 A. I just told you, from the neighborhood, he keep a gun.

22 Q. Okay. My question, though, is did you see a gun in
23 Elfonso's hands?

24 A. I ain't got -- I seen him playing like under his shirt.
25 So if somebody under they shirt, you know they got a gun,

1 right?

2 Q. So, no, you didn't actually see a gun, did you?

3 A. Look, in the neighborhood, ---

4 **MR. HOLLOWAY:** Your Honor, ---

5 A. --- everybody know he got a gun. And if you come back
6 there, you know you come back there looking for something.

7 And I think he had a gun 'cause he was like that the whole
8 time, like I know this. I ain't see the gun for sure, but
9 if somebody like this the whole time, you know they got a
10 gun.

11 Q. Okay. But you didn't see a gun, did you?

12 A. No.

13 Q. Okay. You were just assuming it was a gun, is that
14 right?

15 A. How his hand was, he had a gun.

16 Q. Okay. And what side of his body was he reaching for?

17 A. It was like -- when I seen him, it was on the right,
18 like right here. He was like that.

19 Q. Are you aware that Tivarius earlier testified he was
20 reaching for his left?

21 A. I don't know about what he seen, but what I seen.

22 Q. Okay. Who drove you to the -- actually, where was this
23 affidavit signed?

24 A. What you mean?

25 Q. Where did you sign this affidavit?

- 1 A. At the office ---
- 2 Q. State's exhibit 107?
- 3 A. At the lawyer office.
- 4 Q. Whose lawyer?
- 5 A. Mr. Spencer.
- 6 Q. Okay. And who drove you there?
- 7 A. Ms. Tweet.
- 8 Q. Who is that?
- 9 A. Marquez mother.
- 10 Q. Okay. Who else did she bring up there?
- 11 A. Tivarius -- me and Tivarius, his dad. That's it.
- 12 Q. Okay. And who typed this affidavit, State's exhibit
- 13 107?
- 14 A. Mr. Spencer did.
- 15 Q. Okay. Did they type it before you got there?
- 16 A. No.
- 17 Q. Okay. Thank you.
- 18 **MR. HOLLOWAY:** That's all I have, Your Honor.
- 19 **MR. BRUMBACK:** Just briefly.

20 **Redirect Examination by Mr. Brumback:**

- 21 Q. Is -- the affidavit that you were shown just a second
- 22 ago, is that a proper recollection of your memories of that
- 23 night?
- 24 A. Yes, sir.
- 25 Q. Anybody put any words in your mouth?

1 A. No, sir.

2 Q. Okay. Did -- do you know whether before Elfonso -- the
3 testimony here today has been that Elfonso pulled a gun.
4 Several people have said that. Do you know whether he
5 shifted that gun across his belt-line before pulling that?

6 A. See, it was so much going on when I seen him, his right
7 hand was under his shirt.

8 Q. Okay.

9 A. So that -- to me, that tell me he got a gun.

10 Q. Okay. Could he have shifted the gun across to his left
11 before pulling it?

12 A. Yes.

13 Q. Do you know whether that happened or not?

14 A. Uh-uh (negative).

15 Q. Okay. All right. That's all I have. Thank you.

16 **MR. HOLLOWAY:** That's all I have, Your Honor.

17 **THE COURT:** All right. You can step down. Thank you,
18 Mr. Smith. Let's take one more witness and then we'll take
19 a break.

20 **MR. BRUMBACK:** Okay, Your Honor. This one should be
21 brief as well. I'd like to call Terry Lee Glenn to the
22 stand.

23 **Terry Glenn, being duly**
24 **sworn testified as follows;**

25 **MADAME CLERK:** Please have a seat. Will you state your

1 full name for the record.

2 MS. GLENN: Terry Lee Glenn.

3 MADAME CLERK: Thank you.

4 **Direct Examination by Mr. Brumback:**

5 Q. Ms. Glenn, would you please state your relationship to
6 the Defendant in this case.

7 A. Marquez is my grandson.

8 Q. Okay. All right. Now, there has been some question
9 here today about Marquez's presence out at the Spring Grove
10 complex. Did you live at the Spring Grove complex?

11 A. Yes. I moved into Spring Grove December the 7th of
12 2012.

13 Q. Okay. All right. And when you moved out to Spring
14 Grove did you have any conversation with an agent of the
15 complex and the owners of the complex?

16 A. Well, the manager -- before I got my apartment, I
17 talked to the manager. And I asked her was my grandson on
18 no trespass. I told her to check. And she showed me some
19 pictures ---

20 MR. HOLLOWAY: Your Honor, I'm going to object to that.

21 THE COURT: Well, I sustain the objection. But that is
22 hearsay, but I'll let her, for purposes of the record, go
23 ahead and testify as a proffer.

24 Q. Go ahead.

25 A. Okay. Anyway, I asked -- I said, before I get my

1 apartment, I would like to know if my grandson is on no
2 trespass because they will be coming to see me and spend the
3 night. And she showed me the paper and the picture. She
4 said, no, ma'am, they are not on no trespass. And they
5 ain't never been on no trespass. I don't know how this come
6 up.

7 Q. Okay. So regardless of the conversation that you had
8 with the person at the Spring Grove complex, you saw
9 documents, personally saw documents yourself from Spring
10 Grove ---

11 A. I sure did.

12 Q. --- stating ---

13 A. I seen pictures in there, everything, even the paper
14 with people name on it.

15 Q. Um-hum (affirmative).

16 A. Yes.

17 Q. And those papers stated that your grandson, Marquez
18 Glenn, was not on the trespass list?

19 A. He wasn't, Tivarius wasn't and Jaquavia.

20 Q. Okay.

21 A. And so they come to see me all the time. And if they
22 was on no trespassing, then I just asked Tawanna -- told her
23 about my grandson, gave her they name. And I was telling
24 her that I got three grandsons. And I know that they are
25 not on no trespass. And I told her that Jumper liked

- 1 Tivarius. That's the police. But he liked Tivarius. He
2 talked to him all the time.
- 3 Q. Okay. All right.
- 4 A. Um-hum (affirmative).
- 5 Q. And Jumper is the -- is the deputy out there?
- 6 A. Yeah. Um-hum (affirmative).
- 7 Q. Okay. All right. So to the best of your knowledge are
8 any of your grandchildren presently on a no trespass list
9 ---
- 10 A. No.
- 11 Q. --- for Spring Grove complex?
- 12 A. No, they ain't never been. I don't understand how you
13 can put them on there just today, you know what I'm saying?
14 Because they wasn't on no trespass. And they still ain't on
15 none to my knowledge 'cause if they was, I should have got a
16 letter saying they was on it. You know what I'm saying?
- 17 Q. Um-hum (affirmative).
- 18 A. Because she know that they are my grandsons.
- 19 Q. Okay. And in addition to this, you heard that Marquez.
20 and Tivarius were invitees of Shelricka ---
- 21 A. Yes.
- 22 Q. --- Duncan that night?
- 23 A. Yes.
- 24 Q. Are Marquez and Tivarius, are they always welcome to
25 come to your home as well?

1 A. Oh, yes. Um-hum (affirmative).

2 Q. Okay. All right.

3 A. That's why I asked them about the no trespass. Those
4 are my grandchildren.

5 Q. Okay.

6 A. Yes.

7 MR. BRUMBACK: Thank you, Your Honor. That's all I
8 have for this witness.

9 **Cross Examination by Mr. Holloway:**

10 Q. Ms. Glenn, I'm just going to ask you one question. Why
11 would you ask Ms. Knighton that? Why would you ask ---

12 A. Why would I what?

13 Q. Why would you ask the apartment manager if Mr. Glenn
14 was on a no trespass?

15 A. Because I didn't want to move out there if they
16 couldn't come to see me. That's why I asked.

17 Q. Okay. Was there something that Mr. Glenn told you?

18 A. What ---

19 Q. I guess I'm curious. Why would that question even come
20 up?

21 A. I did that before I moved there.

22 Q. Okay.

23 A. Would she give me an apartment? And her name was

24 Catherine. That's who the manager was. And I asked her ---

25 Q. Okay.

1 A. --- because I needed to know that.

2 Q. Okay.

3 A. Because I'm not going to live nowhere that my
4 grandchildren couldn't come.

5 Q. Are you still out there?

6 A. Yes, I am.

7 Q. Okay. And have you signed a new lease since the last
8 lease?

9 A. Yes, I did, but I didn't sign no new -- haven't been up
10 there to sign no lease now.

11 Q. Okay.

12 A. I ain't got to go til August. So if they made a new
13 lease, we should have been told.

14 Q. Okay. Are you aware ---

15 A. But he are not on no trespass.

16 Q. Ms. Glenn, I'm going to show you what's been marked as
17 Court's exhibits 1 and 2.. Have you seen these before?.

18 A. I haven't seen neither one of them. Like I said, I
19 don't have to be recertified until August.

20 Q. Okay..

21 A. Now, if they just put that in there yesterday, that's
22 sad, and we haven't received it. So, you know in my lease,
23 there ain't no such thing as my grandchildren can't come to
24 see me.

25 Q. Okay.

1 A. And so I don't know why you keep insinuating that he
2 was on no trespass.

3 MR. BRUMBACK: Your Honor, at this point I am going to
4 object to those.

5 A. I'm not going to read them no way 'cause I don't know
6 nothing about them.

7 THE COURT: Ma'am, wait, he's talking.

8 A. Oh, I'm sorry.

9 MR. BRUMBACK: I'm going to object to those based on
10 her testimony that she has no knowledge of either of these
11 documents. And without the actual lease that she signed, I
12 don't know how we can be asking her questions about
13 documents that she may know nothing about and may never have
14 seen.

15 MR. HOLLOWAY: Your Honor, these are standard documents
16 from the apartment complex. One's from 2010.

17 MR. BRUMBACK: And, Your Honor, ---

18 MR. HOLLOWAY: May I finish my argument in response to
19 his? The fact is, I can impeach her on her knowledge or
20 lack thereof on the lease paperwork that I received from the
21 apartment complex.

22 THE COURT: Well, I'll allow the questions. Of course,
23 the best evidence is going to be if such list agrees with
24 what the lease says. But go ahead.

25 Q. Okay.

1 A. Well, I have never seen them and I don't know nothing
2 about them. And when I go to be recertified in August, we
3 don't get no other lease. We don't even get that lease
4 right there, what you have. So how did you get it? They
5 made it up. Y'all made up the lease, all I know.

6 Q. Okay.

7 A. 'Cause Marquez was not on no trespass, none of my
8 grandchildren, not even my daughter. So I don't know where
9 you get that from. Now if anybody come up ---

10 **THE COURT:** All right. Ma'am, just stop and he'll ask
11 you another question.

12 A. All right.

13 **THE COURT:** You've answered.

14 **MR. HOLLOWAY:** Your Honor, I'm good. Thank you.

15 **THE COURT:** Okay. Anything else?

16 **MR. BRUMBACK:** Nothing, Your Honor.

17 **THE COURT:** All right. You can step down. Appreciate
18 your time. Thank you. We'll take about a ten minute break.

19 **MR. BRUMBACK:** Thank you, Your Honor.

20 (Whereupon court was in recess at 3:40 pm)

21 (Whereupon court reconvened at 3:58 pm)

22 **THE COURT:** Thank you. Please take your seats.

23 (Pause)

24 **THE COURT:** Call your next witness.

25 **MR. BRUMBACK:** Your Honor, actually at this point I

1 would like to offer into evidence a statement of a witness
2 who is not able to be here, it's Kevin Bruster, one of the
3 key figures in this case. He is currently incarcerated on
4 attempted murder charges in Ohio. And so unfortunately the
5 only way we have for him to provide a statement is via this
6 CD, which was a recorded statement with, I believe,
7 Detective Whaley in this case?

8 MR. HOLLOWAY: Yes, sir.

9 MR. BRUMBACK: With the detective in this case. So,
10 Your Honor, I would move to enter that into the evidence for
11 this case.

12 MR. HOLLOWAY: Your Honor, and I know that the rules of
13 evidence allow for, at certain times at the Court's
14 discretion, for hearsay to come in, but to have this
15 statement of a witness -- and it's not a sworn statement, it
16 wasn't a sworn statement, entered in without my ability to
17 impeach him is not what is envisioned by the law of the
18 rules of evidence allowing for hearsay testimony in here.
19 It's not even testimony, it's a statement he provided the
20 officer in this case.

21 MR. BRUMBACK: I believe that was actually a sworn
22 statement. I might be wrong, but ---

23 MR. HOLLOWAY: He didn't take an oath, Judge.

24 THE COURT: You the one that has it in your hand. So
25 you would know better than the rest of us.

1 **MR. BRUMBACK:** I don't have a transcript before me. I
2 believe, if I recall, I believe that I recall that it was a
3 sworn statement, but, obviously, we have a difference on
4 that. Now, we could ask the detective because, I believe,
5 that is Detective Whaley?

6 **DETECTIVE WHALEY:** Whaley.

7 **MR. BRUMBACK:** And you were the one who, I believe,
8 took this statement as well, correct, of Kevin Bruster?

9 **DETECTIVE WHALEY:** Yes.

10 **THE COURT:** Well, tell me what rule of evidence would
11 allow the likes of this.

12 **MR. BRUMBACK:** Well, Your Honor, I would think that
13 this would fall under one of the hearsay exemptions ---

14 **THE COURT:** Tell me which one.

15 **MR. BRUMBACK:** And I'm working on that, Your Honor. I
16 would argue that that would fall under the hearsay exemption
17 of ...

18 (Pause)

19 **MR. BRUMBACK:** Yeah, Your Honor, I apologize. I
20 apologize. Rule 804, declarant unavailability is where, I
21 believe, I would try and place this statement. And, Your
22 Honor, unfortunately, as I indicated, this is -- I would
23 proffer that this would be appropriate to admit in this case
24 as a result of the fact that he is a key witness, he is
25 unavailable as a result of his own actions, Mr. Glenn had

1 nothing to do with his unavailability.

2 This is not one of those situations where he was
3 murdered by a defendant or something to that effect. And so
4 it would greatly prejudice Mr. Glenn to be unable to have
5 this testimony entered into and considered by the Court.

6 **THE COURT:** Which statement -- which exemption are you
7 under?

8 **MR. BRUMBACK:** Rule 804, hearsay exemption, declarant
9 unavailability.

10 **THE COURT:** (B), but which ...

11 **MR. BRUMBACK:** I apologize. Your Honor, I would
12 actually offer that this falls under (b) (3), statement
13 against interest. If you listen to the testimony of Mr.
14 Bruster, Mr. Kevin Bruster, he, in fact, at one point
15 indicates as to his severe degree of intoxication on that
16 evening and also discusses going back to Elfonso and
17 recruiting him to come back and cause whatever fracas
18 eventually ensued saying something to the effect that, let's
19 go get up on them.

20 **THE COURT:** Read that last sentence of that number (3).

21 **MR. BRUMBACK:** A statement tending to expose the
22 declarant to criminal liability and offered to exculpate the
23 accused is not admissible unless corroborating circumstances
24 clearly indicate the trustworthiness of the statement. With
25 regard to the trustworthiness of the statement, Your Honor,

1 I would offer that he was being interviewed by a deputy ---

2 **THE COURT:** No, it says -- but you're leaving out the
3 word corroborating circumstances.

4 **MR. BRUMBACK:** Oh, I'm sorry, Your Honor. I might have
5 misread that.

6 **THE COURT:** Not unless corroborating circumstances
7 clearly indicate the trustworthiness of the statement. What
8 are the corroborating circumstances? What corroborates what
9 he says that it should be admissible?

10 **MR. BRUMBACK:** Your Honor, well, as I was about to say,
11 I believe the circumstances of the investigation and the
12 discussion that Kevin Bruster had with the detective
13 investigating this case would give him no incentive to put
14 anything on the record that would assist Mr. Glenn in
15 exculpating himself such that that is corroboration of the
16 trustworthiness of itself -- in and of itself.

17 And as I indicated, Your Honor, I mean, I believe the
18 statement clearly falls under -- it's so far contrary to
19 declarant's pecuniary and proprietary interests. The
20 statements that are made in this interview clearly suggests
21 that Kevin Bruster was the aggressor on this evening in
22 question and that, I believe, Marquez Glenn was justified in
23 exercising his right to self-defense.

24 **THE COURT:** All right. Let's play it and let me listen
25 to it. And then I can make a ---

1 **MR. BRUMBACK:** Thank you, Your Honor.

2 **THE COURT:** I mean, this is not -- this is proffer.

3 (Whereupon the CD of Kevin Bruster's statement was
4 played for the Court)

5 (Whereupon the CD ended)

6 **THE COURT:** What part of that statement brings it under
7 the 804?

8 **MR. BRUMBACK:** Well, Your Honor, as I indicated, I
9 believe that the statements that he made concerning the
10 events of that night tend to exculpate Mr. Glenn. And ---

11 **THE COURT:** He's talked about all kinds of fights and
12 then he -- if I understood his statement, which was very
13 hard to understand for a variety of reasons, he doesn't
14 remember the incident. He just says I woke up and my uncle
15 had been shot, if I ---

16 **MR. BRUMBACK:** He does say that, Your Honor, but it's
17 the lead-up to that where he goes and obtains the assistance
18 of his nephew and then returns to the scene, which is
19 consistent with the testimony of the witnesses that we've
20 provided so far. And ---

21 **THE COURT:** Well, that's not an issue.

22 **MR. BRUMBACK:** Well, Your Honor, I think it's
23 particularly probative and assistance according to
24 statements of the other corroborative -- of the other
25 statements of the other witnesses in that the -- one of the

1 two aggressors here, which I think we've established, one of
2 the two aggressors admits that he went back after whatever
3 altercation occurred after he entered the apartment, went
4 back, got the assistance of his nephew and then returned to
5 the scene. I think that's consistent and I think that's
6 particularly powerful since he was one of the two
7 individuals who went back and accosted Mr. Glenn. That
8 would be my argument, Your Honor.

9 THE COURT: Mr. Holloway.

10 MR. HOLLOWAY: Your Honor, I'm not convinced he's even
11 met the standard for 804(a) because this rule lists five
12 different ways for them to be able to prove this witness is
13 not available. Subsection (a)(1) deals with privileges.
14 That's not here. Number (2) and number (5) would be the
15 closest, but what have they shown to this Court that they've
16 actively tried to get him down here as a witness?

17 Your Honor, I'm still trying to make my argument here.
18 I don't appreciate being interrupted here. I'm not
19 convinced that they've met the standard for rule 804(a) at
20 all here.

21 Secondly, what the Defense is trying to do is bootstrap
22 the ability to attack this guy who's not even here and
23 without even meeting the standards under rule 804(b). It's
24 not his former testimony, it's not a statement under belief
25 of impending death, it's not a statement against interest.

1 He's admitted going over there, but he's not admitting
2 anything that would say anything about -- a statement
3 against interest. And certainly it's not a statement of
4 personal family history.

5 They simply want to attack this witness because that
6 man is not credible at all. But ---

7 **THE COURT:** Well, that's up to me to determine at this
8 point. But do you have an affidavit or anything to indicate
9 that he is in fact in Ohio and can't get here?

10 **MR. BRUMBACK:** Your Honor, I do not have an affidavit
11 other than the news reports. And we did look into -- my
12 partner, Spencer Langley, looked into transporting him here
13 from the detention, and I believe it is Sandusky. He is in
14 detention in Sandusky, Erie County, Ohio on some fairly
15 serious charges, Your Honor.

16 And we did discuss the possibility. And Ryan can
17 confirm this. We did discuss the possibility of trying to
18 obtain his attendance here, however, were told that Mr.
19 Glenn would have to pay for his appearance here himself,
20 which was not a possibility, Your Honor. We could not
21 afford for Mr. Glenn to transport him here bearing the costs
22 associated with the paying, I believe, of the officers to
23 have him transported and detained here.

24 **THE COURT:** Well, that's a practical, not a legal
25 matter.

1 **MR. BRUMBACK:** Well, Your Honor, I would proffer that
2 the Defendant's ability to pay for someone to attend because
3 they're incarcerated in a different location, inability
4 would essentially mean that justice is for those with the
5 ability to pay for someone to have transported down here.
6 We did discuss with the Solicitor's Office the possibility
7 of having him transferred down here because Mr. Glenn does
8 not have the financial means to do so, and we were told that
9 that was not going to happen.

10 **THE COURT:** Well, are y'all appointed or retained? I
11 mean, you public defender or retained?

12 **MR. BRUMBACK:** We are retained.

13 **THE COURT:** He can afford you.

14 **MR. BRUMBACK:** I'm sorry?

15 **THE COURT:** He can pay you. He had enough money to pay
16 his lawyer..

17 **MR. BRUMBACK:** That's ---

18 **THE COURT:** Well, that's between you and him.

19 **MR. BRUMBACK:** That's not ---

20 **THE COURT:** The point is is the public defender -- they
21 very likely could have come to court and asked for funding
22 to do just what individuals who have private counsel do out
23 of their own pocket.

24 **MR. BRUMBACK:** And I do understand that, Your Honor.
25 The discussion of whether he has been able to pay us or not,

1 ---

2 **THE COURT:** I shouldn't have said that. But my point
3 is, when you hire an attorney you're not in the public
4 indigent field where you can get State assistance. If you
5 want experts, the State certainly wouldn't have to pay for
6 an expert. And this is very analogous to that.

7 So I find under 804(a) that the burden has not been met
8 to show that he is not -- that Mr. Glenn cannot procure his
9 -- from a legal standpoint cannot procure him here, his
10 presence here, maybe from a practical standpoint.

11 I also, from my listening, and additionally under (b) I
12 do not find that even if it were admissible, it would fall
13 under (b)(3) either. So there's a lot in there.

14 There is just what you say, a statement that -- well, I
15 don't even know if there's a statement that would expose him
16 to criminal liability, going and getting uncle, getting his
17 nephew. That doesn't -- there's nothing against the law
18 with that.

19 And I don't know that there's anything in there that
20 would exculpate him. There's some evidence that is somewhat
21 corroborating of circumstances leading up to, but those --
22 that evidence doesn't exculpate him.

23 In fact, it may even actually inculcate to say I went
24 and got somebody to -- but it doesn't exculpate -- it
25 doesn't exculpate Mr. Glenn. And it is not a criminal act

1 to go get your uncle. So I'm not going to allow the ---

2 **MR. BRUMBACK:** Well, I appreciate your indulgence, Your
3 Honor. At this point I would call my next witness in that
4 case.

5 **THE COURT:** Okay.

6 **MR. BRUMBACK:** I would call Mr. Marquez Glenn to the
7 stand.

8 **THE COURT:** Okay. Come on up and have a seat, Mr.
9 Glenn.

10 **Marquez Glenn, being duly**
11 sworn testified as follows;

12 **MADAME CLERK:** Please come forward and have a seat.
13 Please state your full name for the record.

14 **MR. GLENN:** Marquez Devon Glenn.

15 **Direct Examination by Mr. Brumback:**

16 Q. You have heard the testimony here today as with
17 everyone else. I would like for you to start off by giving
18 you the opportunity to tell me what your recollections of
19 the entirety of the night of April 12th, 2013 were.

20 A. Okay. The start of the day was a conversation between
21 Shelricka Duncan, Derisha Banks and my brother about having
22 drinks at Shelricka's house later after Derisha got off
23 work.

24 I was the only one at the time, point in time that was
25 driving. On that side of the field it was me and Jamarus

1 Smith, my brother, Tivarius Henderson and John Henderson.

2 So we went and bought -- purchased the alcohol for
3 Derisha because she was unable to obtain her alcohol because
4 she was at work. When she got off she called my brother,
5 and they invited us over there to the house to commence what
6 they had planned already.

7 We got there, they had drinks, they sat around, played
8 cards for a little while, everybody chalked the bobo. And
9 by that point in time a few of my other little acquaintances
10 from the neighborhood was intoxicated and wanted to use
11 Derisha's car.

12 So Derisha was intoxicated herself. And me not being
13 -- having any drinks yet, I offered to drive them to the
14 store in her car.

15 So by me driving them to the store in her car, we
16 commenced to go to the store. They actually wanted to go to
17 the Wal-mart, which is a little bit further, and all they
18 had was a EBT card. So I told them that Spinx accepted EBT.
19 So instead of going to the Wal-mart, we went to the Spinx.

20 We went to the Spinx. They got what they got. We sat
21 around. I had a long talk with them on the way back. And
22 once we got back to the parking lot, that's when I exited
23 out of Derisha's vehicle.

24 I walked into Shelricka's house and seen that there was
25 no -- there was nobody in the apartment, there was nobody

1 out there. So I walked back outside where I seen Kiana and
2 Maria across the street, was trying to flag me down, was
3 like, hey, hey, we need to talk to you, something going on.

4 So in the midst of me walking across the street to meet
5 them, I was met by Jamarus. He walked across the street
6 with me as I was standing on the sidewalk as he stated. And
7 they was trying to fill me in on the endeavor that had
8 happened prior to me getting back on what was going on.

9 And by that time Shelricka was coming to the middle of
10 the parking lot as the officer was pulling into the parking
11 lot. So he proceeded to ask me had I seen anybody or did I
12 know anything of a altercation. And I explained to him that
13 I had just got there and then elaborated on where I had
14 been, my whereabouts and what was I doing out there.

15 Q. Okay. All right. And so did you conclude your
16 conversation with the police officers?

17 A. No. He continued to ask my brother the questions that
18 he wanted to ask him because as I was talking to the officer
19 with Shelricka and Kiana, he was coming around the corner.
20 He put my car -- put my car -- crunk my car up, backed
21 around the police car unit, parked my car adjacent from the
22 curb and parked in front of the curb and said it was time to
23 go.

24 So he asked him had he been into any kind of
25 altercations or whatever. He did put his hat over his

1 eyebrow as he stated and told him no. Shelricka concluded
2 to elaborate on what we said. It was the conclusion of
3 Kiana and them saying that I had just pulled up, we wasn't
4 into the altercation and ---

5 **THE COURT:** All right. Slow down a little bit. You're
6 talking fast. And I understand you're nervous, but slow
7 down a little bit so the court reporter can make sure ---

8 A. Okay.

9 **THE COURT:** --- she gets everything.

10 A. Yeah. But that we were going to be leaving. So in the
11 midst of me leaving, prior to the officer pulling into the
12 parking lot or whatever, I had set the bag that I had
13 obtained from the store in Kiana's apartment. So that was
14 what led me to be over there on top of them ordering pizza.
15 So I was going to pay for the pizza, get the change, and get
16 my bag and leave.

17 So as the officer was getting into his car we noticed
18 that some people was on the side of the building or
19 whatever, whatnot, to the right of the building. So as I
20 was talking to Jamar, I was going up -- I went into Kiana's
21 house, I got the bag that I got.

22 And once I came back out, they were already in the
23 clearing to the sidewalk. And that's when he commenced to
24 ask me, man, who jumped my mother fucking uncle? So ...

25 Q. Okay. Just briefly, before we get into that, if you

1 could assist me on exhibit -- State's exhibit 3 and indicate
2 where Kiana Grayson's house was. And so actually if you
3 could just indicate for the Court from the time you got
4 back, where you parked the car, where you parked Derisha's
5 car and how that went from there. If you could please go
6 from there.

7 A. Okay. Well, I parked Derisha's car about here, which
8 is directly in front of Shelricka Duncan's apartment, which
9 is here on the map, exhibit A.

10 Q. Exhibit 3.

11 A. Or 3. Kiana's apartment is adjacent, across the
12 parking lot about here from Shelricka's house. So as I
13 exited out of Shelricka's house and I go back across the
14 parking lot, this would be Kiana's apartment. They was
15 sitting in front of her house in a little clearing. They
16 had chairs, and I was talking to them.

17 Q. By they, who?

18 A. Kiana and Marie.

19 Q. Okay.

20 A. The cop pulled in. He stopped right around about here
21 right after this speed bump. My car was parked here --
22 well, here, where this white car at. He parked in front of
23 the speed bump.

24 So as I was talking to the police officer, Shelricka
25 came into the middle of the parking lot. And Kiana came to

1 here to explain what was my whereabouts, had I seen anything
2 while I was talking to the police here.

3 My brother walked around this part of the clearing, got
4 into my car, backed out around the police here and parked my
5 car here in front of Kiana's house.

6 Q. Okay.

7 A. And that's when these fellows popped up.

8 Q. Okay. All right. So after your brother backed up the
9 car and you concluded your conversation with the police,
10 what happened?

11 A. I commenced to get the bag and stuff that I had set
12 down prior in her house. After I walk into her house and
13 got my ---

14 **THE COURT:** Her who?

15 A. Kiana. After I walked into Kiana's house and got my
16 personal effects, I walked out of the house. That's when I
17 was greeted by Alfie or Elfonso and Kurt Bruster, Kevin
18 Bruster, excuse me. And that's when they, you know, asked
19 me about what happened to his mother fucking uncle.

20 So as I was stating that I didn't know and I didn't
21 have a part of it, the girls that was sitting behind me,
22 which was Marie and Kiana, said, he didn't know, he was gone
23 to the store, he didn't know what was going on, he didn't
24 have a part in it. And I said, yeah, I just took the little
25 niggers to the store in Shelricka's car, was my exact words.

1 So as I was interrupted in my conversation by Kevin
2 Bruster, he was like, man, fuck that, Alf, let's do what we
3 said -- what you just said what we came to do. You said we
4 gonna get one of these niggers in this white Lincoln right
5 here, we gonna get all these niggers right here, so let's do
6 what we came to do. So after that, that's when I was
7 assaulted.

8 Q. Okay. So you say you were assaulted. What happened?

9 A. By Kevin Bruster.

10 Q. Yeah. What happened?

11 A. I had a cup and a bag in my hand. He called -- they
12 called a stole on me and tried to swing on me. So I kind of
13 jerked. Once I jerked, and he hit the cup in my hand,
14 alcohol was in my eyes. I stumbled back one or two times,
15 which was -- grasped my foot. And he knocked me off balance
16 a little bit and knocked me off track.

17 Q. Um-hum (affirmative).

18 A. I was getting myself together. And once I did, I
19 finally get the better part of the alcohol out of my vision,
20 I did see Elfonso touch something that my brother -- he did
21 have a black handgun in his hand.

22 Q. Okay. All right. And at that point did you hear
23 anyone shout anything?

24 A. I heard somebody yell gun before I could even finish
25 clearing the alcohol out of my eyes, which was correct, but

1 it wasn't a matter of seconds. As far as I'm explaining
2 everything, it seems like it was a matter of a few minutes
3 to ten minutes, but the endeavor was really about three to
4 four minutes as Shelricka stated. Everything happened
5 within a pen drop after the police pulled out. He didn't
6 even make it too far from out of the parking lot ---

7 Q. Okay.

8 A. --- before it commenced.

9 Q. And that's three to four minutes from when the
10 conversation started with ---

11 A. Correct.

12 Q. --- with Kevin and Elfonso?

13 A. Right.

14 Q. Okay. And so what was the time-frame from when you
15 were struck, to when you heard gun, to when you fired the
16 shots?

17 A. About two and a half minutes. From the time that --
18 from the time that I was struck -- well, from the time that
19 I was struck to the time that I heard the word gun, it was
20 about forty-five seconds.

21 Q. Okay. All right. What happened in that interim?

22 A. I mean, in that leeway that was, I guess, when my
23 brother got out of the car and was tussling with Kevin.
24 Like I said, during that point in time, I was -- I had
25 already -- was trying to get the stuff out of my eyes and my

1 clearance. So that took not a minute, not a few minutes,
2 but it took a while.

3 Q. Okay. All right. And once you heard gun, how long
4 between you hearing that and you having to pull your firearm
5 and ---

6 A. In between the time that I could get the alcohol out of
7 my eyes, and me hearing gun, and me pulling my weapon, from
8 seeing he had a weapon and was tussling with my brother,
9 that was a matter of twenty seconds.

10 Q. Okay. Now, when -- did you initiate the conversation
11 between Kevin and Elfonso?

12 A. Not at all. I didn't even know the nature of what they
13 was coming to stand around for in the first place.

14 Q. Okay. All right. What was your orientation from the
15 apartment building at the point that you had contact with
16 Kevin and Elfonso?

17 A. I was walking out of Kiana's apartment.

18 Q. Okay. Was your back to the apartment?

19 A. Yes.

20 Q. Okay. All right. So was -- what was in front of you
21 at that point?

22 A. Them, the sidewalk, the ending of the curb and my car.

23 Q. Okay. All right. Did you have any opportunity to
24 avoid them to get to your car?

25 A. Nah. I had to pass them to get to my car, but if I

1 could have did any kind of maneuver or if I could have got
2 to my car without being assaulted first, the whole situation
3 wouldn't have happened. I would have just left.

4 Q. Okay. Now, you did have a firearm on you that night,
5 correct?

6 A. Correct.

7 Q. Okay. And we've stated that you don't have a permit to
8 conceal carry?

9 A. No, I do not.

10 Q. Okay. All right. Now, did you have that weapon
11 concealed on you?

12 A. Yes, for the most part.

13 Q. Well, how were you carrying it?

14 A. In the inside of my pant's pockets that I was wearing.
15 I was wearing basketball shorts under my shorts. So they
16 was in the pocket of the shorts pockets.

17 Q. Okay. All right. Did you tell anyone about the
18 firearm?

19 A. No.

20 Q. Did you show it to anyone?

21 A. No.

22 Q. Did you make it known to anyone?

23 A. No.

24 Q. Okay. Did anyone, to the best of your knowledge, know
25 that you had a firearm prior to you pulling that gun to fire

1 shots in self-defense?

2 A. Nobody other than me.

3 Q. Okay. All right. Did you have any discussions with
4 Kevin and Elfonso other than what you've already stated?

5 A. No. That was the first time of me seeing Kevin in my
6 life. And I've seen Fonso a few times. I knew of him being
7 in the neighborhood. I know of him. It's not like we just
8 was personal acquaintances.

9 Q. Okay. All right. What was the demeanor of Kevin and
10 Elfonso when they initially made contact with you?

11 A. I mean, they -- they came -- like I said, it was
12 sneaky. They came and approached -- they waited til the
13 police commenced to leave out of the parking lot before they
14 said what they said verbally. The only thing Elfonso really
15 said to me was who jumped my mother fucking uncle?

16 So that was implying that they came to do something in
17 retrospect of what had happened that I didn't have nothing
18 to do with. I didn't have no knowledge of what happened to
19 his uncle, who did it or why at that point in time. I
20 wasn't filled in on that until after everything had all blew
21 over.

22 Q. Okay. And what -- how did Kevin and Elfonso -- well,
23 let's say Kevin first. How did Kevin present himself
24 physically to you when they interacted with you?

25 A. I mean, once he started talking about the intentions of

1 what they came to do, he was aggressive. Fonso really was
2 just standing there more so for back-up. He didn't have
3 nothing else to say after he said who jumped his uncle. So
4 that's making it clear of your intentions of what you came
5 to do.

6 Q. Okay. Now, what was Elfonso's physical presentation to
7 you when the interaction began?

8 A. It's like muscle, protection. I'm here because this
9 happened. So ---

10 Q. Where did he -- where did he have his hands?

11 A. He had his hands in his waistband. When they first
12 came around the building it was on one side. He did shift,
13 but, however, once the -- once I was assaulted and alcohol
14 went in my eyes, I don't know what was his motions or his
15 maneuver to do whatever he did.

16 I just noticed that once I came out of the clear to get
17 my vision straight, he was tussling with my brother in front
18 of my car not even four feet away from me with a big black
19 shape in his hand, and it was a handgun from what I seen.

20 Q. Okay. You said it, it was on his right side.

21 A. The gun.

22 Q. The gun.

23 A. His hand -- when I say it, his hand was on his right
24 side. When they first came around the building it was -- it
25 was on his right side. As far as it being on his left side

1 when he was tussling with my brother once they came off the
2 curb, it was in his left hand.

3 Q. Okay. Did you know what he had his hand on?

4 A. Pretty much so.

5 Q. Okay. Why did you conclude that?

6 A. What else would it be -- what else would it be wavering
7 in the midst of being in his hand? It wouldn't be a big
8 stick or ---

9 Q. I'm talking before he presented the firearm.

10 A. Before he presented the firearm I just knew that it --
11 it was there and they were there to do something bad. I
12 mean, it's not like a gun was protruding out of his side,
13 but it's like Jamarus said, it's not hard to put two and two
14 together once you're approached by somebody and they're very
15 brass about what they're saying to you.

16 Q. All right. Did you -- and I apologize for asking this
17 question again. Did you have any prior interactions with
18 Kevin Bruster?

19 A. No. I never seen him in my life.

20 Q. Did you have any prior interactions with Elfonso
21 Bruster?

22 A. Not other than friendly conversation, hi and bye, no.

23 Q. Okay. All right. What happened after you fired the
24 shots in self-defense?

25 A. I got in my car, I pulled up on the officer who was not

MARQUEZ GLENN - CROSS EXAMINATION BY MR. HOLLOWAY

163

1 too far from being out of the parking lot looking for the
2 shots because I guess he didn't expect for them to come
3 where he had just come from talking to us. And I told him
4 that I had just got into a altercation with the two guys
5 that was standing around in front of him while I was talking
6 to him, that I had shot him and that he was bleeding and he
7 needed help.

8 Q. Okay. When Kevin and Elfonso were speaking to you did
9 you get any sense as to their state of mind with regard to
10 whether they were intoxicated or not?

11 A. I mean, you could tell that Kevin, I mean, I don't know
12 if it was from him being hit 'cause his face was swollen.
13 He did have a black eye. But, I mean, he seemed to be
14 intoxicated. As far as Elfonso's state of being, I couldn't
15 tell you because he never said nothing other than who jumped
16 his uncle.

17 Q. Okay. Thank you, Marquez. Please answer any questions
18 the State may have.

19 A. All right.

20 **Cross Examination by Mr. Holloway:**

21 Q. Do you have a conviction for domestic violence?

22 A. I pled guilty to a misdemeanor of domestic violence in
23 2012.

24 Q. Which is what?

25 A. A conviction, correct.

1 Q. Okay. And you knew you weren't able to carry a gun,
2 correct?

3 A. No, I didn't know that.

4 Q. You didn't know that? Nobody told you that?

5 A. No, because I was not a felon. And I was actually
6 looking into buying a few -- few guns prior to the one that
7 I bought off the street from the store.

8 Q. Okay. So you -- at that time did you have a lawyer?

9 A. At the time of this endeavor?

10 Q. At the time that you pled guilty to domestic violence,
11 did you have an attorney?

12 A. Yes, I had an attorney. I had a public -- a public
13 defender. His name was Chris Scalzo.

14 Q. Okay. But it was an attorney, right?

15 A. More or less.

16 Q. And you're saying that your lawyer didn't explain the
17 after effects of a conviction for domestic violence?

18 A. No, sir. Actually, I had a public defender for about
19 one or two months and then he got switched to Anderson
20 County. And then I had another public defender that I was
21 assigned by the name of Caroline Horlbeck, which I didn't
22 meet til the day of our trial.

23 Q. Okay. When did you arm yourself with this gun on April
24 the 12th?

25 A. About maybe seven or eight months prior to that when I

1 was attacked by a few people and my vision was compromised.

2 So ---

3 Q. Okay.

4 A. --- I bought a gun.

5 Q. Do you recall, as I've asked other witnesses, do you
6 recall giving a statement to the main investigator in this
7 case, Investigator ---

8 A. Yes, I do.

9 Q. --- Whaley? Okay. Do you recall when he was talking
10 to you he pressed a little button on a machine, a little
11 device to actually, you know, make sure your conversation
12 was actually, you know, kept for all time? Do you ---

13 A. I knew that our conversation was being recorded, but he
14 didn't press a button in front of me. I think it was
15 already running by the time I got into his office.

16 Q. Okay. Do you recall -- do you recall how many times
17 you shot Elfonso?

18 A. It was only three bullets in the gun.

19 Q. Okay. Do you recall how many times you shot Elfonso
20 Bruster?

21 A. It was -- I spent all three bullets that was in the
22 gun. There was only three bullets in the gun.

23 Q. You shot him three times? That's your testimony?

24 A. Yes, sir.

25 Q. Okay. Do you know how many times you shot the white

1 car that was nearby in the parking lot?

2 A. I would assume none other than what was only in the
3 weapon.

4 Q. So you're saying that you shot no other rounds that
5 night?

6 A. No, sir, because there was no other rounds live in the
7 gun.

8 Q. Okay. Let me ask you this. Have you reviewed all the
9 information the State's provided your lawyers?

10 A. Not everything.

11 Q. Are you aware that a car was struck nearby in this
12 parking lot?

13 A. No, I wasn't.

14 Q. Okay. Pointing to State's exhibit 3, a car was shot
15 right here. And you have no knowledge of that?

16 A. No, I had no knowledge of that.

17 Q. Okay. And where was Elfonso lying in the parking lot
18 after you shot him? Can you point for the Judge on the
19 exhibit?

20 A. If I was standing about here coming out of Kiana's
21 apartment, and he was four feet in front of me on the
22 sidewalk.

23 **MADAME COURT REPORTER:** Can you speak up? I can't hear
24 you over there.

25 A. If I was standing here coming out of Kiana's apartment,

MARQUEZ GLENN - CROSS EXAMINATION BY MR. HOLLOWAY

167

1 and he was about four and a half feet in front of me by the
2 curb when he fell, it would have landed him right about
3 there.

4 Q. Okay.

5 A. And that's where he was when I pulled off.

6 Q. Okay. Have a seat. And you're saying you don't recall
7 firing two rounds at a car in the other direction?

8 A. No.

9 Q. Okay. Are you aware that the police can account for
10 four bullets in your gun?

11 A. No. I doubt that because there was only three bullets
12 in the gun.

13 Q. Okay. Do you recall where you shot Elfonso with the
14 first bullet?

15 A. No. I didn't aim intentionally at a specific purpose
16 other than the general vicinity of where he was standing.

17 Q. You're saying ---

18 A. Which was next to my brother, too.

19 Q. You're saying he's a threat to you, but you don't
20 recall aiming the gun at him?

21 A. I mean, I didn't aim with precision. I aimed in the
22 general direction of where he was standing with the gun.

23 Q. Well, in general, where did you shoot him in his body?

24 A. In the shoulder area as far as I know.

25 Q. Okay. What about the second bullet, where did that go?

1 A. I mean, they both could have went through and through
2 if it was in his shoulder.

3 Q. Okay. Do you recall for sure if it went through and
4 through?

5 A. I don't know the exact trajectory of where the bullet
6 went after it left the gun, no.

7 Q. Okay. Just, you know, using just layman's knowledge,
8 okay, I'm not asking you to be an expert, but can you
9 explain to the Court how a man is shot right here, maybe
10 even twice, and he ends up paralyzed?

11 A. No, I can't. I don't think there's a logical
12 explanation that anybody can give you for that.

13 Q. Well, so the bullet hit his armpit and bounced off bone
14 and paralyzed him, is that what you're saying?

15 A. I didn't say anything, you said that.

16 Q. Well, did you answer my question?

17 A. No, sir, I didn't.

18 Q. Well, answer my question, please.

19 A. I can't.

20 Q. Okay.

21 A. I don't think anybody can give you a logical
22 explanation for what a bullet does after it leaves a weapon.
23 Nobody can.

24 Q. Okay. You said that the only fighting that occurred
25 that night was between you and Kevin and then -- you and

1 Kevin Bruster.

2 A. I never got a chance to do anything after I was
3 assaulted because he pulled a weapon after I was hit.

4 Q. Okay. Do you remember telling Investigator Whaley that
5 as they were coming towards you that I seen Alfie waving
6 whatever -- it was a black -- I knew it was a handgun? I
7 don't know the caliber of the gun or whatever. That's when
8 I fired. Do you recall saying that?

9 A. Yeah, that was after I cleared my vision out of my
10 eyesight.

11 Q. Okay. Do you -- did you tell the investigator that you
12 had to clear your eyesight first?

13 A. Yes.

14 Q. Okay.

15 A. And it's on record.

16 Q. Would it help you to hear that -- that CD?

17 A. I mean, if you would like to play it.

18 Q. Okay. Do you recall telling Investigator Whaley
19 because I seen him waving what -- when I say him, I mean
20 Elfonso Bruster.

21 A. I know.

22 Q. Okay. Well, it's for the record. Because I seen him
23 waving what I thought was a gun.

24 A. No, it wasn't what I thought, it's what I knew was a
25 gun. I just wasn't sure of the caliber of the gun is what I

1 said.

2 Q. These were your words.

3 A. I didn't write them, I spoke them on a recorder.

4 Q. Okay. Well, you spoke them. So you're admitting you
5 spoke those words, is that right?

6 A. Not the exact words that you just said.

7 **MR. HOLLOWAY:** Your Honor, I'm going to have to play
8 the CD.

9 **THE COURT:** Okay. Go ahead.

10 **MR. BRUMBACK:** Your Honor, I'm going to object to the
11 CD at this point. You know, Mr. Glenn's here to testify.
12 He can testify to, you know, exactly what he saw. And I
13 don't know that this is for impeachment purposes.

14 **THE COURT:** That's what I thought it was for.

15 **MR. HOLLOWAY:** That's what it's for.

16 **MR. BRUMBACK:** Well, Your Honor, ---

17 **MR. HOLLOWAY:** He has a copy of it, Judge.

18 **MR. BRUMBACK:** Your Honor, well, my position would be
19 whether Mr. Glenn said he thought it was -- didn't know he
20 knew the caliber or didn't know he knew it was a gun, I'm
21 not sure that's exactly impeachment. You know, he's ---

22 **THE COURT:** That's why the judge has to hear it because
23 ---

24 **MR. BRUMBACK:** Fair enough, Your Honor.

25 **THE COURT:** --- I have to make that decision.

1 MR. BRUMBACK: Fair enough, Your Honor.

2 MR. HOLLOWAY: And, Your Honor, this is about eleven
3 minutes.

4 THE COURT: Okay.

5 MR. HOLLOWAY: I just wanted to give you an idea.

6 (Whereupon the CD of Marquez Glenn's statement was
7 played for the Court)

8 (Whereupon the CD ended)

9 Q. So you actually didn't say to the officer I shot this
10 guy, right?

11 A. No, I said that.

12 Q. No, Mr. Glenn, do you want to play -- play this CD
13 again? What you said was I stopped and told him, the
14 officer, that the fellow had been shot. Those were your
15 words.

16 A. I worded it differently, but at the point in time what
17 I said -- what I stated to Officer Whaley and what I stated
18 to the officer on the scene were variated differences, but
19 it was around the same aspect of what I said.

20 Q. When was this interview done?

21 A. It was done thirteen days after the situation happened.

22 Q. So you've had a lot of time to think about what you
23 wanted to say today, right?

24 A. Not really.

25 Q. Not really? Two and a half years is not a long time to

1 think about a story for the court?

2 A. I mean, I got a lot going on ---

3 **MR. BRUMBACK:** Objection. Your Honor, relevance. The
4 State -- and it's argumentative.

5 **THE COURT:** Well, I think he has a right to -- let's
6 move forward.

7 **MR. HOLLOWAY:** Yes, sir.

8 Q. You said to -- on the interview that we just heard, I
9 didn't want to get caught with the gun I shot him with, is
10 that right?

11 A. (Affirmative nod).

12 Q. Okay. And you -- did you ever help to try to find the
13 gun?

14 A. They never came back for me to -- for it to be
15 conclusive for me to help them.

16 Q. It's your gun, right? It's your property.

17 **MR. BRUMBACK:** Objection to relevance.

18 **THE COURT:** Yeah, the question was did you ever do
19 anything to help them find the gun. And he said no.

20 **MR. HOLLOWAY:** Okay.

21 **THE COURT:** So I don't know where you're going with the
22 rest of that.

23 Q. Why not?

24 A. They never came for me to help them with a dive team.

25 **MR. BRUMBACK:** Objection, ---

1 Q. Did you go ---

2 MR. BRUMBACK: --- Your Honor.

3 Q. --- to them? Did you offer your services to them?

4 A. I offered my services when I gave my statement.

5 Q. Okay. But your gun is in a river somewhere. Don't you
6 want to go get the gun?

7 A. And he specifically asked me if I would take -- acquire
8 a dive team, could you show me where that weapon was
9 located? And I said I would try. So he never acquired ---

10 Q. Did you try?

11 A. He never acquired a dive team for me to come back.

12 Q. That's not my question. Did you try?

13 MR. BRUMBACK: Your Honor, I'm going to object.

14 THE COURT: Yeah, I sustain the objection.

15 Q. Did you say it on the audio CD, I shouldn't have been
16 assuming?

17 A. What's that?

18 Q. Did you say on this interview, I shouldn't have been
19 assuming?

20 A. I don't recall me saying that.

21 Q. Okay. And you only carry a gun in that neighborhood?

22 A. That was at ---

23 Q. And nowhere else?

24 A. --- that specific time when I had been jumped, I
25 carried a gun everywhere.

1 Q. So now you're saying you carry a gun everywhere?

2 A. No, that's not what I'm saying. I said I acquired the
3 gun because I had been jumped by multiple people prior to
4 this incident. So I carried a gun everywhere, specifically
5 when I was in that neighborhood.

6 Q. So everywhere in the neighborhood or everywhere, say,
7 in the universe?

8 A. Everywhere I was at after I was jumped.

9 Q. So that's not including only Spring Grove Apartments?

10 A. Yeah, it's not including only Spring Grove ---

11 Q. So today you're admitting, despite the domestic
12 violence conviction, you carry a gun everywhere you go?

13 A. I was never notified that I wasn't legally ---

14 Q. That's not my question, Mr. Glenn. Is that true?

15 A. Well, could you reiterate your question?

16 Q. Okay. Do you now carry a gun everywhere you go?

17 A. No, now I don't. Then I did because ---

18 Q. So it's ---

19 A. --- I thought it was ---

20 Q. --- all clear now?

21 **THE COURT:** Mr. Holloway, you've got to let him answer
22 the question, please.

23 **MR. HOLLOWAY:** Yes, sir.

24 A. No, now I don't because I have a current litigation to
25 where I can't bear firearms. Then I was under the

1 impression as I was buying firearms and being under
2 background checks that it was all right for me to carry
3 weapons because I wasn't a felon.

4 Q. Sir, you testified on direct examination that you
5 didn't buy this gun. You actually bought the gun off the
6 streets.

7 A. Correct.

8 Q. So background checks had nothing to do with what you're
9 saying.

10 A. But I also stated earlier that I had been going to
11 stores and looking into buying guns legally as well before I
12 bought it off the street.

13 Q. But you chose to go buy it off the street? You're
14 telling this Court at this immunity hearing that you bought
15 a firearm that's illegal, is that right?

16 A. No, it wasn't illegal because it wasn't stolen. The
17 only reason I bought it off the street is because it was
18 cheaper.

19 Q. Okay. Do you know who you bought it from?

20 A. Not exactly. The dude was supposed to give me a bill
21 of sale, but that ended up being a bust, too.

22 Q. Okay. Do you know if he was a felon?

23 A. No, I didn't ask that.

24 Q. Okay. Asked no questions. Well, how much was this gun
25 by the way?

1 A. I don't know how this is relevant. I think I paid ---

2 Q. Well, that's not for you to decide, Mr. Glenn.

3 A. I paid ---

4 Q. What ---

5 A. --- a hundred and twenty-five ---

6 MR. BRUMBACK: Well, I'll object, Your Honor. I'm not
7 sure ---

8 THE COURT: Yeah, I don't care ---

9 MR. BRUMBACK: --- about the relevance of all of this.

10 THE COURT: That's not relevant. I sustain the
11 objection.

12 MR. BRUMBACK: Thank you, Your Honor.

13 Q. You testified -- you testified earlier that there was
14 tussling between Elfonso Bruster and your brother, is that
15 right?

16 A. Correct.

17 Q. Okay. And that's when you saw the gun?

18 A. Correct.

19 Q. Okay. How do you know that Elfonso wasn't defending
20 himself?

21 A. He put himself in the position of where he wasn't in a
22 defense. You don't come looking for something and be
23 defensive. That's not how it works.

24 Q. How do you know that? You were blinded by alcohol.

25 A. Because his initial statement to me before I was

1 assaulted was who jumped my mother fucking uncle.

2 Q. Okay. Well, how do you know -- well, who actually
3 jumped -- who actually fought your uncle?

4 A. What's that?

5 Q. Who actually fought your brother?

6 A. No one actually fought my brother. They was in a
7 tussle after he, his uncle, assaulted me.

8 Q. Okay. But who was the one who -- who was -- had an
9 altercation with your brother earlier in the apartment?

10 A. I had no knowledge of that until after this whole
11 situation concluded.

12 Q. So you had no knowledge of what happened in the
13 apartment as -- when you see Elfonso and Kevin Bruster on
14 the scene here?

15 A. I didn't know that Kevin Bruster and my brother had got
16 into an altercation. I just know that some people had got
17 into a altercation and that's why the officer was initially
18 called out there. And that's what he stated to me when I
19 got in the middle of the parking lot.

20 Q. You weren't told that Kevin Bruster had cut your
21 brother?

22 A. No, not until later after I was done talking to the
23 officer.

24 Q. You were sitting in the courtroom earlier today,
25 weren't you, when you heard them testify?

1 A. Yeah.

2 Q. I mean, you know your brother said the opposite.

3 A. No, he didn't say the opposite. It's just that

4 everybody's time-frames was correlated from their

5 perceptions ---

6 Q. No, sir, ---

7 A. --- so ---

8 THE COURT: You've got to let him answer, Mr. Holloway.

9 MR. HOLLOWAY: Yes, sir. I'm getting a little ahead of
10 myself.

11 A. Are you ready?

12 Q. Mr. Glenn, I ask the questions, you answer them. You
13 were sitting in the courtroom. Your brother said I told my
14 brother that Kevin Bruster cut me. That's what he said on
15 the stand this afternoon.

16 A. I don't recall him saying that.

17 MR. HOLLOWAY: Your Honor, that's all I have.

18 THE COURT: Okay. Recross. Redirect.

19 MR. BRUMBACK: Yes, Your Honor. I just have a couple.

20 **Redirect Examination by Mr. Brumback:**

21 Q. Mr. Glenn, when did you put your hand on the gun that
22 you had on you to use it?

23 A. After I heard the word gun.

24 Q. Did you ever touch the gun with your hand prior to
25 pulling it to fire in self-defense on that -- during the

1 altercation ---

2 A. I mean, as soon as -- I was already rushing to clear my
3 vision. And as soon as I heard the word gun, that's when I
4 simultaneously started reaching for it.

5 Q. Okay. But my question to you was during the
6 interaction, let's actually go a little bit before, from the
7 time you were speaking to the police officer, ---

8 A. Um-hum (affirmative).

9 Q. --- up until the time you actually laid your hand on
10 the gun to pull the gun and use it, did you touch the gun
11 with your hand? Did you put the gun in your hand at any
12 point prior to the time when you actually pulled it to use
13 it?

14 A. No, not at all.

15 Q. Now, earlier there were some questions about the shots
16 that you fired. How quickly -- describe the fashion in
17 which you fired the shots. How quickly were those shots
18 fired?

19 A. I mean, as quick as you can squeeze the trigger under
20 the duress of whatever situation you're going through.

21 Q. So ---

22 A. When you hear gun, you react. You just -- there's no
23 mannerism that you have to do, no technique, just pull the
24 trigger.

25 Q. So it was click, click, click?

1 A. Yeah.

2 Q. Okay. Now, would you also describe the physical
3 stature of Kevin Bruster?

4 A. I mean, I can elaborate on what Shelricka said earlier.
5 It's pretty much apparent. At that point in time I was
6 five-seven, one forty-five. Alfie was, what, six-three, two
7 sixty, two fifty-five.

8 I really don't even remember the stature of Kevin
9 because it was so brief. I couldn't even tell you what he
10 looked like today other than at that point in time he was
11 about maybe one sixty-five, one seventy and he was just a
12 little bit taller than I was.

13 Q. Okay. All right. And earlier we heard the recording
14 of your prior recorded statement ---

15 A. Um-hum (affirmative).

16 Q. --- to Officer Whaley, Detective Whaley. I believe
17 during the statement you said after you came back from being
18 attacked initially, that's when you saw the gun in Elfonso's
19 hand.

20 A. Um-hum (affirmative).

21 Q. Is that correct?

22 A. Correct.

23 Q. Okay. What did you mean by after you came back from
24 being attacked initially?

25 A. I mean, as far as I was getting my vision corrected.

1 Q. Okay. So are you talking about five minutes before,
2 before you started talking to them or are you talking about
3 after you were punched in the face?

4 A. After I was punched in the face.

5 Q. Okay. All right. Thank you, Marquez.

6 **THE COURT:** All right. Recross.

7 **MR. HOLLOWAY:** One quick question.

8 **Recross Examination by Mr. Holloway:**

9 Q. You said you were punched in the face?

10 A. Well, it was in the jaw area, the throat. When I
11 turned my neck, it was here and here.

12 Q. Okay. So it was your throat or your face?

13 A. Neck -- well, it was between both.

14 Q. All right.

15 **MR. HOLLOWAY:** That's all I have, Your Honor.

16 **THE COURT:** Mr. Glenn, of course you -- this is your
17 motion, but I neglected to remind you, as I'm sure your
18 attorneys have already, that you have a right to remain
19 silent and you need not have testified or give any statement
20 against yourself, that is you did not have to take the stand
21 and testify. You understand that?

22 **MR. GLENN:** Okay. I do now.

23 **THE COURT:** You didn't understand that before?

24 **MR. GLENN:** Yes, sir, I did.

25 **THE COURT:** Okay. Your lawyers explained that to you?

1 **MR. GLENN:** Right. Yes, they did.

2 **THE COURT:** And you made the determination it was in
3 your best interest and you wanted to waive your right to
4 remain silent and testify?

5 **MR. GLENN:** Yes, sir.

6 **THE COURT:** Is that correct?

7 **MR. GLENN:** That's correct.

8 **THE COURT:** All right. Counsel, you explained his
9 rights to that?

10 **MR. BRUMBACK:** We did, Your Honor. We discussed -- and
11 if I am incorrect, then I apologize. But my understanding
12 is that his testimony here at this immunity hearing does not
13 affect his ability to remain silent at trial.

14 **THE COURT:** That's exactly right. You can certainly
15 exercise that if the trial goes forward. You certainly have
16 the right to exercise that. You do not have to testify in
17 front of the jury.

18 Now, this is solely for these purposes, but I want to
19 make sure that he understands that he didn't even have to
20 testify in this hearing ---

21 **MR. BRUMBACK:** Yes, Your Honor, we did explain that.

22 **THE COURT:** Okay.

23 **MR. BRUMBACK:** And I just wanted to make sure I was
24 correct about my ---

25 **THE COURT:** No, you're correct.

1 **MR. BRUMBACK:** Okay. Excellent.

2 **THE COURT:** It's only for these purposes. All right.

3 You can step down.

4 A. Thank you.

5 **THE COURT:** All right. I think it's about twenty til

6 six. So we'll stop and start back at nine in the morning.

7 **MR. BRUMBACK:** Thank you, Your Honor.

8 **THE COURT:** And, Mr. Brumback, I wanted to apologize.

9 I should not have made my comment about where y'all had been
10 paid. The issue really was whether or not he's retained or
11 was appointed counsel, was indigent, not whether y'all had
12 been paid or not.

13 **MR. BRUMBACK:** That's all right, Your Honor. I ---

14 **THE COURT:** I practiced ---

15 **MR. BRUMBACK:** --- understand.

16 **THE COURT:** --- law for twenty years and I know -- and
17 that was improper for me, and I apologize.

18 **MR. BRUMBACK:** And I was trying to answer that question
19 back as delicately as possible as well.

20 **THE COURT:** I understand. And that was my -- I
21 apologize. I should not -- that's not my business.

22 **MR. BRUMBACK:** Thank you, Your Honor.

23 **THE COURT:** All right.

24 **MR. BRUMBACK:** Prior to the conclusion, I just have a
25 highlighted copy of the case that I provided earlier that I

1 would like to actually provide you with that.

2 THE COURT: Okay.

3 MR. BRUMBACK: Thank you, Your Honor.

4 THE COURT: All right. Well, we'll be at ease til nine
5 in the morning. Thank everybody for their patience.

6 MR. HOLLOWAY: Your Honor, about the bond issue?

7 THE COURT: I'll allow Mr. Glenn to remain out as I did
8 at lunchtime. And, Mr. Glenn, you still remember that if
9 you don't show up, this case is going forward.

10 MR. GLENN: Yes, sir, I understand.

11 THE COURT: All right. Thank you. Counsel, we need to
12 mark those CD's, both that were played, as Court's exhibits.

13 MR. BRUMBACK: Certainly, Your Honor.

14 (Whereupon Court's exhibits 4 and 5 were marked)

15 (Whereupon court was in recess at 5:40 pm)

1 Tuesday, August 4, 2015:

2 (Whereupon court reconvened at 9:16 am)

3 Immunity Hearing Continued:

4 THE COURT: Any prelims before we get back in to taking
5 the testimony?

6 MR. BRUMBACK: Actually, Your Honor, I know the issue
7 concerning possession of a firearm was one of the questions
8 that we had very seriously yesterday. And I would like to
9 present some additional authority on that point for your
10 consideration.

11 THE COURT: Okay.

12 MR. BRUMBACK: I have a copy for Mr. Holloway as well.

13 THE COURT: Yes.

14 MR. BRUMBACK: And what I'm presenting is, first of
15 all, a definition of possession from Black's sixth edition
16 and then also a case from South Carolina concerning that
17 issue of possession as well.

18 THE COURT: Okay. Thank you.

19 MR. BRUMBACK: Certainly, Your Honor.

20 THE COURT: All right.

21 MR. BRUMBACK: And at this point we would be prepared
22 to proceed with calling our next witness.

23 THE COURT: Okay. Call your next witness.

24 MR. BRUMBACK: The Defense would call Kiana Grayson.

25 Kiana Grayson, being duly

1 sworn testified as follows;

2 **MADAME CLERK:** Please come forward and have a seat..

3 Will you please state your full name for the record and
4 spell your first.

5 **MS. GRAYSON:** Kiana Grayson, K-i-a-n-a.

6 **MADAME CLERK:** Thank you.

7 **Direct Examination by Mr. Brumback:**

8 Q. Kiana, would you please tell me how, if you do, know
9 any of the parties associated with this case, that being Mr.
10 Marquez Glenn, the Defendant, or any of the other parties
11 involved, Kevin Bruster, Elfonso Bruster, just the general
12 parties involved.

13 A. Through mutual friends.

14 Q. Okay. Mutual friends with Mr. Glenn?

15 A. Um-hum (affirmative).

16 Q. Okay. Do you know Mr. Kevin Bruster?

17 A. No, only through Shelricka.

18 Q. Okay. Do you know Elfonso Bruster?

19 A. No.

20 Q. Okay. All right. Thank you. Would you please tell me
21 your recollection of the evening of April 12th, 2013?

22 A. I was sitting on my porch, and that's when I saw the
23 car pulled up that Kevin was in. And he came out, he got
24 out of the car and went in Shelricka Duncan's house.

25 And I saw him getting pushed back out. They were

1 fighting. So me and my friend ---

2 THE COURT: When you say they, make sure you ---

3 A. I'm sorry.

4 THE COURT: --- tell me who we talking about because I
5 don't know.

6 A. I don't know who they are that was fighting, but they
7 was coming back out of the house. So me and Maria Miles
8 actually tried to stop the fight, see what was going on.
9 And we just went back across the street to my porch.

10 And that's when the deputy came. And he was asking --
11 he was talking to Marquez. And we was all right there.

12 That's when Elfonso and Kevin walked up. And they just kind
13 of like stood back, you know, didn't say, you know, anything
14 because I think he was looking for -- he asked who is Kevin.

15 Q. Who was looking for Kevin?

16 A. The deputy.

17 Q. Okay.

18 A. And nobody really said anything. He didn't say
19 anything to make himself -- like, it's me. So the deputy
20 left. And when he left, that's when Kevin hit Marquez.

21 Q. Okay. Now, you said that they were sort of standing
22 back.

23 A. Uh-huh (affirmative).

24 Q. Where were they standing back?

25 A. Like sort of near the bush, like at the -- on the

1 sidewalk, but like back toward -- more towards like -- like

2 they was kind of like separated, but near the bush ---

3 Q. Okay.

4 A. --- that's in front of my house. Well, my house and my
5 neighbor's house.

6 Q. Okay. Do you live on the corner of the building?

7 A. No.

8 Q. Okay. All right. If you could actually -- this is
9 State's exhibit 3, the map over on the left.

10 A. Um-hum (affirmative).

11 Q. If you could just point out where you live and where
12 Kevin and Elfonso were sort of holding back while Mr. Glenn
13 was speaking to the police.

14 A. I live here.

15 Q. Okay.

16 A. And they were kind of like right here.

17 Q. Okay. All right. Thank you. So was Mr. Glenn on the
18 property at the time that you saw the fight between Kevin
19 and whoever else was involved?

20 A. No.

21 Q. Okay. Do you know where he was?

22 A. He had went to the store.

23 Q. Okay. Do you know why he'd gone to the store?

24 A. No.

25 Q. Okay. All right. Now, after you saw Kevin and Elfonso

1 approach Mr. Glenn, what happened next?

2 A. That's when Kevin hit Marquez. Both of them looked
3 like they was going towards him, ---

4 Q. Um-hum (affirmative).

5 A. --- but -- and then that's when Marquez stumbled back
6 and started shooting.

7 Q. Okay. Now, how would you describe the demeanor of
8 Kevin and Elfonso when they approached Mr. Glenn?

9 A. I didn't -- Kevin was -- he was like angry, but I
10 didn't pay attention to Elfonso.

11 Q. Okay. All right. So Mr. Glenn was struck in the neck,
12 he stumbled backwards and then you heard shots fired?

13 A. Um-hum (affirmative).

14 Q. Now, how long would you say from when Mr. Glenn was
15 struck in the neck to when the shots were fired?

16 A. Seconds.

17 Q. Seconds?

18 A. (Affirmative nod).

19 Q. Okay. And how quickly would you describe the
20 succession of shots? How quickly did they go?

21 A. Can you explain what ---

22 Q. Yeah. What I'm trying to ask, and I apologize,
23 generally my bad question when a witness can't answer. How
24 quickly did the shots follow one another? Was it bang --
25 bang -- bang? Or was it bang, bang, bang?

1 A. It was quick.

2 Q. It was quick?

3 A. (Affirmative nod).

4 Q. So they followed very quickly, one after the next?

5 A. Yeah.

6 Q. Okay. All right. Now, from your perspective did you
7 see whether Mr. Glenn had any opportunity to avoid the
8 attack from Kevin and Elfonso Bruster?

9 A. No.

10 Q. You did not see it or he did not have an opportunity?

11 A. He didn't have an opportunity.

12 Q. Okay. Based on your perception of the event was Mr.
13 Glenn's life in jeopardy at the time he was attacked?

14 A. Yes.

15 Q. Thank you very much for answering my questions this
16 morning. That's all I have.

17 **Cross Examination by Mr. Holloway:**

18 Q. Ms. Grayson, the night of the shooting do you recall
19 talking to the police?

20 A. Um-hum (affirmative).

21 Q. Okay. And you gave a statement?

22 A. Um-hum (affirmative).

23 Q. Okay. In your statement you didn't mention whether
24 Elfonso had a gun. Did Elfonso have a gun?

25 A. I didn't see it.

1 Q. Okay. Did he ever reach for a gun?

2 A. Not that I know of. I didn't -- I wasn't paying
3 attention.

4 Q. Okay. Did you -- do you recall if Mr. Glenn had a
5 drink in his hand?

6 A. Um-hum (affirmative).

7 Q. Did he have a ---

8 A. Yes.

9 Q. --- a drink in his hand? Okay. And you just testified
10 that Kevin was the one, Kevin Bruster's the one who punched
11 Mr. Glenn.

12 A. Um-hum (affirmative).

13 Q. And he was the one who was angry, is that right?

14 A. (Affirmative nod).

15 Q. Okay.

16 A. Yes.

17 Q. And Elfonso never made a move toward -- Elfonso never
18 made a move toward the Defendant, is that right?

19 **MR. BRUMBACK:** Objection, Your Honor. I don't think
20 that's consistent with the testimony the witness just gave.

21 **THE COURT:** Well, he has a right to -- she can correct
22 him. He's got a right to cross her.

23 Q. Okay. Let me clarify. You testified that both -- at a
24 certain point in time Elfonso and Kevin were walking sort of
25 together, ---

1 A. Um-hum (affirmative).

2 Q. --- is that right?

3 A. Yes.

4 Q. So when it came time for the physical altercation,
5 Kevin was the one who initiated the physical altercation,

6 ---

7 A. Yes.

8 Q. --- correct?

9 A. Yeah, he ---

10 Q. But not Elfonso?

11 A. --- initiated it. Yes.

12 Q. I'm sorry, Elfonso, ---

13 A. Yes, Kevin initiated it.

14 Q. But not Elfonso?

15 A. No.

16 Q. Okay. Thank you. That's all I have.

17 **MR. BRUMBACK:** Just a couple of questions to clarify.

18 **Redirect Examination by Mr. Brumback:**

19 Q. Can you state for certain whether or not Elfonso did or
20 did not have a gun?

21 A. No.

22 Q. You just didn't see it?

23 A.. (Negative nod).

24 Q. Okay. And when the altercation began, when the fight
25 began, when Marquez was struck did you see both Kevin and

1 Elfonso move towards Mr. Glenn?

2 A. Yes.

3 Q. Would you say at that point both of them were a threat
4 to Mr. Glenn?

5 A. Yes.

6 Q. Thank you very much.

7 **Recross Examination by Mr. Holloway:**

8 Q. Did you -- Ms. Grayson, how long were you out there?

9 A. The whole night except going to check on my kids, but
10 ...

11 Q. Okay. And that night Mr. Glenn bought you pizza, is
12 that right?

13 A. Um-hum (affirmative).

14 Q. Okay. Now, you just testified on -- that Elfonso was
15 also a threat, is that right?

16 A. Um-hum (affirmative). Yes.

17 Q. Okay. But you testified on cross with me that he never
18 made a move toward Mr. Glenn, is that right?

19 A. No. You said was he -- did he initiate it.

20 Q. Okay. Did Elfonso attack Mr. Glenn?

21 A. Attack, I can't say because Marquez was getting hit.

22 Q. By whom?

23 A. Kevin.

24 Q. Okay. Thank you.

25 **THE COURT:** All right. You can step down. Thank you.

1 We appreciate your time. Call your next witness.

2 MR. BRUMBACK: Your Honor, that is our final witness
3 for the purposes of the immunity hearing.

4 THE COURT: All right. The State ready to proceed?

5 MR. HOLLOWAY: Yes, sir. The State calls Deputy Dorsey
6 Lay.

7 Dorsey Lay, being duly
8 sworn testified as follows;

9 MADAME CLERK: Please have a seat. Please state your
10 full name for the record.

11 MR. LAY: Deputy Dorsey Lay.

12 **Direct Examination by Mr. Holloway:**

13 Q. Deputy, tell the -- for the record, tell the Court
14 where you work.

15 A. I work for the Greenville County Sheriff's Office,
16 presently assigned to Community Patrol Unit.

17 Q. Okay. And you're aware of why you're here today, is
18 that right?

19 A. Yes, sir.

20 Q. Okay. Do you recall an encounter with the Defendants
21 back in October 2010?

22 A. Yes, sir.

23 Q. Can you tell the Court about that?

24 A. I was assigned to secondary employment at the Spring
25 Grove Apartments. Probably about three or four deputies

1 that were assigned out there at the time to do security
2 details. And some worked for the management as far as
3 enforcing some of the lease laws along with criminal laws.
4 We had -- we still do have jurisdictional rights out there
5 to enforce such laws and County ordinances.

6 Q. Okay. Can you tell the Court or explain about how
7 individuals are issued no trespass -- how do you and the
8 sheriff's department issue no trespass notices?

9 A. Well, in this case, if we're issuing a no trespass for
10 the apartment complex, we're acting as actual employees of
11 the apartment complex. We could issue that on the authority
12 of management if a violation of any of the rules were, you
13 know, violated or we see one that's a clear violation at the
14 time.

15 That was part of our assignment there along with
16 enforcing any criminal laws. From a managerial standpoint
17 we would issue a no trespass notice if that was pertinent.

18 Q. And those notices, are they written or verbal?

19 A. From a deputy it just has to be verbal.

20 Q. Okay. How do you know or how do you confirm if a
21 person is on a no trespass list or database?

22 A. If they're already on there?

23 Q. Yes.

24 A. Well, there's several ways. We can do it from our in-
25 car computer, we can call records over the radio or we can

1 actually call on the phone. And we give them the person's
2 name, and they do a search. And it actually shows them
3 every place within the County that they're on trespass
4 notice for. You can also reverse search it by address.
5 That takes a little longer.

6 Q. Okay. And, deputy, could you tell the Court about the
7 incident when you encountered the Defendants?

8 A. Well, during routine patrol when I was walking through
9 the breeze-ways and there was a group of people that were
10 congregating, it's a lease violation to have people
11 congregating in the breeze-ways. And what -- we usually
12 make contact with the individuals that are congregating and
13 just do normal field interrogation to make sure we know who
14 we're talking to, and then we disperse them.

15 During such encounter I ran Mr. Glenn and remembered
16 that he was on the list of people -- his family was on the
17 list of people that were evicted prior. So I did more
18 research to find out at that time why he was evicted and if
19 a trespass notice -- if me entering a trespass -- issuing a
20 trespass notice at the time would have been pertinent.

21 After researching a little more and consulting with
22 Master Deputy Jumper, it was decided that we were going to
23 place him on trespass notice for loitering and not having a
24 residence out there any longer.

25 Q. Okay. And what did you do to make sure it was him?

DORSEY LAY - CROSS EXAMINATION BY MR. BRUMBACK

197

1 A. It was ---

2 Q. Marquez Glenn I should say for the record.

3 A. Verified it through my in-car computer with a State
4 issued ID along with a mobile mugshot.

5 Q. Okay. And as part of getting ready for this trial did
6 you confirm that Mr. Glenn is still on that list for no
7 trespass at Spring Grove?

8 A. Yes, sir.

9 Q. Okay. And what were -- what did you find out?

10 A. That he's still presently on trespass notice.

11 Q. All right. Thank you very much. That's all I have.

12 **Cross Examination by Mr. Brumback:**

13 Q. Officer Lay, you indicated it was secondary employment
14 at Spring Grove at the time, is that correct?

15 A. Yes, sir. During secondary employment we're actually
16 working for the -- whoever you're working for, but we're
17 still acting as a law enforcement officer.

18 Q. Okay.

19 A. It's just considered secondary employment because we're
20 not actually in a call rotation for the sheriff's office.

21 Q. Okay. Excellent. And so at that time who were you
22 employed by?

23 A. The Spring Grove Apartment complex.

24 Q. Okay. And do you know who owned Spring Grove Apartment
25 complex at that time?

1 A. At the time I can't recall, no. I know they've changed
2 hands a couple of times. The present -- since then. I
3 can't remember the name of the management company at this
4 point.

5 Q. Okay. All right. Are you still employed by Spring
6 Grove?

7 A. No, sir.

8 Q. When did your employment with Spring Grove complex
9 stop?

10 A. I don't remember the exact date. It was approximately
11 a year after that. I changed units within the sheriff's
12 office, and the secondary employment was no longer
13 convenient for me.

14 Q. Okay. All right. Thank you very much.

15 THE COURT: You can step -- oh, you got another
16 question?

17 MR. HOLLOWAY: Yes, sir.

18 THE COURT: I'm sorry.

19 MR. HOLLOWAY: Your Honor, that's all I have for this
20 witness.

21 THE COURT: All right. You can step down.

22 MR. HOLLOWAY: Your Honor, the next witness for the
23 State, the State calls Eric Whaley to the stand.

24 Eric Whaley, being duly
25 sworn testified as follows;

1 **MADAME CLERK:** Please have a seat. Can you please
2 state your name for the record.

3 **MR. WHALEY:** Eric Whaley.

4 **Direct Examination by Mr. Holloway:**

5 **Q.** All right. Officer Whaley, tell us your rank and where
6 you work.

7 **A.** I'm a master deputy with the Greenville County
8 Sheriff's Office.

9 **Q.** Okay. And tell the Court, just in general, how you
10 became involved in this case.

11 **A.** At the time I was working as a homicide investigator in
12 the Violent Crimes Unit. And I was called out by a road
13 supervisor the night of the shooting and asked to respond.

14 **Q.** And you actually went out to this -- to the scene of
15 the crime?

16 **A.** Not that night, no.

17 **Q.** Okay. As part of your investigation did you, I mean,
18 did you interview the key parties in this case?

19 **A.** Throughout the investigation, yes, I spoke with most
20 everybody.

21 **Q.** Okay. Would that include Mr. Glenn?

22 **A.** Yes.

23 **Q.** Okay. Can you describe your interview with Mr. Glenn,
24 how that transpired, when he came up to your office?

25 **A.** Sure. A few days after the shooting, I don't remember

1 exactly, I've got it in my notes, I was back out at Spring
2 Grove talking to the residents, at which time the resident
3 of the apartment allowed us to communicate with Mr. Glenn's
4 brother by phone. At which time I did -- his name is
5 Tivarius -- is that correct?

6 Q. Yes.

7 A. Okay. Spoke to him by phone and asked if he would
8 speak with us at the law enforcement center. He agreed.
9 And a couple of days later Tivarius, the dad and Marquez
10 Glenn came into the law enforcement center at which time I
11 interviewed them.

12 Q. Okay. In general can you describe what Mr. Glenn said
13 about the shooting in this case?

14 A. He said that he was out at the apartment complex and
15 that ---

16 **MR. BRUMBACK:** Objection. Hearsay, Your Honor.

17 **THE COURT:** Talking about Mr. Glenn, the Defendant.

18 **MR. HOLLOWAY:** The party ---

19 **THE COURT:** I overrule the objection.

20 A. That he was at the party. He went to the store, came
21 back. There had been an altercation that he was not
22 involved in. Police were there. Kevin Bruster and Elfonso
23 Bruster came back after the altercation. Kevin Bruster
24 assaulted Mr. Glenn. Mr. Glenn was blinded by alcohol in
25 his eyes. He pulled out a gun that he had, fired what he

1 thought to be three shots. Jumped in the car. Spoke to the
2 police and left.

3 Q. In your investigation did you confirm whether he
4 actually did speak to the officers who were -- who would
5 have been there and were there at the time of the shooting?

6 A. Yes. We didn't know who the people were in the car
7 when they left. That was part of the investigation. We did
8 not know. And the deputies that I interviewed that were
9 involved in this case, no one ever mentioned anybody saying
10 their name or that they'd shot anybody. It was very vague
11 when they passed each other in the apartment complex.

12 And it took us a while to figure out who the
13 participants were. And I did speak with all the deputies
14 throughout this investigation and actually had a couple of
15 deputies go back with me to the scene days later to explain
16 where things were, who they spoke to, what apartments they
17 were in, kind of walked me through step by step of what
18 happened.

19 Q. Okay. Did you learn whether Mr. Glenn actually spoke
20 to the two officers who were out there just after the
21 shooting?

22 A. They -- the deputies told me that they did speak with
23 some people leaving in a car, but they didn't know who they
24 were because nobody identified themselves and they didn't
25 say that they were involved. They just said, hey, there was

1 a fight down there.

2 Q. So whoever talked to those deputies didn't say I shot
3 so and so?

4 A. No. And they would have been detained. If they said I
5 shot somebody, the deputies would have got out of their car
6 and would have said, well, you can't leave. That did not
7 happen.

8 Q. Okay. In your interview with the Defendant did he tell
9 you where the gun is?

10 A. In the river, Reedy River.

11 Q. Okay. Did he ever come back and offer to help you find
12 that gun?

13 A. No.

14 Q. Did he say what kind of gun it was?

15 A. It was a small caliber handgun.

16 Q. Thank you very much. Please answer any questions
17 opposing counsel has for you.

18 **Cross Examination by Mr. Brumback:**

19 Q. So Mr. Glenn came down and gave you a statement based
20 on his own volition, correct?

21 A. Yes, sir.

22 Q. Okay. Was he being cooperative?

23 A. Yes, sir.

24 Q. Okay. Do you find people who have attempted to murder
25 people generally come down to your office and give

1 statements and attempt to be cooperative with the police?

2 A. Yes, sir, a lot of people do.

3 Q. Okay. That's interesting. Had Mr. Glenn not come down

4 to your office and given a statement would you otherwise

5 known who was involved in the shooting?

6 A. Yes, sir.

7 Q. Okay. How would you have known that?

8 A. Throughout the investigation we had been able to

9 determine who the parties were, who the parties were

10 involved. And after even speaking with his brother on the

11 telephone he even told me who his brother was and who shot.

12 So he had been identified prior to them coming down.

13 Q. Okay. Was he contacted about assisting to find the

14 handgun after your interview?

15 A. No, he was not.

16 Q. That's all I have. Thank you.

17 **THE COURT:** All right.

18 **MR. HOLLOWAY:** Your Honor, that's all I have for this

19 witness ---

20 **THE COURT:** All right.

21 **MR. HOLLOWAY:** --- at this time.

22 **THE COURT:** You may step down. Thank you. Call your

23 next witness.

24 **MR. HOLLOWAY:** The State calls Elfonso Bruster.

25 **Elfonso Bruster,** being

1 duly sworn testified as follows;

2 **MADAME CLERK:** Please state your full name for the
3 record and spell your first.

4 **MR. BRUSTER:** Elfonso Bruster, E-l-f-o-n-s-o.

5 **MADAME CLERK:** Thank you.

6 **Direct Examination by Mr. Holloway:**

7 Q. Mr. Bruster, can you tell the Court what happened on
8 April the 12th -- the night of April 12th, 2013.

9 A. I -- I was visiting my kids at my baby mama house. And
10 we was out there in the breeze-way chillin'. And my uncle
11 -- I heard somebody screaming, calling my name. So I turned
12 around, and he came up -- he came from the back of us. So
13 he was like, man, they done jumped on me, they done jumped
14 on me. They beat me down like a rag doll. Come help me get
15 my moped back.

16 Because like the day before the police knocked at my
17 kids' mother door, and I was up there. And they wanted me
18 to take him home because he was drunk down at Shelricka's
19 house, and they had got the police on him. So I took him
20 home.

21 And so he come back up there the next day with the same
22 story. I was like, man, go on with that, man, go on. He
23 was begging, please, I just want my moped, I just want my
24 moped. And so I'm like, all right, man. So we walked down
25 through there.

1 So as we come out through the cut, we came out through
2 the cut. And so as we was walking up the sidewalk the first
3 person I saw was Marquez 'cause they was standing right
4 there by the car. But I knew him from the neighborhood.

5 So I just walked up on him, what happened down here,
6 man? And as soon as I said that, my uncle punched him,
7 boom. So I was like, dang.

8 And so when my uncle punched him, he was on the ground.
9 And so as he was on the ground, he was getting up, he was
10 fumbling in his pocket. I already knew what time it was.
11 So I put my hands up. So as he got up with the gun, he was
12 like, nigger, die, nigger, and started busting the gun,
13 boom, boom, boom, boom, boom.

14 Q. When you say he, who was he?

15 A. Marquez Glenn.

16 Q. Okay. And he said what again?

17 A. Nigger, die, and started busting the gun.

18 Q. Okay. And what happened after that?

19 A. I just hit the ground. And while I was on the ground
20 his brother, Tivarius, ran over and kicked me in my face.

21 Q. Okay. Did you punch anybody else?

22 A. I didn't have time. It happened so quick. As we
23 walked up on him, I knew him from the neighborhood, so I
24 asked him what was going on. They was like a little crowd
25 right there. I ain't know what was going on.

- 1 So I asked him what was going on. And as soon as I
2 asked him that, he was about to say something, my uncle
3 punched him, boom. And then it went from there.
- 4 Q. Where did the bullets hit you?
- 5 A. In my arm and in front of my chest.
- 6 Q. Okay. And as a result of the injuries what happened?
- 7 A. Paralyzed me.
- 8 Q. And you're, just for the record, you're paralyzed from
9 the waist down, approximately?
- 10 A. Um-hum (affirmative).
- 11 Q. Okay. Were you carrying a gun?
- 12 A. No, I wasn't carrying no gun.
- 13 Q. Okay. Is there anybody that you know that lives at
14 this complex?
- 15 A. At what complex?
- 16 Q. At Spring Grove?
- 17 A. What, right now?
- 18 Q. Well, at the time.
- 19 A. Yes, sir.
- 20 Q. Who?
- 21 A. My kids' mother.
- 22 Q. Okay. And your children, too?
- 23 A. Yes, sir.
- 24 Q. Okay. Did that have any bearing on your wanting to
25 carry a gun out there?

1 A. What for? I ain't -- I ain't mess with nobody out

2 there. So I -- I ain't have no reason to carry no gun.

3 Q. All right. Thank you very much.

4 **Cross Examination by Mr. Brumback:**

5 Q. Mr. Bruster, are you right handed or left handed?

6 A. Right handed.

7 Q. Right handed. Okay. From where your uncle contacted
8 you, your uncle Kevin, contacted you to the scene where you

9 came up on Mr. Glenn, what distance is that?

10 A. Like two minutes, three minutes walking.

11 Q. Two minutes, three minutes walk?

12 A. Um-hum (affirmative).

13 Q. Okay. I don't want to put you out, I was just -- if
14 it's easy for you, could you indicate on State's exhibit 3,
15 and I guess I could move that for you, if you'd like. If
16 you could indicate where your uncle came up on you and asked
17 you to come with him.

18 A. We was in this breeze-way right here.

19 Q. Okay. You were in that breeze-way. About -- would you
20 generalize that about halfway across the complex?

21 A. Probably the middle.

22 Q. About halfway is fair?

23 A. Um-hum (affirmative).

24 Q. Okay. All right. And so can you point to where the
25 altercation with Mr. Glenn occurred?

1 A. Right here.

2 Q. Okay. All right. Thank you. That's all I have for
3 State's exhibit 3. Were you on a no trespass notice for ---

4 A. No, sir.

5 Q. You were not?

6 A. (Negative nod).

7 Q. Okay. Do you recall giving an oral statement to
8 officers concerning the events of this night?

9 A. Yes, sir.

10 Q. Okay. Do you recall indicating that after getting
11 punched by your uncle, Mr. Glenn pulled a gun and you asked
12 him, dang, man, what you gonna do, shoot me?

13 A. I just put my hands up like, dang. I already knew what
14 he was gonna do. That's what he's known to do. So I
15 already knew what time it was. And when he came up, he just
16 started busting.

17 Q. Okay. So you do recall or don't recall making that
18 statement?

19 A. I probably did.

20 Q. Okay. All right. And, I'm sorry, I didn't catch this
21 earlier. I just want to be clear. What was the reason your
22 uncle asked you to come down there with him?

23 A. 'Cause he said they jumped on him and he wanted his
24 moped back.

25 Q. He wanted more, I'm sorry?

1 A. They jumped on him, and he wanted me to walk down
2 there, he was gonna get his moped back so he could leave.

3 Q. Okay.

4 A. But, obviously, he had other intentions when we got
5 down there I ain't know nothing about.

6 Q. Okay. From the time that your uncle struck Mr. Glenn
7 to the point where shots are fired, how long was that?

8 A. Probably like ten seconds.

9 Q. Had you been drinking that night?

10 A. I had a couple of shots.

11 Q. Couple of shots of what?

12 A. E&J.

13 Q. Had you been doing any other substances that night?

14 A. No, sir.

15 Q. Do you know whether your uncle was drinking that night?

16 A. I'm pretty sure he was 'cause that what he do every
17 day.

18 Q. That's what he does every day?

19 A. Um-hum (affirmative).

20 Q. Were y'all looking for trouble when you went down
21 there?

22 A. No. My intention was to go down there and help him get
23 his moped back so he can go -- 'cause he came over at my
24 house the day before, and I was like, nobody want to go
25 through all that.

1 Q. Okay. On the night in question did -- how did your
2 uncle get to the property?

3 A. I don't know. That's what I don't know. I was out
4 there visiting with my -- my kids. And he was down there
5 doing what he do. I don't know how he got down there.

6 Q. Okay.

7 A. I know I took him home the night before though.

8 Q. Okay.

9 MR. BRUMBACK: That's all I have for this witness.
10 Thank you.

11 THE COURT: All right. Any more ---

12 MR. HOLLOWAY: No, sir, I don't.

13 THE COURT: All right. You can go back to where you
14 were. Thank you. Appreciate your time.

15 A. Yes, sir.

16 MR. HOLLOWAY: Your Honor, that's all the State has for
17 this matter.

18 THE COURT: All right. Mr. Brumback, I'll be glad to
19 hear your position on this. I know it, but with some more
20 particularity.

21 MR. BRUMBACK: Yes, Your Honor. Based on the evidence
22 which has been produced by these various witnesses and the
23 corroborative nature of the testimony, which has been given
24 by numerous witnesses, some of who knew Mr. Glenn prior to
25 that night, some who didn't really know Mr. Glenn prior to

1 that night, I think that the Defense has established at
2 least by a preponderance of the evidence that Mr. Glenn was
3 an invitee to the property on that evening in question such
4 that regardless of the existence of a trespass notice that
5 he was lawfully permitted to be on the property for
6 purposes, and outside of any given apartment that he was
7 invited to, for purposes of the ingress and egress in that
8 apartment, which at the time of the attack he was actually
9 egressing the apartment to return to his vehicle to depart
10 from the property.

11 With regard to the issue of possession of a gun, I have
12 assisted the -- given the Court additional authority
13 concerning the issue of possession, which contrary to the
14 State's argument, I believe, suggests that possession is
15 having something within your custody and control. So given
16 the case law stating that one can have in their possession
17 -- unlawfully have in their possession a gun and yet use
18 that gun if in that -- if they arm themselves incidental to
19 the moment when they are able to and lawfully self-defend
20 themselves, they have not engaged in an unlawful act which
21 would preclude them from statutory immunity under the
22 grounds of self-defense.

23 I think that we have also established that Mr. Glenn at
24 no time made the handgun known to anyone. In fact, the
25 evidence shows that Mr. Glenn spoke to police officers with

1 the gun on him, and the police officers did not even know of
2 the existence of the gun. Had they known of the existence
3 of the gun, Mr. Glenn most likely would have been arrested
4 at that point. So to say that this gun had any relation to
5 the escalation or to the reason for his attack, which
6 ultimately put him in reasonable fear for his life, I think
7 is sort of a bunk argument.

8 Mr. Glenn only resorted to his firearm once he had been
9 attacked by two larger individuals, two substantially larger
10 individuals than himself, and he used the gun to defend
11 himself after seeing someone reach to their waistband and
12 hearing someone yell gun. Given those circumstances I think
13 that Mr. Glenn lawfully armed himself, actually reached for
14 and intended to use the handgun in a lawful manner at the
15 time when his life was put into jeopardy, Your Honor.

16 **THE COURT:** All right. Mr. Holloway.

17 **MR. HOLLOWAY:** Thank you, Your Honor. As the Court is
18 aware that to prove that the Defendant's entitled to
19 immunity under the statutes, it's all the elements of self-
20 defense. It's just that he doesn't have a duty to -- to
21 flee the ---

22 **THE COURT:** Retreat.

23 **MR. HOLLOWAY:** --- scene, to retreat.

24 The elements are, obviously, the defendant was without
25 fault in bringing on the -- what happened, he actually

1 believed he was in imminent danger of losing his life, that
2 a prudent person of ordinary firmness and courage would have
3 entertained the same belief and he had no other probable
4 means of avoiding the danger of losing his life. I think
5 the Defendant fails on each and every one of these elements.

6 Their own witnesses can't keep it straight on whether
7 Elfonso had a gun or was even reaching for a gun. They are
8 not credible when it comes to the assertion that even a
9 reasonable person would have feared assuming if what half
10 the witnesses say, Elfonso was reaching for or reaching this
11 side because their witnesses can't even tell the Court that
12 Elfonso reached for this side or this side, that he ---

13 THE COURT: Well, ---

14 MR. HOLLOWAY: --- shifted over.

15 THE COURT: --- I think the issue that I'm concerned
16 about more is whether he had a right to be there or not.

17 MR. HOLLOWAY: Right.

18 THE COURT: Not only that, but what you're going into
19 now, and, quite frankly, I hate to be rude, but I ---

20 MR. HOLLOWAY: That's okay.

21 THE COURT: --- think that has more to do with self-
22 defense if that's, if the case goes forward, as a defense is
23 where he was at the time this -- to decide whether he has
24 immunity or not.

25 MR. HOLLOWAY: Yes, sir. Well, in that case, the fact.

1 is he didn't have a right to be there. As I mentioned
2 yesterday in my opening argument in order for him to have a
3 right, and if you want to look at, you know, the standard
4 definition of what is a right, in this situation didn't even
5 have any property right, any authority that was given to him
6 to be at that property, and he was not. The actual property
7 owners told him, don't ever come back. That is the purpose
8 of issuing a no trespass notice.

9 As I said yesterday, these complexes shouldn't have to
10 repeatedly tell somebody don't come back, you're not wanted
11 here, you don't live here. Certainly someone that has a
12 conviction for domestic violence, they wouldn't want
13 somebody there with that prior record.

14 **THE COURT:** All right. What's in the record regarding
15 -- I know the last witness testified that Mr. Glenn was on
16 some sort of a no trespass.. Tell me more about that, the no
17 trespass notice and how it was -- when and how it came
18 about.

19 **MR. HOLLOWAY:** Yes, sir. It was ---

20 **THE COURT:** Based on the record.

21 **MR. HOLLOWAY:** Yes, sir. On the record, the Defendant
22 in October of 2010 was issued a verbal no trespass notice.
23 The sheriff's deputy testified -- found him with a group of
24 individuals in a stairwell and found out by checking through
25 their database through the sheriff's office by calling in on

1 his radio that this Defendant didn't live there, he and his
2 family were kicked out about, at that time, five months
3 prior, six months prior.

4 So any authority he had to be on the property by virtue
5 of that, essentially termination of that lease, ended his
6 authority. And if that wasn't enough, he was then told by
7 the person the complex has given the right to issue these
8 verbal no trespass notices, you're not wanted on this
9 property.

10 **THE COURT:** And that was the officer?

11 **MR. HOLLOWAY:** Yes, sir. The Defense is -- and I can
12 go into the other arguments if the Court is inclined to hear
13 it, but what's important, I think, is reading State versus
14 Smith, the citation is 752 SE 2d 795, along with State
15 versus Slater. And that's a Supreme Court case in 2007.

16 Essentially, we're not arguing by simply a virtue of
17 having a prior conviction for domestic violence is the end-
18 all be-all as in Slater. The issue in Slater was the -- was
19 the defendant entitled to assert a self-defense simply
20 because he was under the age of 21 and found in possession
21 of a firearm?

22 By the way, that statute was actually found
23 unconstitutional ---

24 **THE COURT:** That's because some judge issued an order
25 that ---

1 **MR. HOLLOWAY:** I think I know the judge.

2 **THE COURT:** Yeah.

3 **MR. HOLLOWAY:** That's not what we're saying. And, of
4 course, Slater describes was the defendant in proximate
5 cause of the wrongfulness of what happened or the situation
6 that did erupt? No one else had a gun out there but him.
7 He armed himself -- technically, he armed himself before
8 entering the property. By his own words he said, I only
9 bring a gun to this property. Now, on the stand, two and a
10 half years later, he says, well, I arm myself everywhere
11 else, which, is again, against federal law. He cannot
12 possess a firearm.

13 It is safe to say that but for the Defendant's
14 producing a gun, this simply would have been a fist fight.
15 He brought a gun to a fist fight. How can he not be
16 considered the proximate cause of escalating the situation
17 from a fist fight to gunfire, which is what Slater is
18 talking of, the exchange of gunfire? What was the proximate
19 cause of the eruption of gunfire?

20 With regard to analyzing whether the Defendant could
21 assert lethal force against a man who never even punched
22 him, never even touched him, and as the Court is aware, we
23 don't have transferred intent in this State when ---

24 **THE COURT:** Well, now you're still going -- you're
25 going back into self-defense stuff, not ---

1 **MR. HOLLOWAY:** Yes, sir.

2 **THE COURT:** Unless you make it dovetail with proximate
3 cause.

4 **MR. HOLLOWAY:** Well, also going toward the wrongfulness
5 of his actions, he did admit that he did purchase this gun.
6 This is -- the gun he used to shoot at Elfonso was not a
7 legal gun. It wasn't purchased by a legal vendor. That
8 also goes to the wrongfulness.

9 And I think with proximate cause, it's the
10 foreseeability of his action, the foreseeability of coming
11 on this property with a loaded gun, which he says was
12 loaded. Was it foreseeable that, you know, some activity,
13 some unseemly or violent activity would erupt?

14 And I think with his actions -- I think he -- I think
15 it was said earlier that my victim, Elfonso, was looking for
16 trouble. I think it's the other way around. I think based
17 on these facts, Mr. Glenn was looking for trouble. So how
18 can the Court grant him immunity from prosecution based on
19 these facts?

20 **THE COURT:** All right. Mr. Brumback, any response?

21 **MR. BRUMBACK:** Yeah, Your Honor. First of all, with
22 regard to the property rights discussion, as we cite in our
23 memorandum, there's a recent South Carolina Supreme Court
24 opinion which holds a trespass is an invasion of the
25 interest in the exclusive possession of land.

1 In this case the individuals who owned the property at
2 the time, I believe, would have to be the ones who put Mr.
3 Glenn on a trespass notice. I don't see how a prior owner
4 of a property complex can put someone or prior owner of
5 property, let's just extend it to that, a prior owner of
6 property sells that property to someone else, does that
7 person remain on a trespass notice from here until eternity?
8 I would think it is the owner of the property who has the
9 right to exclude persons from that property with regard to
10 putting someone on trespass.

11 But regardless of that, when an owner of property
12 leases property to another individual, they give up some of
13 that bundle of sticks. And part of that bundle is the
14 ability to invite people, whoever they want to invite, to
15 their premises for lawful purposes to visit them.

16 And if they invite them, they have granted a license.
17 They have granted a portion of their bundle of sticks to
18 that person, in this case, Mr. Glenn, for purposes of
19 visiting them, effectuating that visit.

20 And since, you know, we don't just simply appear and
21 disappear places, that person has a right to reasonably
22 ingress and egress. And so on the evening in question Mr.
23 Glenn was visiting people at the complex and he was, at the
24 time, exercising a reasonable egress from the premises when
25 he was attacked by these individuals.

1 With regard to ---

2 **THE COURT:** Even though he was under trespass notice?

3 **MR. BRUMBACK:** Even though he was under trespass
4 notice. I think the citations we've provided in our brief
5 go from these Massachusetts cases to the Attorney General
6 opinion to law reviews from the Harvard Law Review and the
7 authorities to the ALRs from the 70's.

8 I think that the general consensus to the authorities
9 is that a person who is leased property, a person who rents
10 a property has a right to invite persons to their premises
11 even over the trespass objection of a landlord. And that
12 decision is ultimately, obviously, for the Court, but I
13 think that the case law and everything supports that
14 position.

15 That said, I think the issue of proximate cause, first
16 of all, as you see ---

17 **THE COURT:** You don't need to talk about that. I've
18 got my handle on that part.

19 **MR. BRUMBACK:** Okay. All right, Your Honor. Well, if
20 the issue that the Court wants to discuss is this issue of
21 trespass, ---

22 **THE COURT:** I think I've got a pretty good handle on
23 that, too. I just want to make sure you've exhausted what
24 you want to say about ---

25 **MR. BRUMBACK:** I think that ---

1 **THE COURT:** --- all that.

2 **MR. BRUMBACK:** That's all we have, Your Honor.

3 **THE COURT:** All right. Well, I'm reviewing this. And
4 keep in mind that this ruling is solely for the purpose of
5 this immunity motion and does not bear on any self-defense
6 defense, but I deny the motion for immunity.

7 I find that to follow the Defendant's logic and the
8 logic of the Massachusetts' cases and the other literature
9 in essence neuters trespass notices. I think a landlord has
10 a right, if not the duty and obligation, to protect the
11 safety of all the tenants of a project.

12 I do not believe the rights of the tenant to have
13 guests of their choice overrides the duty and right of the
14 landlord to protect the entire community from having
15 troublemakers, and that's generally what trespassers are,
16 and I'm not saying that Mr. Glenn is a troublemaker, but
17 that's generally where we find trespass, from having
18 troublemakers on the property. This overriding duty trumps
19 any particular rights that the tenant may have.

20 In spite of the well articulated argument and the
21 cases, I do not believe, at least under the South Carolina
22 -- well, there is no real South Carolina law, but I do not
23 believe that a landlord -- a tenant has unfettered rights.
24 As the way of example, they can be told they can't have
25 pets, they can be told they can't have a business, they can

1 be told they can only have a certain number of occupants,
2 they can be told that the occupants have to be relatives.

3 So I do not follow the logic of the Massachusetts cases
4 that there are certain rights, and our Appellate Courts may
5 determine different, that there are certain rights that
6 exist and override the rights -- and, again, I think it's an
7 obligation and a duty.

8 We have cases dealing not directly with this that
9 indicate that owners of property have a duty to keep the
10 people who come upon the property. There's a recent case
11 dealing with the Harbison Community in -- it's not directly
12 on point, but my point is that the property owner has an
13 obligation and a duty to protect anyone that comes on the
14 premises.

15 So I do not -- I find that the immunity argument fails
16 solely on the issue of whether or not he had a right to be
17 there. I find he did not.

18 As to any illegal activity, I believe this phrase
19 addresses active illegal activity such as a drug deal, an
20 assault, armed robbery. I believe passive activity, even if
21 it allegedly does not come under the phrase, under this
22 phrase, does not -- let me rephrase that. Passive activity
23 such as Mr. Glenn's carrying an illegal weapon, I don't
24 believe comes under the phrase illegal activity as
25 envisioned by the Legislature. I think it has to be a more

1 active illegal activity.

2 I find that Mr. Glenn's, and this, again, is solely for
3 the purposes of this motion, Mr. Glenn's illegal activity or
4 illegal act of having the pistol was not a proximate cause
5 of the incident. So as to the two sort of prongs, I find
6 that immunity fails based on his not having the right to be
7 there, but that I do not find that he was engaged in an
8 illegal activity, which would prevent him from -- from
9 having immunity but for his not being allowed on the
10 property.

11 So I find that he is not clothed with the immunity
12 provided by section 16-11-440 and 450 because he was not at
13 a place he had a lawful right to be at the time of the
14 incident. So the motion is denied.

15 Now, we've got the jury here. Let's take a break, and
16 we'll get started with the trial.

17 **MR. HOLLOWAY:** Your Honor, just one real quick -- the
18 statement that Mr. Glenn made, I wanted to get the Court to
19 -- based on what we've heard already, I believe it's pretty
20 clear it was given in a voluntary manner. I don't know if
21 the Court wants to go ahead and rule on the statement given
22 by him and say it was a voluntary statement given to the
23 officer at this point versus doing a hearing on the ---

24 **THE COURT:** Well, I don't remember there being anything
25 about Miranda warnings on the statement that I heard.

CHARGE OF THE COURT

479

1 **MR. BRUMBACK:** I'd like to make a brief objection. I
2 think per your motion in limine regarding the victim
3 statement, I believe Mr. Elfonso Bruster was referred to as
4 a victim there in the closing argument. And I'd just like
5 to put that objection on the record. I don't know how we
6 could necessarily rectify that without maybe making it
7 worse, but I would like to put that objection on the record.

8 **THE COURT:** All right. Well, I understand. And we did
9 -- I did rule that we should stay away from that word.
10 That's basically a jury question. However, I use in my
11 charge the word victim. But you're on record as -- in
12 regard to the arguments.

13 **MR. BRUMBACK:** Thank you, Your Honor.

14 **THE COURT:** All right. We'll take about a five minute,
15 real quick refresher break. And then we'll do the charge.

16 (Whereupon court was in recess at 10:52 am)

17 (Whereupon court reconvened at 11:05 am)

18 **THE COURT:** Be seated. State ready?

19 **MR. HOLLOWAY:** Yes, sir.

20 **THE COURT:** Defense?

21 **MR. BRUMBACK:** Yes, Your Honor.

22 **THE COURT:** Bring in the jury.

23 (Whereupon the jury entered the courtroom at 11:06 am)

24 **THE COURT:** Members of the jury panel, I appreciate
25 your attention to me and to the attorneys and to the

CHARGE OF THE COURT

480

1 witnesses to this point in the trial. And I ask you to pay
2 me your undivided attention for a few minutes while I charge
3 you the law that you are to apply to the facts in this case.

4 The indictment charges Mr. Glenn with two counts, and
5 the fact that there are two counts is of no importance.
6 That's just the way the State has charged him.

7 One is with attempted murder. It's alleged that that
8 occurred or both of these occurred on July -- April 12th,
9 2013 here in Greenville County, South Carolina when Mr.
10 Glenn with malice aforethought attempted to kill -- shot Mr.
11 Elfonso Bruster. And it's alleged in the second count that
12 at that time he used a weapon in the commission of a violent
13 crime, that being attempted murder.

14 I'll tell you at this time that the fact that Mr. Glenn
15 has been charged, the fact that he has been indicted in this
16 case is not evidence and cannot be considered by you as
17 evidence of guilt in this case. It does not create any
18 presumption of inference or guilt. That's just the way our
19 system works.

20 When someone is thought to have committed an offense,
21 they are arrested, processed, case goes through the system
22 and they come to trial, and it is up to a jury to determine
23 whether or not the State meets its burden of proving that
24 person's guilt beyond a reasonable doubt. So the fact that
25 he is on trial is of no importance whatsoever and does not

CHARGE OF THE COURT

481

1 mitigate against him at all. It does not raise any
2 presumption of guilt or inference of guilt.

3 Each indictment charges a separate and distinct
4 offense. You must decide each indictment separately on the
5 evidence and the law applicable to it uninfluenced by your
6 decision as to other indictments.

7 However, I will charge you in my charge the --- that
8 there are what we call lesser included offenses in this
9 charge. That is, he is charged with attempted murder,
10 however, under our laws we have a sort of stair-step system.
11 He's charged with attempted murder, however, the State, I'm
12 sorry, however, a jury is allowed to consider if you do not
13 find the State has proven that guilt beyond a reasonable
14 doubt, lesser included offenses, in this case, assault and
15 battery of a high and aggravated nature, assault and battery
16 in the first degree and assault and battery in the second
17 degree.

18 So I will charge you more about that later, but in
19 order to find Mr. Glenn guilty under count two of the
20 indictment you would have to find him guilty of a violent
21 crime. In that stair-step of offenses, attempted murder,
22 which he's charged with, and assault and battery of a high
23 and aggravated nature are violent crimes. If you do not
24 find him guilty of one of those, and of course if you find
25 him not guilty, you wouldn't even consider the second count.

1 But you would have to have found him guilty of a violent
2 crime, assault and battery with intent to kill, I'm sorry,
3 yeah, assault and battery -- attempted murder or assault and
4 battery of a high and aggravated nature before you could
5 even consider count two, commission of a violent crime while
6 being in possession of a weapon.

7 Mr. Glenn, like anyone charged with any offense in our
8 system, is presumed innocent. He has pled not guilty to
9 this indictment. And it places on the State the burden of
10 proving his guilt beyond a reasonable doubt.

11 In South Carolina no one is required to prove themself
12 innocent. This presumption of innocence is an important
13 rule of law. No matter how the serious -- how serious an
14 offense may be, a defendant will always be presumed innocent
15 of the crime for which he has been indicted in his own trial
16 until his guilt has been proven by evidence satisfying you
17 of that person's guilt beyond a reasonable doubt.

18 This presumption of innocence does not end when you
19 begin deliberation, but it accompanies the Defendant
20 throughout the trial until you reach a verdict of guilt
21 based on evidence satisfying you of that person's guilt
22 beyond a reasonable doubt.

23 This presumption of innocence attached to Mr. Glenn at
24 the time he was arrested, and remained with him as his case
25 has processed through our court system, remains with him at

CHARGE OF THE COURT

483

1 this moment, and remains with him as you deliberate.
2 Presumption of innocence in his favor is removed if and when
3 and only if and when you determine the State has proven his
4 guilt beyond a reasonable doubt.

5 Now, this presumption of innocence is not a mere legal
6 theory or mere legal phrase, it is a substantial right. And
7 it is overcome only if you determine the State has proven
8 his guilt beyond a reasonable doubt.

9 Our courts have defined a reasonable doubt as the kind
10 of doubt that would cause a reasonable person to hesitate to
11 act. Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of one's guilt. There are very few
13 things in our world that we can know with absolute
14 certainty. And in criminal case law, our law does not
15 require proof that overcomes every possible doubt.

16 If, based on your consideration of the evidence, you
17 are firmly convinced that Mr. Glenn is guilty of the crime
18 with which he is charged or one of the lesser includes, you
19 would find him guilty. If, on the other hand, you think
20 there is a real possibility that he is not guilty of the
21 charge or a lesser included, then you would give him the
22 benefit of that doubt and find him not guilty. Mr. Glenn is
23 entitled to the benefit of any reasonable doubt you have as
24 to any issue in this case.

25 I'll remind you that we have -- you and I have separate

CHARGE OF THE COURT

484

1 duties. Mine is to charge you the law. As trial judge I
2 have the duty to charge you the law that you are to apply to
3 the facts as you determine them to be in this case. You're
4 to consider only the competent evidence before you, which
5 would be the testimony and the exhibits.

6 And I have the additional duty to charge you the law.
7 I am the sole judge of the law. And you must take, accept
8 and apply the law as I charge it. This is true even if you
9 think the law should be different or even if you think I
10 charge you the law in error.

11 Our laws do not allow a trial judge to formulate or
12 express to a jury any opinion on the facts. It's solely in
13 your province to examine the evidence and to give to the
14 evidence the effect, the value, the weight and belief --
15 truth and belief you believe it should have.

16 You may believe one witness as opposed to several,
17 several witnesses as opposed to one. You may believe all, a
18 part or none of a witness' testimony. Use your common
19 sense, your sense of logic, your sense of reason and your
20 experiences of life as you analyze the evidence.

21 As judges of the facts you necessarily must judge the
22 credibility, that is the believability of the witnesses who
23 have testified. In assessing credibility use those things
24 that you find in your day-to-day life as indicating
25 truthfulness in an individual.

1 And you can use certain evaluators, a witness'
2 demeanor, how they act on the stand, are they hesitant or
3 straightforward, are they -- are their statements and
4 testimony consistent or inconsistent within their testimony
5 yesterday or when compared with statements given at an
6 earlier time. You can consider whether anyone has any bias
7 or prejudice, that is, any reason to help or hurt one side
8 or the other.

9 And you can consider the opportunity a witness had to
10 know those things about which they testified. All these
11 things you consider, determine the true facts, apply the law
12 and you'll be in a position to return a verdict that speaks
13 the truth.

14 Mr. Glenn is charged with attempted murder. In order
15 to prove this charge the State must prove beyond a
16 reasonable doubt that Mr. Glenn attempted to kill another
17 person with malice aforethought, either express or implied.

18 Malice is hatred, ill will or hostility towards another
19 person. Malice is the intentional doing of a wrongful act
20 without just cause or excuse and with an intent to inflict
21 any injuries or under circumstances that the law will infer
22 an evil intent.

23 Malice aforethought does not require that malice exist
24 any particular time before the act is committed, but malice
25 must exist in the mind of the Defendant just before and at

CHARGE OF THE COURT

486

1 the time the act is committed. Therefore, there must be a
2 combination of previous evil intent and the act.

3 Malice aforethought may be express or inferred. These
4 terms express and inferred do not mean different kinds of
5 malice, but merely the manner in which malice may be shown
6 to exist. That is either by direct evidence or by inference
7 from the facts and circumstances which are proven.

8 Express malice is shown when a person speaks words
9 which express hatred or ill will for another or when the
10 person prepared beforehand to do the act which was later
11 accomplished. For example, acts of preparation going to
12 show that the deed was within the Defendant's mind would be
13 express malice.

14 Malice may be inferred from conduct showing a total
15 disregard for human life. If facts are proved beyond a
16 reasonable doubt sufficient to raise an inference of malice
17 to your satisfaction, this inference would simply be an
18 evidentiary fact to be considered by you along with the
19 other evidence in the case, and you may give it such weight,
20 if any, as you decide it should receive.

21 A specific intent to kill is an element of attempted
22 murder. Intent means intending the results which actually
23 occurs, not accidentally or involuntarily. Intent may be
24 shown by acts and conduct of a defendant and other
25 circumstances from which you may naturally and reasonably

CHARGE OF THE COURT

487

1 infer intent.

2 Evidence of the character of the act, the character of
3 the instrument used, manner in which it was used, the
4 purpose to be accomplished and the resulting wounds or
5 injuries may be considered in determining the intent with
6 which an act was committed. Intent may also be inferred
7 when it is demonstrated that the Defendant voluntarily and
8 wilfully commits an act, the natural tendency of which is to
9 destroy another's life.

10 I talked to you earlier about assault and battery and
11 the lesser includeds. They are assault and battery of a
12 high and aggravated nature, assault and battery in the first
13 degree and assault and battery in the second degree.
14 Assault and battery I'm going to define for you. And that,
15 of course, applies to all three as their name suggests.

16 An assault occurs when a person unlawfully attempts or
17 offers to commit a violent injury upon another person and
18 had the present ability to complete the attempted injury.
19 An assault is the intentional creation of a reasonable fear
20 of immediate bodily harm.

21 It is not necessary that the attempted injury or harm
22 actually take place. I always use an example, if I am close
23 enough to you and I rare back my fist in a rude and angry
24 manner, and I'm close enough to strike you, and I -- then I
25 have assaulted you. I haven't hit you, but I've assaulted

CHARGE OF THE COURT

488

1 you.

2 A battery is the unlawful touching of another person by
3 a person who has committed an assault. An unlawful touching
4 can be caused by a part of the accused body or by any object
5 the accused has put in motion. A battery is the completion
6 of the assault by using or applying force to another person,
7 however slight, in a rude, angry or resentful manner without
8 legal justification for doing so.

9 As my example, if I rare back in a rude and angry
10 manner, and I'm close enough to strike you, then that's an
11 assault. If I follow through and actually make contact with
12 you, however slight, once I have engaged my body with your
13 body or something that I have put in motion, that completes
14 the battery. Assault is putting fear into the person. The
15 battery is completion of the assault.

16 In order to prove assault of a high and aggravated
17 nature the State must prove beyond a reasonable doubt that
18 the Defendant unlawfully attempted or offered to commit a
19 violent injury upon another person and had the present
20 ability to complete the attempted injury.

21 An assault is the intentional creation of a reasonable
22 fear of immediate bodily harm, as I've told you. It is not
23 necessary that an attempted injury or harm actually take
24 place, as I have already explained to you.

25 The State must also prove beyond a reasonable doubt, in

1 addition to proving the assault and battery, the State must
2 prove beyond a reasonable doubt circumstances of aggravation
3 including the use of a deadly weapon, or the infliction of
4 serious bodily injury, or a great disparity between the ages
5 or physical conditions of the parties. These are merely
6 examples of aggravation. And you may consider any act of
7 aggravation as to whether or not Mr. Glenn is guilty beyond
8 a reasonable doubt of committing an assault and battery of a
9 high and aggravated nature.

10 Next step down, that's step number one, assault and
11 battery of a high and aggravated nature. The second step
12 down is assault and battery, first degree. A person commits
13 the offense of assault and battery in the first degree if
14 that person unlawfully offers or attempts to injure another
15 person with the present ability to do so. And the act
16 either is accomplished by means likely to produce death or
17 great bodily injury or great bodily injury, I'm sorry, is
18 accomplished by means likely to produce death or great
19 bodily injury.

20 Great bodily injury means bodily injury which causes a
21 substantial risk of death or which causes serious permanent
22 disfigurement or protracted loss or impairment of the
23 functioning of a bodily member or organ. The State must
24 prove that beyond a reasonable doubt before you can convict
25 Mr. Glenn of that lesser included, assault and battery,

CHARGE OF THE COURT

490

1 first degree.

2 Assault and battery in the second degree, a person
3 commits the offense of assault and battery in the second
4 degree if the person unlawfully injures another person or
5 offers or attempts to injure another person with the present
6 ability to do so and moderate bodily injury to another
7 person results or moderate bodily injury to another person
8 could have resulted.

9 Moderate bodily injury means physical injury that
10 involves prolonged loss of consciousness, or that causes
11 temporary or moderate disfigurement or temporary loss of the
12 function of a bodily member or organ, or injury that
13 requires medical treatment when the treatment requires the
14 use of regional or general anesthesia or injury that results
15 in a fracture or dislocation.

16 Moderate bodily injury does not include one-time
17 treatment and subsequent observation of scratches, cuts,
18 abrasions, bruises, burns, splinters or other minor injuries
19 that do not ordinarily require extensive medical care.
20 Again, before you could even find Mr. Glenn guilty of that
21 last step, assault and battery, second degree, the State
22 must prove beyond a reasonable doubt those elements I
23 charged you.

24 Mr. Glenn is also charged -- there's a second count
25 with being in possession of a weapon during the commission

CHARGE OF THE COURT

491

1 of a violent crime. Here the State must prove beyond a
2 reasonable doubt that at the time of the incident Mr. Glenn
3 was in possession of a firearm and that he committed a
4 violent crime. A revolver and a pistol are considered
5 firearms.

6 In order to find the Defendant guilty of possession of
7 a weapon during the commission of a violent crime, you must
8 first find that he was guilty of either committing a violent
9 crime or attempting to commit a violent crime. Attempted
10 murder and assault and battery of a high and aggravated
11 nature, as I told you earlier, are violent crimes. The
12 State must prove beyond a reasonable doubt that the weapon
13 further advanced or helped in the commission of the crime.

14 Now, a CD was played of a statement alleged to have
15 been made by Mr. Glenn. That has been admitted into
16 evidence. While I determined that it could be admitted into
17 evidence, it is up to you as the trial jury in this case to
18 make the ultimate decision of whether or not he, Mr. Glenn,
19 made the statement.

20 If he did make the statement, you must determine
21 whether the statement was made by him voluntarily and of his
22 own free will. This means that the statement was not caused
23 by pressure, force, fear, threats, coercion, or
24 intimidation, or by hope, or a promise of leniency or a
25 reward of any kind.

CHARGE OF THE COURT

492

1 In determining whether the statement was voluntary you
2 should consider both the characteristics of the Defendant,
3 Mr. Glenn, and the details of any questioning. Some of the
4 facts you may consider are the Defendant's age, his
5 education or lack of education, his mental ability or
6 capacity, his IQ or intelligence, his background and
7 environment, the place and length of detention, the nature
8 of any questioning and the advice or lack thereof to him of
9 his constitutional rights, including, but not limited to the
10 right to remain silent, that any statement could be used
11 against him in a court of law, the right to have a lawyer
12 present, that if he could not afford a lawyer, a lawyer
13 would be appointed to represent him without any cost and
14 that he could stop making his statement at any time.

15 You must carefully consider all the surrounding
16 circumstances before you give any weight to any of his
17 statement. The State has a burden of proving beyond a
18 reasonable doubt that the alleged statement was voluntary.
19 If you determine it was, you may give it any further
20 consideration deemed proper.

21 You as the trial jury must decide what weight, if any,
22 should be given to the alleged statement. If you determine
23 the alleged statement was not the free and voluntary
24 statement of Mr. Glenn, you should not consider the
25 statement at all.

CHARGE OF THE COURT

493

1 There's been evidence in this case that witnesses have
2 made prior statements which are not consistent with their
3 present testimony. I alluded to that a moment ago when I
4 told you you may consider that in determining a witness'
5 credibility.

6 As I said, you use this evidence to decide whether to
7 believe a witness.. You may also use this evidence of
8 earlier contradictory statements to determine the truth of
9 the statements. It is up to you to decide whether to
10 believe an earlier statement or the testimony given at trial
11 by a witness.

12 If a witness has shown to have knowingly testified
13 untruthfully concerning any material matter, you may
14 consider this in determining whether to trust the witness'
15 testimony as to other matters. You may reject all testimony
16 of a witness or give all or a part of a witness' testimony
17 the weight you think that testimony deserves.

18 Mr. Glenn has raised the defense of self-defense.
19 Self-defense is a complete defense. And if it is
20 established, you must find him not guilty. The State has
21 the burden of disproving self-defense by proving beyond a
22 reasonable doubt -- by proof beyond a reasonable doubt.

23 If you have a reasonable doubt of his guilt after
24 considering all of the evidence, including the evidence of
25 self-defense, I'm sorry, if you have a reasonable doubt of

CHARGE OF THE COURT

494

1 Mr. Glenn's guilt after considering all of the evidence,
2 including the evidence of self-defense, you must find him
3 not guilty. On the other hand, if you have no reasonable
4 doubt of his guilt after considering all of the evidence,
5 including the evidence of self-defense, then you would find
6 him guilty.

7 The following evidence are required to establish self-
8 defense. First, the Defendant must be without fault in
9 bringing on the difficulty. If the Defendant's conduct was
10 the type which was reasonably calculated to and did provoke
11 a deadly assault, the Defendant would be at fault in
12 bringing on the difficulty and would not be entitled to an
13 acquittal based on self-defense.

14 The second element of self-defense is that the
15 Defendant was actually in imminent danger of death or
16 serious bodily injury or that he actually believed he was in
17 imminent danger of death or serious bodily injury. If the
18 Defendant was actually in imminent danger, it must be shown
19 that the circumstances would have warranted a person of
20 ordinary firmness and courage to strike a blow to prevent
21 death or serious bodily injury.

22 If the Defendant believed that he was in imminent
23 danger of death or serious bodily injury it must be shown
24 that a reasonably prudent person of ordinary firmness and
25 courage would have had the same belief. In deciding whether

CHARGE OF THE COURT

495

1 the Defendant, Mr. Glenn, actually was or believed he was in
2 imminent danger of death or serious bodily injury you should
3 consider all the facts and circumstances surrounding the
4 crime, including the physical condition and characteristics
5 of the Defendant and the victim.

6 A defendant does not have to show that he was actually
7 in danger. It is enough if he believed he was in imminent
8 danger and a reasonably prudent person of ordinary firmness
9 and courage would have had the same belief.

10 A defendant has the right to act on appearances. Even
11 though the Defendant's belief may have been mistaken, it is
12 for you to decide whether his fear of imminent danger of
13 death or serious bodily injury was reasonable and would have
14 been felt by an ordinary person in the same situation.

15 Words accompanied by hostile acts, depending on the
16 circumstances, may establish self-defense. The relative
17 sizes, ages and weights of the Defendant and a victim may be
18 considered in deciding the apparent or actual need for force
19 and self-defense and the amount of force needed.

20 You may consider prior instances of violence or
21 unprovoked aggression by Kevin and/or Elfonso Bruster in
22 determining whether Defendant had a reasonable belief of
23 imminent danger. The intoxication of the victim may be
24 considered in deciding whether a Defendant's fear of death
25 or bodily harm was reasonable.

1 The final element of self-defense is that the Defendant
2 had no other probable way to avoid the danger of death or
3 serious bodily injury than to act as he did in the
4 particular circumstance and instance. One must retreat from
5 an encounter unless by doing so the danger of being killed
6 or suffering serious bodily injury would increase.

7 A person cannot be required to make an exact
8 calculation as to the degree or amount of force which may be
9 needed to avoid a death -- to avoid death or serious bodily
10 harm. Therefore, in self-defense the Defendant has a right
11 to use a force needed to avoid death or serious bodily harm.

12 The force used in self-defense does not have to be
13 limited to the degree or amount of force used by the victim.
14 The Defendant has the right to use so much force as appeared
15 to be necessary for his complete self-protection and which a
16 person of ordinary reason and firmness would have believed
17 to be needed to prevent death or serious bodily harm.

18 If one is justified in defending themselves or others
19 and in firing the first shot -- in firing the first shot,
20 then the Defendant is also justified in continuing to shoot
21 until it is apparent that the danger of death or serious
22 bodily injury is completely ended.

23 Under the law of self-defense a defendant may take or
24 attempt to take another's life in the defense of others.
25 The right to intervene to protect another person is subject

1 to the same rights and limitations as the right of self-
2 defense.

3 The defendant may take or attempt to take the life of a
4 person who assaults a friend, relative or bystander if that
5 friend, relative or bystander would have had the right of
6 self-defense. To show that the person being defended had
7 the right of self-defense it must first be shown that the
8 person being defended and the defendant were both without
9 fault in bringing on the difficulty.

10 If the conduct of the person defended or the defendant
11 was the type which was reasonably calculated to and did
12 provoke a deadly assault, the person would be at fault in
13 bringing on the difficulty and would not have the right of
14 self-defense. Therefore, the defendant would not have the
15 right to use deadly force in defending that person. The
16 defense of another person is excusable if the defendant had
17 reasonable grounds to believe and in good faith did believe
18 that the person being defended was in imminent danger of
19 death or serious bodily harm from another.

20 Deciding whether the person defended actually was or
21 that the defendant actually believed the person was in
22 imminent danger of death or serious bodily injury you should
23 consider all the facts and circumstances surrounding the
24 crime, including the physical condition and the
25 characteristics of the party.

CHARGE OF THE COURT

498

1 Now, your verdict must be unanimous. It cannot be
2 based on passion, prejudice, public opinion or matters
3 outside the record.

4 If you, while you are deliberating, have a question,
5 please write it down, knock on the door, send it out by way
6 of the bailiff. After consulting with the attorneys, I will
7 respond to the note.

8 It may be that I can write an answer to your question
9 on the note itself. If that's the case, Mr. Foreman, keep
10 that note and return it to me or return it with the exhibits
11 because it has to be part of the record.

12 When you've reached a verdict, knock on the door, tell
13 the bailiff, the bailiff will -- I'm not starting any other
14 cases today. So I should be able to send for you promptly.
15 But when you've reached a verdict, knock on the door, tell
16 the bailiff, and the bailiff will come and get us, and I
17 will send for you as promptly as I can.

18 If you need testimony replayed or read back, let us
19 know. We can bring you back in and replay testimony if you
20 wish. If you do wish that -- for us to do that, it would be
21 helpful if you can isolate as close as possible the
22 testimony you wish to hear because we have to find it, and
23 that does take a little bit of time.

24 I'm going to send in, when I send in the exhibits, a
25 written form of my verdict -- my charge in a written form.

CHARGE OF THE COURT

499

1 But if you wish me to recharge you on any part of the law,
2 even though you'll have my charge in there with you to
3 review, please let me know, and I'll bring you back out here
4 in open court, recharge you any part or all of the law.

5 Now, in using the charge, since you are a jury of
6 peers, a jury of lay persons, consider the charge as a
7 whole. Do not, the written charge I send in, do not isolate
8 a part to the exclusion of other parts. That is, look at
9 the charge as a whole in making your determination. And
10 again, your verdict must be unanimous.

11 When the jury goes out in just a minute, Ms. McMillan
12 and Mr. Clayton, you'll stay in and not go with them this
13 last time. When you do go in, do not start deliberating. I
14 have to go over with the attorneys whether I have to make
15 any corrections to my charge. If I have made an error in my
16 charge, that is if I've left anything out, said anything
17 incorrectly or included anything that's not to be included,
18 I'll have to bring you back in and correct it.

19 If not, I'll send in my written charge and exhibits and
20 the bailiff will tell you to start deliberating. But do not
21 do that -- do not start until you get the word from the
22 bailiff. And don't get too comfortable yet because that
23 will only take a few minutes for me to determine.

24 Now, you will have with you in the jury room verdict
25 forms. The verdict form for count one, which is the charge

CHARGE OF THE COURT

500

1 of attempted murder. And there's a verdict form for count
2 two, possession of a firearm during the commission of a
3 violent crime.

4 There are several choices in each of these. The order
5 they're in is of no importance. I have to put them in some
6 order. Just have to. And the fact that they're in the
7 order they're in is of no importance. So the fact that one
8 precedes the other does not mean it is any greater -- has
9 any greater weight in your consideration with any other
10 possible verdict form.

11 As to count one, the charge of attempted murder, the
12 options are, of course, if the State has failed to prove Mr.
13 Glenn guilty beyond a reasonable doubt of attempted murder
14 or one of the three lesser included offenses, you would put
15 an X on the last line that says we find the Defendant not
16 guilty.

17 If you find the Defendant guilty of attempted murder as
18 charged, you would, on the first line, put an X or check in
19 front of that sentence.

20 If you do not find him guilty of attempted murder, but
21 do find him guilty of a lesser included offense, you would
22 put a check mark, Mr. Foreman, in front of the second line
23 that says we find the Defendant guilty of the lesser
24 included offense. Then there's a colon and the three
25 options. Of course, he can only be found guilty of one if

CHARGE OF THE COURT

501

1 guilty of any. Those are assault and battery of a high and
2 aggravated nature, assault and battery, first degree,
3 assault and battery, second degree.

4 If you find that Mr. Glenn has been proven by the State
5 to be guilty of one of those lesser included offenses beyond
6 a reasonable doubt, you would check the first line and then
7 the offense with which you -- the defense [sic] you have
8 found him to be guilty of.

9 There are only two options on the count two, possession
10 of a firearm during the commission of a violent crime, and
11 that is we find the Defendant guilty of possession of a
12 firearm during the commission of a violent crime, and if
13 that's what you find unanimously, you would mark that. The
14 second would be we find the Defendant not guilty of
15 possession of a firearm during the commission of a violent
16 crime. And you would put a check or an X there if you find
17 the State has failed to prove him guilty of that offense.

18 Keeping in mind that before you could even consider
19 that, you would have to have found him guilty of either
20 attempted murder or assault and battery of a high and
21 aggravated nature.

22 Now, I'm going to let you go to the jury room, everyone
23 but the two alternates, but don't start deliberating quite
24 yet. And I'll be with the two of you in just a minute.

25 (Whereupon the jury exited the courtroom at 11:38 am)

CHARGE OF THE COURT

502

1 **THE COURT:** Anything regarding the charge from the
2 State?

3 **MR. HOLLOWAY:** No, sir.

4 **THE COURT:** Anything regarding the charge from the
5 Defense?

6 **MR. BRUMBACK:** Yes, Your Honor, one small thing. With
7 discussing intoxication, right after we discussed, I believe
8 it was, the violent acts, I believe in violent acts you said
9 Kevin and Elfonso Bruster, during intoxication you said just
10 intoxication of the victim. And I think on the record there
11 was clearly intoxication of both Kevin and Elfonso, which, I
12 think, contributed to the circumstances. That was the only
13 note I had, Your Honor.

14 **THE COURT:** Well, this, as I've said, is not a straight
15 line of facts. And I'm not sure that the intoxication of a
16 third party gives one the right to defend themselves as to
17 the second party or vice versa.

18 **MR. BRUMBACK:** And on that, Your Honor, for the record,
19 my argument would be that as we've discussed the concert of
20 the two parties acting together, that would bring into
21 question the intoxication of both of the individuals with
22 regard to the perception of Mr. Glenn. There was clearly
23 testimony as admission by Elfonso Bruster that Kevin Bruster
24 was visibly intoxicated such that I think that that would
25 create a perception from the Defendant or add to the

1 Defendant's perception of the danger of the situation for
2 purposes of claiming self-defense.

3 **THE COURT:** All right. Here's what I'm going to do.
4 Now, you see when y'all are out, we do work pretty hard.
5 How about this; the intoxication of the victim or an
6 aggressor may be considered?

7 **MR. BRUMBACK:** That is acceptable to me, Your Honor.

8 **MR. HOLLOWAY:** That's fine, Your Honor. I was just
9 going to say we don't have transferred intent in South
10 Carolina. And I think his initial argument was trying to
11 get it through the back door ---

12 **THE COURT:** Yeah, I know this is a thorny issue we've
13 been dealing with for two days, three days now, but I'm
14 going to grant that request.

15 **MR. BRUMBACK:** Thank you, Your Honor.

16 **THE COURT:** Anything else?

17 **MR. BRUMBACK:** No, Your Honor. That's it.

18 **MR. HOLLOWAY:** No, sir.

19 **THE COURT:** Just you two keep your seats. You can
20 bring the jury back in just a minute.

21 (Whereupon the jury entered the courtroom at 11:42 am)

22 **THE COURT:** I've been asked to correct or expand,
23 really, on one element of the elements regarding self-
24 defense. When I was discussing factors you could consider,
25 I mentioned intoxication. I charged you that intoxication

CHARGE OF THE COURT

504

1 of the victim, here that would be Elfonso, may be considered
2 in deciding whether a defendant's fear of death or bodily
3 harm was reasonable.

4 I should have charged you and now charge you, and this
5 will be in the written charge that you'll receive, that the
6 intoxication of the victim or an aggressor may be considered
7 in deciding whether a defendant's fear -- the Defendant's
8 fear of death or bodily harm was reasonable.

9 So I'm going to let you go back to the jury room.
10 Don't start deliberating, again, don't start until you
11 receive word from the bailiff to do so.

12 (Whereupon the jury exited the courtroom at 11:44 am)

13 **THE COURT:** Anything further from the State?

14 **MR. HOLLOWAY:** No, sir.

15 **THE COURT:** From Defense?

16 **MR. BRUMBACK:** No, Your Honor. Thank you.

17 **THE COURT:** All right. If you will check the exhibits.

18 And we'll get my charge, make a couple of corrections on it.

19 I noticed one other place I had a word that needed to be
20 deleted, that being the word fatal, where it talks about
21 self-defense, the right to deliver a fatal blow. This does
22 not -- the word fatal does not apply here, fortunately. So
23 I think that's the only change I made in my written charge.
24 So check the exhibits, and we'll send it in, and we'll start
25 deliberation.

1 The two remaining, Ms. Clayton, I'm sorry, Mr. Clayton
2 and Ms. McMillan, you can leave, you can wait around and see
3 what the verdict is, you can enjoy your lunch. We'll make
4 arrangements for you to have a quiet place to have lunch.

5 The attorneys have the right to ask you what you're
6 thinking regarding the trial. They're not prohibited from
7 doing that. They're not encouraged to do it either, but
8 they have the right. But you can tell them you don't want
9 to discuss it, and they have to honor that. Or if you do
10 want to chat with them, they have a right to chat.

11 So just let the bailiff know whether you want to stay
12 around for your lunch. If not, you're free for the -- what
13 about the rest of the week?

14 **MADAME CLERK:** They probably should go down and check
15 with ---

16 **THE COURT:** Yeah. And when you do leave, go by the
17 jury assembly room down on the first floor, and Ms. Judy
18 will tell you what next happens. Thank you. All right.
19 We'll be at ease. Check the exhibits and all and send it
20 in, and then we'll be at ease.

21 **MR. BRUMBACK:** Thank you, Your Honor.

22 (Pause)

23 **THE COURT:** Everything ready to go back?

24 **MR. BRUMBACK:** I believe so, Your Honor.

25 **THE COURT:** All right. Before we disperse I want to

1 thank all the counsel for their courtesies and patience
2 during the trial.

3 MR. BRUMBACK: Well, thank you, Your Honor.

4 MR. HOLLOWAY: Thank you, Your Honor.

5 MR. BRUMBACK: It was a pleasure to try a case before
6 you.

7 THE COURT: We'll be at ease.

8 (Whereupon the jury began deliberating at 11:49 am)

9 (Whereupon court was in recess at 11:49 am)

10 (Whereupon court reconvened at 1:28 pm)

11 THE COURT: Thank you. Take your seats. We received a
12 note from the jury. They asked four -- well, three
13 questions and then a request. The three questions, I've
14 gone over with the attorneys.

15 How long did Mr. Glenn have the gun before the incident
16 -- instance, actually? Two, where was Kevin? Why not
17 appear? Three, did he, I believe they mean Mr. -- I'm
18 sorry, Mr. Brumback, come on in.

19 MR. BRUMBACK: Yeah, no worries. I just wanted to get
20 Mr. Glenn.

21 THE COURT: Okay. I'm sorry. I didn't even look up.

22 I'll start over. We received questions from the jury.
23 Number one, how long did Mr. Glenn have the gun before the
24 incident -- instance? Two, where was Kevin? Why not
25 appear? Three, did he, I'm presuming Mr. Glenn, have a

1 record when he had a gun without a permit?

2 All three of those are questions that cannot be
3 answered. They have to rely on the record. And I will tell
4 them that.

5 The fourth is can we hear Mr. Glenn's interview,
6 exhibit number 4? And we can play that for them, I believe,
7 about eleven minutes ---

8 **MR. HOLLOWAY:** Yes, sir.

9 **THE COURT:** Okay. All right. As soon as the court
10 reporter tells me she can do it, we'll do it.

11 **MADAME CLERK:** That's just an exhibit. And Mr. Ryan is
12 going to ---

13 **THE COURT:** Oh, that's right. She doesn't have it.
14 Lucky you. All right. Ask them to hand out exhibit number
15 4, and we'll cue it up.

16 **THE BAILIFF:** Exhibit number 4?

17 **THE COURT:** Number 4.

18 **THE BAILIFF:** Is it a CD?

19 **THE COURT:** CD.

20 (Pause)

21 (Whereupon Court's exhibit 8 was marked)

22 **THE COURT:** Bring the jury in.

23 (Whereupon the jury entered the courtroom at 1:31 pm)

24 **THE COURT:** Members of the jury panel, I've received
25 your note with the four -- three questions and one request.

1 The three questions, how long did Mr. Glenn have the gun
2 before the instance? Two, where was Kevin? Why not appear?
3 And, three, did he have a record when he had a gun without a
4 permit?

5 I cannot answer those or the way I answer them is
6 you've got to rely on the testimony that was presented and
7 the witnesses who were called. We can't tell you why a
8 witness was or was not called. And we certainly can't
9 answer questions that were not covered in the record.

10 So I cannot answer those other than to say that you
11 have to rely on the record and the exhibits that were
12 presented, not what was not presented. Or at least we
13 cannot tell you why something was not presented. Then we
14 will hear Mr. Glenn's interview.

15 (Whereupon State's exhibit 4 was played for the jury)

16 (Whereupon the CD had ended)

17 **THE COURT:** All right. I'll let you return to the jury
18 room for deliberation.

19 (Whereupon the jury exited the courtroom at 1:43 pm)

20 **THE COURT:** Anything from the State?

21 **MR. HOLLOWAY:** No, sir.

22 **THE COURT:** Defense?

23 **MR. BRUMBACK:** Nothing, Your Honor.

24 **THE COURT:** All right. We'll be at ease again.

25 (Whereupon court was in recess at 1:43 pm)

1 (Whereupon court reconvened at 3:47 pm)

2 (Whereupon Court's exhibit 9 was marked)

3 **THE COURT:** Thank you. Keep your seats. The jury,
4 again, wants to hear the statement, number 4. Ready, State?

5 **MR. HOLLOWAY:** Yes, sir.

6 **THE COURT:** Defense?

7 **MR. BRUMBACK:** Yes, Your Honor.

8 **THE COURT:** Bring in the jury.

9 (Whereupon the jury entered the courtroom at 3:48 pm)

10 **THE COURT:** We will again play Mr. Glenn's statement,
11 exhibit number 4.

12 (Whereupon State's exhibit 4 was played for the jury)

13 (Whereupon the CD had ended)

14 **THE COURT:** You can return to the jury room.

15 (Whereupon the jury exited the courtroom at 3:59 pm)

16 **THE COURT:** Anything from the State?

17 **MR. HOLLOWAY:** No, sir.

18 **THE COURT:** Defense?

19 **MR. BRUMBACK:** Nothing, Your Honor.

20 **THE COURT:** All right. We'll remain at ease then.

21 (Whereupon court was in recess at 3:59 pm)

22 (Whereupon court reconvened at 4:50 pm)

23 **THE COURT:** This is the problem with sending back a
24 written charge. What I have in my written charge is an
25 assault of a high and aggravated nature, not assault and

1 battery. I noticed that and then -- and when I was --
2 orally I added the word battery, but what I'm going to do is
3 recharge them on assault and battery of a high and
4 aggravated nature and print out a corrected and send it
5 back. But I'm going to bring them back in and explain that.

6 **MR. BRUMBACK:** Your Honor, was this a result of a
7 question from the jury or just something you noticed?

8 **THE COURT:** No, a question from the jury. They asked
9 whether it was a typo. That's basically what it is is a
10 typo.

11 (Pause)

12 **THE COURT:** All right. I'm going to -- the clerk's
13 going to go get a printed copy, but I'm going to recharge
14 them and tell them I'm going to send it in corrected and to
15 disregard the written charge on page 9, which covers just
16 assault. All right. Bring in the jury.

17 (Whereupon Court's exhibit 10 was marked)

18 (Whereupon the jury entered the courtroom at 4:57 pm)

19 **THE COURT:** Members of the jury panel, concerning the
20 charge on assault and battery of a high and aggravated
21 nature where it simply says assault, that is basically a
22 typo. What I'm going to do is charge you assault and
23 battery of a high and aggravated nature, which is a little
24 different from the simple assault that was inadvertently
25 charged to you and I included in the written charge.

1 We will send in a written -- this portion of the charge
2 in just a few minutes. We're having it printed right now.
3 And it'll be substituted for that part on page 9 that starts
4 off saying an assault of a high and aggravated nature.

5 A person commits the offense of assault and battery of
6 a high and aggravated nature if the person unlawfully
7 injures another person and (a) great bodily injury to
8 another person results or (b) the act is accomplished by
9 means likely to produce death or great bodily injury. Great
10 bodily injury means bodily injury which causes a substantial
11 risk of death or which causes serious permanent
12 disfigurement or protracted loss or impairment of a bodily
13 member or organ.

14 So that corrects the charge that -- inadvertently just
15 used the word assault, and it establishes what the law is
16 with assault and battery of a high and aggravated nature.
17 And we will send that in in writing.

18 So disregard the part on page 9 that says assault of a
19 high and aggravated nature all the way up to assault and
20 battery, first degree, and just rely on the new page that
21 I'll give -- I'm going to let you go on back to the jury
22 room. I'll send it in in just a moment. Thank you.

23 (Whereupon the jury exited the courtroom at 5:00 pm)

24 **THE COURT:** Anything from the State?

25 **MR. HOLLOWAY:** No, sir.

1 **THE COURT:** Defense?

2 **MR. BRUMBACK:** No, Your Honor.

3 **THE COURT:** All right. Sorry, it's come out on two
4 different pages, actually, front and back. Counsel, both of
5 you come up and look at -- it unfortunately came out front
6 and back page. So I had to chop it up. I apologize for
7 that.

8 (Pause)

9 **THE COURT:** All right. Well, we'll send it in when it
10 gets back. And we'll be at ease.

11 (Whereupon court was in recess at 5:03 pm)

12 (Whereupon court reconvened at 5:10 pm)

13 **THE COURT:** I did still leave out a part. Bring them
14 back in. I did not charge about aggravation. That was in
15 my -- that was in the charge, but it only referred to the
16 assault language.

17 (Whereupon the jury entered the courtroom at 5:11 pm)

18 **THE COURT:** Members of the jury panel, the only issue
19 now is that I told you to go -- leave out from the heading
20 of assault of a high and aggravated nature to assault and
21 battery, first degree. I meant to and will now tell you
22 that after the new charge that I send in, the last paragraph
23 before assault and battery, first degree, on page 10 still
24 applies, that is, as to this charge, not only as to assault
25 of a high and aggravated nature, but as to assault and

1 battery of a high and aggravated nature the State must prove
2 beyond a reasonable doubt the elements I just sent in, plus
3 the State must prove beyond a reasonable doubt a
4 circumstance of aggravation.

5 Circumstances of aggravation include the use of a
6 deadly weapon, the infliction of serious bodily injury, a
7 great disparity between the ages or physical condition of
8 the parties. And these are merely examples of circumstances
9 of aggravation.

10 So, again, I apologize that I stopped you or indicated
11 you needed to stop where I did. You actually need to, in
12 addition to what I just sent in, read it along with the
13 language on page 10 that talks about aggravation, that being
14 the last paragraph before assault and battery, first degree.
15 Thank you.

16 (Whereupon the jury exited the courtroom at 5:13 pm)

17 **THE COURT:** Anything from the State?

18 **MR. HOLLOWAY:** No, sir, Your Honor.

19 **THE COURT:** Defense?

20 **MR. BRUMBACK:** No, Your Honor.

21 **THE COURT:** Okay. All right. We'll be at ease.

22 (Whereupon court was in recess at 5:14 pm)

23 (Whereupon court reconvened at 5:20 pm)

24 (Whereupon Court's exhibit 11 was marked)

25 **THE COURT:** I understand the jury's reached a verdict.

VERDICT OF THE JURY

514

1 I see that the exhibits are already back in and the written
2 charge has been returned. The State ready to receive the
3 verdict?

4 **MR. HOLLOWAY:** Yes, sir.

5 **THE COURT:** Defense?

6 **MR. BRUMBACK:** Yes, Your Honor.

7 **THE COURT:** All right. We have several spectators
8 here. And I do not know what the verdict will be, but I
9 would warn anyone here, everyone here that there should be
10 no outburst, whatever the verdict is. If you can't control
11 your emotions, you need to leave now because if you don't
12 and there's any outburst, that person will be held in
13 contempt of court and automatically be sent to jail for
14 thirty days. I don't want to have to do that. So if you
15 don't think you can control your emotions, don't remain in.
16 All right. Bring in the jury.

17 (Whereupon the jury entered the courtroom at 5:22 pm)

18 **THE COURT:** Mr. Foreman, I understand the jury's
19 reached a verdict.

20 **MR. FOREMAN:** We have, Your Honor.

21 **THE COURT:** If you'll hand it to the bailiff, the
22 bailiff will bring it up to me.

23 **MADAME CLERK:** In the case of 2013-GS-23-6789, the
24 State versus Marquez Devon Glenn, we, the Defendant -- we
25 find the Defendant guilty of the lesser included offense of

VERDICT OF THE JURY

515

1 assault and battery of a high and aggravated nature.

2 **THE COURT:** No, I think they found him of first degree.

3 **MADAME CLERK:** Assault and battery of a high ---

4 **THE COURT:** Of a high and aggravated nature, sorry.

5 **MADAME CLERK:** That's all right. If this is your
6 verdict, please raise your right hand.

7 (Whereupon all the jurors raised their right hand)

8 **MADAME CLERK:** Thank you.

9 **THE COURT:** All right. You got count two. Count one,
10 we find the Defendant guilty of the lesser included offense
11 of assault and battery of a high and aggravated nature. And
12 as to count two, we find the Defendant guilty of possession
13 of a firearm during the commission of a violent crime. Is
14 this your verdict? So say you all by raising your right
15 hand.

16 (Whereupon all jurors raised their right hand)

17 **THE COURT:** All right. Anything from the State before
18 the jury's dismissed?

19 **MR. HOLLOWAY:** No, sir.

20 **THE COURT:** Anything from the Defense?

21 **MR. BRUMBACK:** No, Your Honor.

22 **THE COURT:** All right. Members of the jury panel, I'm
23 going -- if you'll step back in the jury room, the bailiff
24 will have the information that you need as far as further
25 service and your checks or anything like that. I appreciate

1 your help with this particular case. Thank you so very
2 much. And if you'll just step out.

3 **THE BAILIFF:** What is it ---

4 **MADAME CLERK:** The letter.

5 **THE BAILIFF:** I got that. Do they need to come back
6 tomorrow? Or call ---

7 **MADAME CLERK:** Oh, no. They're excused for the week.

8 **THE BAILIFF:** Excused for the week.

9 **THE COURT:** Okay. You're excused for the week.

10 (Whereupon the jury exited the courtroom at 5:24 pm)

11 **THE COURT:** Get the foreman..

12 (Whereupon the foreman entered the courtroom)

13 **THE COURT:** We need to enroll the verdict on the actual
14 indictment. You see I've written count one. Just write
15 guilty of assault and battery of a high and aggravated
16 nature. And under count two you can just write guilty and
17 then sign -- see where I've written count two? Thank you.

18 Before we get into sentencing, anything from the State?

19 **MR. HOLLOWAY:** No, sir.

20 **THE COURT:** Do you have sentencing sheets?

21 **MR. HOLLOWAY:** I do.

22 **THE COURT:** All right. Anything before we get into
23 sentencing from the Defense?

24 **MR. BRUMBACK:** I would move for a judgment -- sorry,
25 Your Honor, I'm a little fried at this point, judgment

1 notwithstanding the jury verdict.

2 **THE COURT:** All right. Well, that motion's denied. I
3 believe the evidence was susceptible, it certainly was a
4 case that lent itself to a charge of a consideration of
5 self-defense, but I think the facts support the verdict as
6 rendered by the jury.

7 **MR. HOLLOWAY:** Your Honor, I believe the CDR code for
8 ABHAN is 3411. I've changed that on the sentencing sheet.

9 **THE COURT:** Anything from the State involving
10 sentencing?

11 **MR. HOLLOWAY:** No, sir. The State would leave the
12 sentencing in the Court's hands.

13 **THE COURT:** All right. Does the victim, Mr. Bruster,
14 want to say anything?

15 **MR. HOLLOWAY:** No, sir, I don't believe so.

16 **THE COURT:** Okay. All right. Now I'll hear from the
17 Defense on behalf of Mr. Glenn and then from Mr. Glenn
18 himself regarding the issue of sentencing.

19 **MR. BRUMBACK:** Yes, Your Honor. As the Court has heard
20 the testimony of the witnesses here, I think that despite
21 the verdict of the jury that there were certainly questions
22 concerning the events that occurred that night. And whether
23 or not the jury deemed Mr. Glenn's actions to be reasonable,
24 I certainly think that based on his testimony and his
25 forthrightness with the detectives investigating this case

1 that he certainly believed his life was in danger that night.
2 and that he acted in accordance with what he believed was
3 appropriate at the time.

4 He certainly has attempted to cooperate in the
5 prosecution of this case and to be forthright with both the
6 Court and the jury. And he has also, during the pendency of
7 this case, served a substantial amount of time. Ryan, I
8 forget, do you know the number of days on that?

9 MR. HOLLOWAY: I can look that up. I'm sorry, Your
10 Honor, I forgot the jail days.

11 MR. BRUMBACK: As well, he has, you know, exhibited
12 good behavior during the time this case has been pending.
13 And I believe as Your Honor has seen on each day, you know,
14 he has come back with no problem to return to the court
15 despite facing what are serious charges. Based on the
16 dispute as to the facts of this case ...

17 THE COURT: Go ahead.

18 MR. BRUMBACK: Based on the dispute concerning the
19 facts of this case and the fact that there were certainly
20 not necessarily any good actors out at Spring Grove
21 Apartments on that night, I would ask for a great deal of
22 leniency from the Court for Mr. Glenn in his sentencing.

23 THE COURT: All right. Before I hear from Mr. Glenn,
24 Mr. Holloway, you've got most serious marked. I think that
25 would have been the case had he ---

1 **MR. HOLLOWAY:** I'm sorry, Your Honor. I tried to --
2 I'll scratch that.

3 **THE COURT:** Well, I think it is serious, not most
4 serious.

5 **MR. HOLLOWAY:** It is.

6 **THE COURT:** All right.

7 **MR. BRUMBACK:** And in addition, Your Honor, you know, I
8 believe that Mr. Glenn can certainly be a positive and
9 productive member of our community despite what has
10 transpired here today. When he gets out he does have a job
11 waiting for him.

12 And I believe he could be a productive member of
13 society such that I would ask the Court, if it is making its
14 decision upon a rehabilitative stance, that I believe that
15 Mr. Glenn certainly has learned a lesson through this
16 process. And I understand that the Court may feel it
17 necessary to impose some sentence, but I, again, would ask
18 for substantial leniency in that sentence.

19 **THE COURT:** Before I hear from Mr. Glenn -- thank you,
20 Mr. Brumback. What's the prior record? I know you
21 mentioned criminal domestic violence and the cocaine charge?

22 **MR. HOLLOWAY:** Yes, sir, Your Honor. He's got a -- the
23 cocaine charge is in 2005, a possession of marijuana also in
24 2005. The CDV was in 2012. The child cruelty misdemeanor
25 was the same time. Two counts of resisting arrest,

1 subsection (a). And that was just last year.

2 **THE COURT:** All right. And how much time has he been
3 in jail?

4 **MR. HOLLOWAY:** My assistant is checking on that. I
5 couldn't access our computer right here. It's a long story,
6 but she's checking on that. It's at least two hundred and
7 fifty days, roughly.

8 **THE COURT:** All right. Anyone that wants to speak on
9 Mr. Glenn's behalf?

10 **MR. BRUMBACK:** I certainly believe ---

11 **THE COURT:** I see somebody's raising -- a couple of
12 people raising their hand. I'll be glad for them to come
13 up. Stand between the tables where the attorneys are seated
14 and give us your name and speak in a good strong voice, if
15 you would.

16 **MS. HENDERSON:** Right here?

17 **THE COURT:** Yes, that's fine.

18 **MS. HENDERSON:** My name is Shuntanya Henderson. I am
19 Marquez Glenn's mother. In regards to what's going on to
20 this, I do feel in my heart that he really didn't have any
21 intent to harm Elfonso. You know, I know Elfonso as well.
22 Neither one of these gentlemen are bad guys. It was
23 just a situation that happened that should have been, you,
24 know, never happened and rectified in a different manner on
25 both party's behalf.

1 My son is a very loving father. He has two kids, which
2 one has been here with us the whole time. And I just want
3 to just help him to come back home to his kids 'cause they
4 have missed him so much. Since he's been home they have not
5 left his side. So whatever you can do to help him with
6 that, I would appreciate that you do so.

7 **THE COURT:** All right. Thank you. Someone else raised
8 their hand. Anybody else? Yes, sir. Come and stand over
9 there. I recognize you from the case, but you still need to
10 tell us your name again.

11 **MR. HENDERSON:** My name is Tivarius Henderson. That's
12 my brother. I know Elfonso as well. I'm not saying that
13 he's a bad fellow, just some things happened that night,
14 transpired different than what was supposed to go on. We
15 was just leaving.

16 My brother's not a bad dude. He works, supports his
17 family. And his kids, really, they going to take it hard.
18 He going to be gone again probably. The whole time he was
19 gone my little niece was having problems. She was just
20 missing her daddy. That's all she wanted. She got all
21 right and now he gone.

22 I would ask you if you can help, you know, on his
23 sentencing, you know, so he could come back home and get to
24 his family, get things back right.

25 **THE COURT:** All right. Thank you. Yes.

1 **MS. GLENN:** My name is Terry Glenn. I'm Marquez
2 grandmother. I raised Marquez from a baby up until he got
3 four. And he's very intelligent. And he's never been a
4 violent person.

5 So sometimes things happen like that. And I hope you
6 do give him leniency because he's good to his daughter. She
7 been crying. She cried so hard. She wouldn't stop crying.
8 But she told us she was crying because she was happy that
9 her father was out.

10 And then the little boy, he don't even want to leave
11 his side either. She got out of the nursery just to be with
12 her father. And the little boy, he didn't want to go to the
13 nursery no more. He had to go back to the nursery. But he
14 been keeping them. So I wish you would give him leniency.

15 **THE COURT:** All right. Thank you.

16 **MR. HOLLOWAY:** Your Honor, there is two friends of the
17 family of the victim that would like to speak.

18 **THE COURT:** All right.

19 **MS. BRUSTER:** My name is Jalonda Bruster. And Elfonso
20 Bruster is my brother. And I understand that the tragedy
21 took place, but I feel like that there was no remorse
22 because when my brother was laying on that ground in a fetal
23 position, helpless, he still put another bullet in him, the
24 fatal bullet that shot in his T3 and T4 spine.

25 And just like he got a family, my brother got a family,

1 too. And when he get out of jail he'll still be able to
2 walk and communicate the same way he did before he got in
3 there.

4 Not only did my brother life change, but everybody
5 around him as well. My brother'll never be able to walk
6 again. He'll never be able to drive without special
7 equipment. He'll never be able to walk his daughters down
8 the aisle or to their first dance. So my family is
9 experiencing a more tragedy than anybody can ever imagine or
10 anything that Mr. Glenn family is going through.

11 My brother still have countless surgeries, doctor's
12 appointments, pain medication that he have to take for the
13 rest of his life. I mean, it's a lot going on with him
14 physically and mentally.

15 So I just feel like the Court shouldn't show him any
16 leniency because he didn't show my brother any when he stood
17 over him and shot him and the words that he used when he let
18 the bullet enter him. And that's all I have to say.

19 **THE COURT:** Thank you. Anyone else?

20 **MR. HOLLOWAY:** No, sir.

21 **THE COURT:** All right. Mr. Glenn, anything you want to
22 say? You can stand and ---

23 **MR. GLENN:** Yes, sir. I want to first and foremost say
24 that I express a lot of emotion and remorse for Elfonso
25 because our family's coincided together. My brother knows

1 his children. I've known their children. His mother of his
2 children and her sisters are duly noted friends of my
3 family. And our lives were intertwined for quite a while.

4 So I do express remorse and I do feel remorse for every
5 day for the simple fact that I didn't have any -- I didn't
6 have any control of what the bullet did and the effects of
7 it and neither did I stand over him and shoot him after he
8 was already down. I never got within an arms reach of him
9 after we separated from that fact. And I just wanted that
10 to be openly known.

11 I do have children of my own. And we're all going
12 through a travesty and hardships on both ends just because
13 it was a situation that was never supposed to happen. And
14 if I could have went back and changed any steps that were
15 made towards as far as my actions or as far as what happened
16 and as far as anything of the whole endeavor, then I would.
17 If I could have did anything different, then it would have
18 never have happened.

19 And I'm sorry that it had to go down like that. And I
20 do feel sorry that he in a wheelchair, but I had no control
21 over what happened as far as what happened when the bullets
22 hit him. I just wanted to openly say it for his family's
23 sake to let them know and look at everybody in their eyes
24 that I do feel remorseful.

25 And, you know, it's a tough situation that we both in

1 as far as how we got to live for the rest of our lives and
2 our kids, not just us. But I do have a family. And I take
3 care of my children very well. I work. I don't really get
4 in trouble.

5 The cocaine charge that Ryan is speaking of happened
6 when I was young and seventeen. And I admitted to the
7 possession of that. And I was not an adult at that time.
8 And the only priors that I have are misdemeanor priors. I
9 don't really have a record. I'm not a bad person.

10 Like I said, I know these people and their children.
11 They know my children as well. It's just that we weren't
12 the closest of friends. We were just acquaintances from our
13 living situation.

14 And, you know, any kind of leniency that I could get on
15 the sentence or a deferred sentence as far as being able to
16 take care of my family and my children, I would like for
17 there to be -- shed light on me as well because I cooperated
18 through the full investigation, I've been going with
19 extensive endeavors as far as charges with Mr. Holloway for
20 a few years. And I feel like he has biased opinions of me.

21 But given the factors of my actions, I feel myself very
22 accountable and very responsible for my actions, being
23 accountable for what happened and holding myself personally
24 accountable as a man. But if I'm gone for any kind of
25 allotted time, then my family and my children as well, this

SENTENCE OF THE COURT

526

1 is -- our livelihood is in jeopardy if I'm not able to take
2 care of my family the way that I am because we've been going
3 through financial hardships since I've been in this
4 situation.

5 **THE COURT:** All right. Thank you. All right. How
6 long?

7 **MR. HOLLOWAY:** Your Honor, he's been in jail for -- he
8 was in jail for three hundred and three days. He was on HIP
9 for four fifty-two. It's sort of like home incarceration
10 where he had the ankle monitor while out on bond. So that
11 was four fifty-two. The total would be seven fifty-five.

12 **THE COURT:** So in Greenville County they get credit for
13 that? Or no?

14 **MR. HOLLOWAY:** It's at the Court's discretion, I
15 believe. I think that's the state of the law at this point.

16 **THE COURT:** What is that, seven forty-five?

17 **MR. HOLLOWAY:** Seven fifty-five.

18 **MR. LANGLEY:** And, Your Honor, he currently is on HIP.
19 with an ankle bracelet where he checks in basically
20 everywhere he goes.

21 **THE COURT:** All right. Well, I'm not going to preach
22 about guns, but this is a sad situation that sheds a lot of
23 light on part of our cultural problem all across our
24 cultures of guns and their prevalence. And that's about all
25 I can say about that.

SENTENCE OF THE COURT

527

1 I do -- even though the jury did not acquit Mr. Glenn
2 and, therefore, did not find that he had a defense of self-
3 defense, I do find that there is some mitigating
4 circumstance involved in this situation.

5 So on assault and battery of a high and aggravated
6 nature, giving Mr. Glenn credit for seven hundred and fifty-
7 five days, my sentence is twelve years. On the pistol
8 charge, the weapons charge, five years to run concurrent.
9 Thank you. And, again, I appreciate everybody's courtesies.
10 Thank you..

11 (Hearing Ended at 5:42 pm)

12 (End of Requested Transcript of Record)

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Marquez Devon Glenn

AKA:

Race: BLACK

Sex: M

Age: 27

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempted Murder

Assault + Battery of a High and Aggravated Nature

in violation of § 16-03-0029 600

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45

The charge is:

☐ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Holloway, Ryan

71605

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 12 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of

_____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____

plus 20% fee: _____

\$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

\$ _____

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ _____

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$ _____

§ 56-5-2995 (DUI Assessment)

\$12

\$ _____

§ 56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 47.9 (Public Def/Prob)

\$500

\$ _____

§ 14-1-212 (Law Enforce. Funding)

\$25

\$ _____

§ 14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

Proviso 90.5 (SCJA Surcharge)

\$5

\$ _____

3% to County (if paid in installments):

\$ _____

TOTAL

\$ _____

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickens

Susan Hudgens

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2306789

A/W#: 2013A2330203356

Date of Offense: 4/12/2013

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 600

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45

The charge is:

☐ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Holloway, Ryan

71605

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 12 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of

_____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____

plus 20% fee: _____

\$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

\$ _____

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ _____

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$ _____

§ 56-5-2995 (DUI Assessment)

\$12

\$ _____

§ 56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 47.9 (Public Def/Prob)

\$500

\$ _____

§ 14-1-212 (Law Enforce. Funding)

\$25

\$ _____

§ 14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

Proviso 90.5 (SCJA Surcharge)

\$5

\$ _____

3% to County (if paid in installments):

\$ _____

TOTAL

\$ _____

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickens

Susan Hudgens

Presiding Judge

Judge Code:

Sentence Date:

John H. Hays

2044

8/5/13

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Marquez Devon Glenn

AKA:

Race: BLACK

Sex: M

Age: 27

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

71605

Holloway, Ryan

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections,☐ County Detention Center,

for a determinate term of

5 days/months/years or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

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§ 14-1-211(A)(2) (DUI Surcharge)

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§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

3% to County. (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Widener

Susan Higgins

282

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2306789

A/W#: 2013A2330203357

Date of Offense: 4/12/2013

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

2010CV2310800577
CIVIL CASE NUMBER
MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE

Courts
8/3/15 5H

Spring Grove Apartments
1900 Boling Road Ext.
Taylors, SC 29687
(864) 268-2842

PLAINTIFF(S)

Vs

Shutonya Henderson
1900 Boling Road Ext., Apt. 9F
Taylors, SC 29687

DEFENDANT(S)

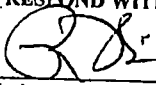
Upon the application of the Plaintiff(s) listed above, which states:

- ☒ TENANT HAS FAILED TO PAY RENT WHEN DUE OR DEMANDED.
☐ THE TERMS OF THE TENANCY OR OCCUPANCY HAVE ENDED.
☐ THE TERMS OR CONDITIONS OF THE LEASE HAVE BEEN VIOLATED.

You the defendant(s) or lessee(s) of the premises located at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 or contact the: Greer Summary Court Court, 100 South Main Street, Suite A, Greer, SC 29650, (864) 877-7464, within ten (10) days excluding date of service, for the purpose of showing why you and all occupants should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Monday, April 26, 2010


Judge Robert F. Simms, Greer Summary Court

Personally appeared before me, the undersigned deponent, being duly sworn, says that he attempted to serve the Rule to Vacate or Show Cause on Shutonya Henderson on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1. _____	_____	_____	4-29-10	2 15
2. _____	_____	_____	SETTLED/DATE	_____
3. _____	_____	_____	VACANT/DATE	_____

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

Sworn to and subscribed before me
This 3 day of May, 2010.

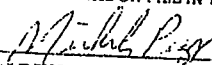
NOTARY PUBLIC OR JUDGE


SIGNATURE OF SERVER

ON _____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

MAGISTRATE'S CLERK

MV 15

DATE: 10/1/14
CERTIFIED TO BE A
TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH
THE ORIGINAL ON FILE IN THIS OFFICE

GREER SUMMARY COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

2010CV2310800577
CIVIL CASE NUMBER
MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE

Spring Grove Apartments
1900 Boling Road Ext.
Taylors, SC 29687
(864) 268-2842

PLAINTIFF(S)

Vs

Shutonya Henderson
1900 Boling Road Ext., Apt. 9F
Taylors, SC 29687

DEFENDANT(S)

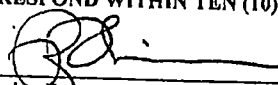
Upon the application of the Plaintiff(s) listed above, which states:

- ☒ TENANT HAS FAILED TO PAY RENT WHEN DUE OR DEMANDED.
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Monday, April 26, 2010


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DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE	SETTLED/DATE	VACANT/DATE
1. _____	_____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

Sworn to and subscribed before me
This _____ day of _____, 20____.

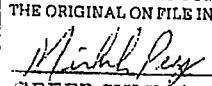
NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

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MAGISTRATE'S CLERK

MV 15

DATE: 10/14/14
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AS TAKEN FROM AND COMPARED WITH
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GREER SUMMARY COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

2010CV2310800577
CIVIL CASE NUMBER
MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE

Spring Grove Apartments
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(864) 268-2842

PLAINTIFF(S)

Vs

Shutonya Henderson
1900 Bolling Road Ext., Apt. 9F
Taylors, SC 29687

DEFENDANT(S)

Upon the application of the Plaintiff(s) listed above, which states:

- ☒ TENANT HAS FAILED TO PAY RENT WHEN DUE OR DEMANDED.
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1. _____	_____	_____	_____	_____
2. _____	_____	_____	SETTLED/DATE	_____
3. _____	_____	_____	VACANT/DATE	_____

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

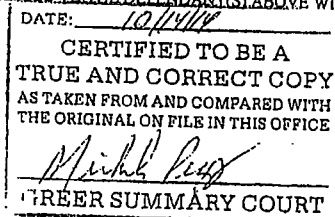
Sworn to and subscribed before me
This _____ day of _____, 20 _____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

ON _____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

MAGISTRATE'S CLERK



MV 15

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Spring Grove

NAME (LANDLORD ☒ AGENT ☐
1900 Boling Rd. Ext.

ADDRESS
Tailors, SC 29687

CITY/ST/ZIP
864-268-2842

PHONE 1 PHONE 2

PLAINTIFF(S)

vs.
Shutonya Henderson

NAME
1900 Boling Rd. Ext. 9F

ADDRESS
Tailors, SC 29687

CITY/ST/ZIP

PHONE 1

PHONE 2

SERVING INFORMATION

DEFENDANT(S)

2010 CV23108 00577

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR EJECTMENT

I Catherine Jennings, plaintiff in this action, state that I am the landlord-lessor of premises within the jurisdiction of Magistrate Robert F. Simms, which is described as: (address and description of premises - apartment, house, etc.)

Bedroom Size - 3

1900 Boling Rd. Extension Apt. # 9F

Tailors, SC 29687

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between me and the defendant, _____, the tenant-lessee, as evidenced by the following: (Attach lease papers or other written proof.)

Grounds for this ejectment are one or more of the following:

- ☒ The tenant fails or refuses to pay the rent when due or when demanded; or
- ☐ The contractual term of tenancy or occupancy has ended;
- ☐ 30-day notice in month-to-month tenancy given and not complied with;
- ☒ The terms or conditions of the lease have been violated as follows:

NON Payment of rent

Sworn to before me, this 26th
day of April, 2010.

Magistrate Robert F. Simms

DATE: 4/27/10

CERTIFIED TO BE A
TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH
THE ORIGINAL ON FILE IN THIS OFFICE

Signature of Magistrate Robert F. Simms

COVER SHEET

Counts
3
8/3/15 stt

2010 Model Lease for Subsidized
Programs

2010 Apartment Rules and Regulations

MODEL LEASE FOR SUBSIDIZED PROGRAMS

1. Parties and Dwelling Unit:

The parties to this Agreement are SPRING GROVE, LLC, referred to as the Landlord, and [REDACTED], referred to as the Tenant. The Landlord leases to the Tenant(S) unit number [REDACTED], located at 1900 BOLING ROAD EXTENSION, TAYLORS, SC 29687 in the project known as SPRING GROVE.

2. Length of Time (Term):

The initial term of this Agreement shall begin on 06/25/10 and end on 06/30/2011. After the initial term ends, the Agreement will continue for successive terms of one MONTH each unless automatically terminated as permitted by paragraph 23 of this Agreement.

3. Rent:

The Tenant agrees to pay \$16.00 for the partial month ending on 06/30/10. After that, Tenant agrees to pay a rent of \$80.00 per month. This amount is due on the FIRST day of the month at SPRING GROVE RENTAL OFFICE. The Tenant understands that this monthly rent is less than the market (unsubsidized) rent due on this unit. This lower rent is available either because the mortgage on this project is subsidized by the Department of Housing and Urban Development (HUD) and/or because HUD makes monthly payments to the Landlord on behalf of the Tenant. The amount, if any, that HUD makes available monthly on behalf of the Tenant is called the tenant assistance payment and is shown on the "Assistance Payment" line of the Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures form which is Attachment No. 1 to this Agreement.

4. Changes in the Tenant's Share of the Rent:

The Tenant agrees that the amount of rent the Tenant pays and/or the amount of assistance that HUD pays on behalf of the Tenant may be changed during the term of this Agreement if:

- a) HUD or the Contract Administrator (such as a Public Housing Agency) determines, in accordance with HUD procedures, that an increase in rents is needed;
- b) HUD or the Contract Administrator changes any allowance for utilities or services considered in computing the Tenant's share of the rent;
- c) the income, the number of persons in the Tenant's household or other factors considered in calculating the Tenant's rent change and HUD procedures provide that the Tenant's rent or assistance payment be adjusted to reflect the change;
- d) changes in the Tenant's rent or assistance payment are required by HUD's recertification or subsidy termination procedures;
- e) HUD's procedures for computing the Tenant's assistance payment or rent change; or
- f) the Tenant fails to provide information on his/her income, family composition or other factors as required by the Landlord.

The Landlord agrees to implement changes in the Tenant's rent or tenant assistance payment only in accordance with the time frames and administrative procedures set forth in HUD's handbooks, instructions and regulations related to administration of multifamily subsidy programs. The Landlord agrees to give the Tenant at least 30 days advance written notice of any increase in the Tenant's rent except as noted in paragraphs 11, 15 or 17. The Notice will state the new amount the Tenant is required to pay, the date the new amount is effective, and the reasons for



the change in rent. The Notice will also advise the Tenant that he/she may meet with the Landlord to discuss the rent change.

5. Charges for Late Payments and Returned Checks:

If the Tenant does not pay the full amount of the rent shown in paragraph 3 by the end of the 5th day of the month, the Landlord may collect a fee of \$5 on the 6th day of the month. Thereafter, the Landlord may collect \$1 for each additional day the rent remains unpaid during the month it is due.

The Landlord may not terminate this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of rent, as explained in paragraph 23. The Landlord may collect a fee of \$35.00 on the second or any additional time a check is not honored for payment (bounces). The charges discussed in this paragraph are in addition to the regular monthly rent payable by the Tenant.

6. Condition of Dwelling Unit:

By signing this Agreement, the Tenant acknowledges that the unit is safe, clean and in good condition. The Tenant agrees that all Appliances and equipment in the unit are in good working order, except as described on the Unit Inspection Report which is Attachment No. 2 to this Agreement. The Tenant also agrees that the Landlord has made no promises to decorate, alter, repair or improve the unit, except as listed on the Unit Inspection Report.

7. Charges for Utilities and Services:

The following charts describe how the cost of utilities and services related to occupancy of the unit will be paid. The Tenant agrees that these charts accurately describe the utilities and services paid by the Landlord and those paid by the Tenant.

- a) The Tenant must pay for the utilities in column (1). Payments should be made directly to the appropriate utility company. The items in column (2) are included in the Tenant's rent.

(1) Put an "X" by any Utility resident pays directly.	Type of Utility	(2) Put an "X" by any Utility included in resident rent.
☒	Heat	☐
☒	Lights, Electric	☐
☒	Cooking	☐
☒	Water	☐
☐	Other (Please Specify)	☐
☐	NA	☐
☐	NA	☐

- b) The Tenant agrees to pay the Landlord the amount shown in column (3) on the date the rent is due. The Landlord certifies that HUD had authorized him/her to collect the type of charges shown in column (3) and that the amounts shown in column (3) do not exceed the amounts authorized by HUD.

	(3) Show \$ amount resident pays to landlord in addition to rent.
Parking	\$0.00
Other (Please Specify)	\$0.00
	\$
	\$

8. Security Deposits:



The Tenant has deposited \$177.00 with the Landlord. The Landlord will hold this security deposit for the period the Tenant occupies the unit. After the Tenant has moved from the unit, the Landlord will determine whether the Tenant is eligible for a refund of any or all of the security deposit. The amount of the refund will be determined in accordance with the following conditions and procedures.

- a) The Tenant will be eligible for a refund of the security deposit only if the Tenant provided the Landlord with the 30-day written notice of intent to move required by paragraph 23, unless the Tenant was unable to give the notice for reasons beyond his/her control.
- b) After the Tenant has moved from the unit, the Landlord will inspect the unit and complete another Unit Inspection Report. The Landlord will permit the Tenant to participate in the inspection, if the Tenant so requests.
- c) The Landlord will refund to the Tenant the amount of the security deposit plus interest computed at N/A % beginning 06/25/10
- d) , less any amount needed to pay the cost of:
 - 1) unpaid rent;
 - 2) damages that are not due to normal wear and tear and are not listed on the Unit Inspection Report;
 - 3) charges for late payment of rent and returned checks, as described in paragraph 5; and
 - 4) charges for unreturned keys, as described in paragraph 9.
- e) The Landlord agrees to refund the amount computed in paragraph 8c within 30 days after the Tenant has permanently moved out of the unit, returned possession of the unit to the Landlord, and given his/her new address to the Landlord. The Landlord will also give the Tenant a written list of charges that were subtracted from the deposit. If the Tenant disagrees with the Landlord concerning the amounts deducted and asks to meet with the Landlord, the Landlord agrees to meet with the Tenant and informally discuss the disputed charges.
- f) If the unit is rented by more than one person, the Tenants agree that they will work out the details of dividing any refund among themselves. The Landlord may pay the refund to any Tenant identified in Paragraph 1 of this Agreement.
- g) The Tenant understands that the Landlord will not count the Security Deposit towards the last month's rent or towards repair charges owed by the Tenant in accordance with paragraph 11.

9. Keys and Locks:

The Tenant agrees not to install additional or different locks or gates on any doors or windows of the unit without the written permission of the Landlord. If the Landlord approves the Tenant's request to install such locks, the Tenant agrees to provide the Landlord with a key for each lock. When this Agreement ends, the Tenant agrees to return all keys to the dwelling unit to the Landlord. The Landlord may charge the Tenant \$ACCORDING TO THE PRICE LIST IN EFFECT AT THE TIME OF MOVE OUT for each key not returned.

10. Maintenance:

- a) The Landlord agrees to:

- 1) regularly clean all common areas of the project;
- 2) maintain the common areas and facilities in a safe condition;
- 3) arrange for collection and removal of trash and garbage;
- 4) maintain all equipment and appliances in safe and working order;
- 5) make necessary repairs with reasonable promptness;
- 6) maintain exterior lighting in good working order;
- 7) provide extermination services, as necessary; and
- 8) maintain grounds and shrubs.

b) The Tenant agrees to:

- 1) keep the unit clean;
- 2) use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
- 3) not litter the grounds or common areas of the project;
- 4) not destroy, deface, damage or remove any part of the unit, common areas, or project grounds;
- 5) give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment or any other part of the unit or related facilities; and
- 6) remove garbage and other waste from the unit in a clean and safe manner.

11. Damages:

Whenever damage is caused by carelessness, misuse, or neglect on the part of the Tenant, his/her family or visitors, the Tenant agrees to pay:

- a) the cost of all repairs and do so within 30 days after receipt of the Landlord's demand for the repair charges; and
- b) rent for the period the unit is damaged whether or not the unit is habitable. The Tenant understands that HUD will not make assistance payments for any period in which the unit is not habitable. For any such period, the Tenant agrees to pay the HUD-approved market rent rather than the Tenant rent shown in paragraph 3 of this agreement.

12. Restrictions on Alterations:

No alteration, addition, or improvements shall be made in or to the premises without the prior consent of the Landlord in writing. The Landlord agrees to provide reasonable accommodation to an otherwise eligible tenant's disability, including making changes to rules, policies, or procedures, and making and paying for structural alterations to a unit or common areas. The Landlord is not required to provide accommodations that constitute a fundamental alteration to the Landlord's program or which would pose a substantial financial and administrative hardship. See the regulations at 24 CFR Part 8. In addition, if a requested structural modification does pose a substantial financial and administrative hardship, the Landlord



must then allow the tenant to make and pay for the modification in accordance with the Fair Housing Act.

13. General Restrictions:

The Tenant must live in the unit and the unit must be the Tenant's only place of residence. The Tenant shall use the premises only as a private dwelling for himself/herself and the individuals listed on the Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, Attachment 1. The Tenant agrees to permit other individuals to reside in the unit only after obtaining the prior written approval of the Landlord. The Tenant agrees not to:

- a) sublet or assign the unit, or any part of the unit;
- b) use the unit for unlawful purposes;
- c) engage in or permit unlawful activities in the unit, in the common areas or on the project grounds;
- d) have pets or animals of any kind in the unit without the prior written permission of the Landlord, but the landlord will allow the tenant to keep an animal needed as a reasonable accommodation to the tenant's disability, and will allow animals to accompany visitors with disabilities who need such animals as an accommodation to their disabilities; or
- e) make or permit noises or acts that will disturb the rights or comfort of neighbors. The Tenant agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors.

14. Rules:

The Tenant agrees to obey the House Rules which are Attachment No. 3 to this Agreement. The Tenant agrees to obey additional rules established after the effective date of this Agreement if:

- a) the rules are reasonably related to the safety, care and cleanliness of the building and the safety, comfort and convenience of the Tenants; and
- b) the Tenant receives written notice of the proposed rule at least 30 days before the rule is enforced.

15. Regularly Scheduled Recertifications:

Every year around the 1ST day of FEBRUARY the Landlord will request the Tenant to report the income and composition of the Tenant's household and to supply any other information required by HUD for the purposes of determining the Tenant's rent and assistance payment, if any. The Tenant agrees to provide accurate statements of this information and to do so by the date specified in the Landlord's request. The landlord will verify the information supplied by the Tenant and use the verified information to recompute the amount of the Tenant's rent and assistance payment, if any.

- a) If the Tenant does not submit the required recertification information by the date specified in the Landlord's request, the Landlord may impose the following penalties. The Landlord may implement these penalties only in accordance with the administrative procedures and time frames specified in HUD's regulations, handbooks and instructions related to the administration of multifamily subsidy programs.

- 1) Require the Tenant to pay the higher, HUD-approved market rent for the unit.
- 2) Implement any increase in rent resulting from the recertification processing without providing the 30-day notice otherwise required by paragraph 4 of this Agreement.



- b) The Tenant may request to meet with the Landlord to discuss any change in rent or assistance payment resulting from the recertification processing. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and discuss how the Tenant's rent and assistance payment, if any, were computed.

16. Reporting Changes Between Regularly Scheduled Recertifications:

- a) If any of the following changes occur, the Tenant agrees to advise the Landlord immediately.
- 1) Any household member moves out of the unit.
 - 2) An adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.
 - 3) The household's income cumulatively increases by \$200 or more a month.
- b) The Tenant may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the Landlord has confirmation that the decrease in income or change in other factors will last less than one month, the Landlord will verify the information and make the appropriate rent reduction. However, if the Tenant's income will be partially or fully restored within two months, the Landlord may delay the certification process until the new income is known, but the rent reduction will be retroactive and the Landlord may not evict the Tenant for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The Tenant has thirty days after receiving written notice of any rent due for the above described time period to pay or the Landlord can evict for nonpayment of rent. (Revised 3/22/89)
- c) If the Tenant does not advise the Landlord of these interim changes, the Landlord may increase the Tenant's rent to the HUD-approved market rent. The Landlord may do so only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.
- d) The Tenant may request to meet with the Landlord to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and explain how the Tenant's rent or assistance payment, if any, was computed.

17. Removal of Subsidy:

- a) The Tenant understands that assistance made available on his/her behalf may be terminated if events in either items 1 or 2 below occur. Termination of assistance means that the Landlord may make the assistance available to another Tenant and the Tenant's rent will be recomputed. In addition, if the Tenant's assistance is terminated because of criterion (1) below, the Tenant will be required to pay the HUD-approved market rent for the unit.
- 1) The Tenant does not provide the Landlord with the information or reports required by paragraph 15 or 16 within 10 calendar days after receipt of the Landlord's notice of intent to terminate the Tenant's assistance payment.



2) The amount the Tenant would be required to pay towards rent and utilities under HUD rules and regulations equals the Family Gross Rent shown on Attachment 1.

- b) The Landlord agrees to give the Tenant written notice of the proposed termination. The notice will advise the Tenant that, during the ten calendar days following the date of the notice, he/she may request to meet with the Landlord to discuss the proposed termination of assistance. If the Tenant requests a discussion of the proposed termination, the Landlord agrees to meet with the Tenant.
- c) Termination of assistance shall not affect the Tenant's other rights under this Agreement, including the right to occupy the unit. Assistance may subsequently be reinstated if the Tenant submits the income or other data required by HUD procedures, the Landlord determines the Tenant is eligible for assistance, and assistance is available.

18. Tenant Obligation to Repay:

If the tenant submits false information on any application, certification or request for interim adjustment or does not report interim changes in family income or other factors as required by paragraph 16 of this Agreement, and as a result, is charged a rent less than the amount required by HUD's rent formulas, the Tenant agrees to reimburse the Landlord for the difference between the rent he/she should have paid and the rent he/she was charged. The Tenant is not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow HUD's procedures for computing rent or assistance payments.

19. Size of Dwelling:

The Tenant understands that HUD requires the Landlord to assign units in accordance with the Landlord's written occupancy standards. These standards include consideration of unit size, relationship of family members, age and sex of family members and family preference. If the Tenant is or becomes eligible for a different size unit, and the required size unit becomes available, the Tenant agrees to:

- a) move within 30 days after the Landlord notifies him/her that unit of the required size is available within the project; or
- b) remain in the same unit and pay the HUD-approved market rent.

20. Access by Landlord:

- a) The Landlord agrees to enter the unit only during reasonable hours, to provide reasonable advance notice of his/her intent to enter the unit, and to enter the unit only after receiving the Tenant's consent to do so, except when urgency situations make such notices impossible or except under paragraph (c) below.
- b) The Tenant consents in advance to the following entries into the unit:
 - I. The tenant agrees to permit the Landlord, his/her agents or other persons, when authorized by the Landlord, to enter the unit for the purpose of making reasonable repairs and periodic inspections.
 - II. After the Tenant has given a notice of intent to move, the Tenant agrees to permit the Landlord to show the unit to prospective tenants during reasonable hours.
- c) If the Tenant moves before this Agreement ends, the Landlord may enter the unit to decorate, remodel, alter or otherwise prepare the unit for re-occupancy.

21. Discrimination Prohibited:



The Landlord agrees not to discriminate based upon race, color, religion, creed, National origin, sex, age, familial status, and disability.

22. Change in Rental Agreement:

The Landlord may, with the prior approval of HUD, change the terms and conditions of this Agreement. Any changes will become effective only at the end of the initial term or a successive term. The Landlord must notify the Tenant of any change and must offer the Tenant a new Agreement or an amendment to the existing Agreement. The Tenant must receive the notice at least 60 days before the proposed effective date of the change. The Tenant may accept the changed terms and conditions by signing the new Agreement or the amendment to the existing Agreement and returning it to the Landlord. The Tenant may reject the changed terms and conditions by giving the Landlord written notice that he/she intends to terminate the tenancy. The Tenant must give such notice at least 30 days before the proposed change will go into effect. If the Tenant does not accept the amended agreement, the Landlord may require the Tenant to move from the project, as provided in paragraph 23.

23. Termination of Tenancy:

- a) To terminate this Agreement, the Tenant must give the Landlord 30-days written notice before moving from the unit.
- b) Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement.
- ☒ c) The Landlord may terminate this Agreement for the following reasons:
 - 1) the Tenant's material noncompliance with the terms of this Agreement;
 - 2) the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act;
 - ☒ 3) drug related criminal activity engaged in on or near the premises, by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control;
 - 4) determination made by the Landlord that a household member is illegally using a drug;
 - ☒ 5) determination made by the Landlord that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
 - ☒ 6) criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control:
 - ☒ a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
 - ☒ b) that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;
 - ☒ 7) if the tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the



laws of the place from which the individual flees, or that in the case of the State of New Jersey, is a high misdemeanor;

- 8) if the tenant is violating a condition of probation or parole under Federal or State law;
 - 9) determination made by the Landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;
 - 10) If the Landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in the criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.
- d) The Landlord may terminate this Agreement for other good cause, which includes, but is not limited to, the tenant's refusal to accept change to this agreement. Terminations for "other good cause" may only be effective as of the end of any initial or successive term.

The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that (a) disrupt the livability of the project; (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), and (4) Non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

- e) If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice and the grounds for the proposed termination. If the Landlord is terminating this agreement for "other good cause," the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit and in accordance with State law requirements. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

- specify the date this Agreement will be terminated;
 - state the grounds for termination with enough detail for the Tenant to prepare a defense;
 - advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
- advise the Tenant of his/her right to defend the action in court.



- f) If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph e.

24. Hazards:

The Tenant shall not undertake, or permit his/her family or guests to undertake, any hazardous acts or do anything that will increase the project's insurance premiums. Such action constitutes a material non-compliance. If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.

25. Penalties for Submitting False Information:

Knowingly giving the Landlord false information regarding income or other factors considered in determining Tenant's eligibility and rent is a material noncompliance with the lease subject to termination of tenancy. In addition, the Tenant could become subject to penalties available under Federal law. Those penalties include fines up to \$10,000 and imprisonment for up to five years.

26. Contents of this Agreement:

This Agreement and its Attachments make up the entire agreement between the Landlord and the Tenant regarding the unit. If any Court declares a particular provision of this Agreement to be invalid or illegal, all other terms of this Agreement will remain in effect and both the Landlord and the Tenant will continue to be bound by them.

27. Attachments to the Agreement:

The Tenant certifies that he/she has received a copy of this Agreement and the following Attachments to this Agreement and understands that these Attachments are part of this Agreement.

- a. Attachment No. 1 – Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, form HUD-50059
- b. Attachment No. 2 - Unit Inspection Report.
- c. Attachment No. 3 - House Rules (if any).
- d. Attachment No. 4 – Pet Rules Addendum.
- e. Attachment No. 5 – Live In Aide Addendum (if applicable).
- f. Attachment No. 6 – Lease Addendum for Late Payments and Returned Checks (NC Sites Only)
- g. Attachment No. 7 – Lease Addendum for Security Deposits (SC Properties Only)

28. Tenants' rights to organize:

Landlord agrees to allow tenant and tenant organizers to conduct on the property the activities related to the establishment or operation of a tenant organization set out in accordance with HUD requirements.

29. Tenant Income Verification:

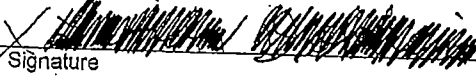
The Tenant must promptly provide the Landlord with any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income in accordance with HUD requirements.



30. The lease agreement will terminate automatically, if the Section 8 Housing Assistance contract terminates for any reason.

31. Signatures:

TENANT BY:


Signature

6/25/10
Date

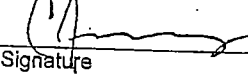
Signature

Date

Signature

Date

LANDLORD BY:


Signature

6/25/10
Date

Public reporting burden – HUD is not requesting approval of any burden hours for the model leases since use of leases are a standard business practice in the housing rental industry. This information is required to obtain benefits and is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The request and required supporting documentation are sent to HUD or the Contract Administrator (CA) for approval. The lease is a contract between the owner of the project and the tenant(s) that explains the terms for residing in the unit. Leases are a standard business practice in the housing rental industry. Owners are required to use the HUD model lease which includes terms normally covered by leases used in the housing rental industry plus terms required by HUD for the program under which the project was built and/or the program providing rental assistance to the tenants.

This information is authorized by 24 CFR 5.360, 236.750, 880.606, 883.701, 884.215, 886.127, 891.425, 891.625 and 891.765 cover lease requirements and provisions. This information is considered non-sensitive and does not require any special protection.





APARTMENT RULES AND REGULATIONS

Page 1 of 2

The following Rules and Regulations are part of your lease, and will be strictly enforced in order to keep this community the best possible place to live. Please familiarize yourself with these rules and regulations, and be sure that you, other members of your family, and your guests follow them. When in doubt about any rule, please contact the Landlord.

1. Residents must furnish shower curtains in order to avoid water damages to the floor. Light bulbs will be furnished at move-in, and the Resident must furnish replacement bulbs or be charged for any missing or burned out bulbs.
2. Opening the apartment for movers is the responsibility of the Resident. Furniture may be moved between 8:00 a.m. and 8:00 p.m. Packing cases, boxes and barrels must be broken down before being placed in the dumpsters. Mattresses, furniture or other items should not be placed outside or near the dumpsters.
3. Use picture hangers with small nails for wall decorations. Please do not use adhesive hangers – they damage the walls. Do not install wallpaper or adhesive wall decorations.
4. Place all garbage and trash in the dumpsters. We request that you use plastic bags. Keeping the breezeway clean is the responsibility of the Residents. Do not store items in the breezeways, on porches or patios unless otherwise approved by the Site Property Manager.
5. Residents may not pour greasy or oily food waste down drains, toilets or on the grounds.
6. Do not repaint your apartment. We will repaint your apartment at no charge after five years, and on a prorated basis after the first year.
7. Observe the 15-mph, or otherwise posted speed limit inside the community.
8. Do not store anything in the small closet where your furnace or hot water heater is located. Creation of physical hazards (storing of flammable materials; unsafe condition of porches, steps, or breezeways; use of open flame except natural gas appliances provided by the Landlord; or other hazards to persons or property), are prohibited. This includes any type of portable space heater, kerosene heater or propane gas grills. The use of small portable charcoal grills must be at least 10 feet from the building and in compliance with local fire codes. Charcoal must be completely cooled prior to disposal in dumpsters.
9. Since our insurance company will not pay for damage claims due to waterbeds, waterbeds are not permitted on the premises without the written permission of the Landlord and appropriate renters insurance policy which carries waterbed liability.
10. The activities and conduct of all residents and guests outside of the apartment, in all common areas, parking areas, and recreational areas (if provided) must be reasonable at all times and not disturb, by reasonable standards, other residents or guests. ~~Residents and guests, including family members, shall not make any disturbing noises in or around the apartment. Residents and guests, including family members, shall not engage in conduct which, by reasonable standards, would seriously interfere with the rights, comforts, or conveniences of other persons. Such rights include, but are not limited to, unobstructed access to apartments, building entries or common areas. Residents will make reasonable efforts to ensure all guests follow all Apartment Rules and Regulations. If guests fail to follow these rules, they will be asked to leave the apartment grounds.~~
11. The loud playing of stereos, radio, televisions, or other musical instruments is not permitted. This equipment must be played in such a manner as to not disturb other residents. Groups may not congregate in the breezeways, parking lots or common areas at any time. No alcoholic beverages may be consumed or displayed outside the apartments.
12. No Resident may be disturbed or interfered with by his neighbor at any hour of the day or night. Serious interference includes, but is not limited to, discharging a firearm, fighting and verbal and physical harassment. Serious interference could lead to possible termination of your lease agreement.
13. Residents may not repair automobiles or motorcycles on the premises. Drainage of any automotive fluids on the common areas is strictly prohibited. ~~Residents may not wash automobiles or motorcycles on the premises. Motorcycles must be parked in the parking areas only. Residents may not have parked or stored on the project premises any motor vehicle, which is not in good running order, which does not have a valid license, license plate, current auto insurance, and a valid parking permit issued by the Site Property Manager.~~

PM-301
Eff. 8/2/04, Rev. 5/28/2010



14. Children under the age of fourteen (14) are not allowed in the laundry room unless supervised by an adult. Otherwise, children are permitted on the premises and in common areas without adult supervision as long as they do not violate the terms of the Tenant's lease, violate the Apartment Rules and Regulations, interfere with the peaceful and quiet enjoyment of other tenants, or create unsafe conditions.

* → 15. Residents may not invite any person onto the property or into their unit who is listed on the site's Trespass List.

16. Pools of any type are not permitted.

17. Pets are not allowed without the Landlord's prior written permission.

18. Unless the unit is equipped for washers and dryers, they are not allowed. Laundry facilities are available on the property.

* → 19. Under federal regulations applying to this community, *Residents may not share their apartment with anyone who is not on the lease or allow unauthorized persons in the unit or on the property.* Management has the right to prohibit anyone, other than the resident from coming on the leased premises or any part of the community for any length of time once the resident receives a copy of a written notice barring an individual from entering the community.

20. Residents may not create safety hazards, including but not limited to blocking an emergency egress or extending cords or cables along the floors in a manner that may create a trip hazard.

21. To help maintain a pest free and sanitary environment, the Resident agrees to remove the contents of all cabinets and closets when required prior to a scheduled exterminating procedure.

22. If rent is not paid by the close of office hours on the 1st business day of the month, late notices will be sent. If rent is still unpaid by the close of office hours on the 5th day; a lease violation notice will be sent. If rent is still unpaid by the close of business hours on the 10th day after the rent demand is delivered, legal proceedings will be enacted.

23. Residents must get approval from management PRIOR to installing satellite dishes.

24. Residents must keep utilities on at all times while in possession of the unit.

25. Residents must immediately report any malfunctioning smoke alarms, fire extinguishers, and/or CO detectors. Residents must not disconnect or remove any safety device including, but not limited to smoke alarms, fire extinguishers and/or CO detectors.

26. Residents with Assistance Animals must register the animal with the property prior to bringing the animal onto the premises. Residents with Assistance Animals must:

- Clean up after their animals at all times. This includes, but is not limited to, cleaning up of the designated exercise and common area(s). Should an Owner fail to clean up after their animal, management may charge a fee of \$5 per occurrence to the Owner for animal clean up performed by the staff. This in no way relieves the Owner(s) from the responsibility of cleaning up after their animal.
- Attend their animal at all times when outside the apartment. The Owner must have their animal under physical control (on leash not to extend 36" in length, caged, or physically held) during all times that the animal is outside the apartment.
- Restrain their animal(s) from making noise that would disturb other residents.
- Remove any animal that bites, attacks, or demonstrates other aggressive behavior towards humans from the property.

27. Guests are permitted for a period not to exceed 14 days in a calendar year.

Resident Signature

6/25/10
Date Signed

Resident Signature

Date Signed

Agent for Landlord Signature

6/25/10
Date Signed

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5

State v Marquez Glenn



Greenville County Sheriff's Office Technical Services Unit 2014

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305

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

General Sessions Court

John C. Hayes, III, Judge

Warrant Nos. 2013A2330203356 &

2013A2330203357

State of South Carolina

Respondent

vs.

Marquez D. Glenn

Appellant

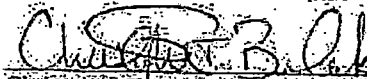
NOTICE OF APPEAL

Marquez D. Glenn appeals Judge Hayes' denial of statutory immunity pursuant to S.C. Code Ann. § 16-11-440(C) and § 16-11-450 and his subsequent conviction and sentence for Assault and Battery of a High and Aggravated Nature and Possession of a Weapon During the Commission of a Violent Crime. Judge Hayes' denial of statutory immunity was rendered on Tuesday, August 4, 2015 and Mr. Glenn was ultimately convicted of Assault and Battery of a High and Aggravated Nature and Possession of a Weapon During the Commission of a Violent Crime at the trial that followed immediately following the denial of immunity. The jury returned its verdict on the evening of Wednesday, August 5, 2015, at which time Mr. Glenn was sentenced as well.

August 17, 2015

Respectfully submitted,

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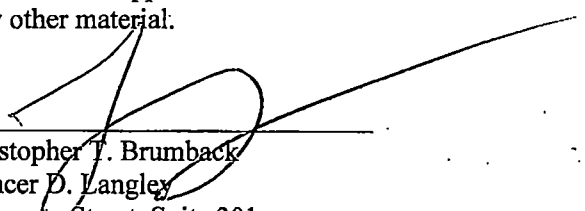
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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October 21, 2016
Greenville, South Carolina

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SC Court of Appeals

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6

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

RECEIVED

Appellate Case No. 2015-001810

NOV 21 2016

SC Court of Appeals

State of South Carolina.....Respondent,

vs.

Marquez D. Glenn.....Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	4
ARGUMENT.....	8
I. The trial court's denial of Mr. Glenn's Motion for Immunity pursuant to S.C. Code Ann. § 16-11-450(A) on the sole ground that Mr. Glenn was in violation of a three year old Trespass Notice for loitering was an abuse of discretion because Mr. Glenn, as an invitee reasonably egressing the residence to which he was invited at the time he was attacked, was in fact in a place where he had a right to be when he was forced to defend himself.....	8
A. Glenn's status as a guest and licensee of a resident of the apartment complex imbued Glenn with a license to ingress and egress through the common areas of the complex such that Glenn, while reasonably exercising his license to egress, was "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).....	11
B. Though S.C. Code Ann. § 16-11-620 is silent as to whether intent is a requirement of the offense, the express language of the statute implies an intent requirement through the creation of a "good excuse" exception.	22
C. Even assuming arguendo that Appellant was trespassing on the project premises, the trial court erred in denying Appellant self-defense immunity on the sole ground that Appellant did not have a right to be at the housing project, because S.C. Code Ann. § 16-11-410 <i>et seq.</i> 's invocation of location rights refers to relative rights versus an attacker and does not contemplate an individuals forfeiture of protections during lawful egress from a posted property.....	32

II. The housing project's use of S.C. Code Ann. § 16-11-620 in conjunction with the project's "Ban List" violate the United States Housing Act's statutory mandate and HUD's implementing regulations such that they cannot constitute the grounds for the forfeiture of an individual's statutory right to self-defense.....	36
III. The use of a general non-specific allegation of loitering as a basis for a summary adjudication of a trespass violation on a public housing project property is unconstitutionally vague.....	39
IV. The use of a three year old trespass notice as a bar to statutory immunity under the PPPA deprives the Appellant of his right to due process of law.....	41
CONCLUSION.....	43

TABLE OF AUTHORITIES

Cases

<u>Albee v. Collins</u> , 463 S.E. 2d 922 (Ga. App. 1995).....	15
<u>Anthony v. Chicopee Mfg. Corp.</u> , 147 S.E. 887 (Ga. 1929).....	15
<u>Babb v. Lee County Landfill SC, LLC</u> , 405 S.C. 129, 747 S.E.2d 468 (2013).....	19, 20
<u>Bouie v. City of Columbia</u> , 378 U.S. 347 (1964).....	39
<u>Bremerton v. Widell</u> , 51 P.3d 733 (Wash. 2002).....	15
<u>Cabins On The Ocean IV Homeowners Ass. Inc. v. North Myrtle Beach</u> , 345 S.C. 418, 548 S.E.2d 595 (2001).....	21
<u>Chesterfield v. Ratliff</u> , 53 S.C. 563, 30 S.E. 593 (1898).....	22
<u>Chicago v. Morales</u> , 527 U.S. 41 (1999).....	39, 40
<u>Connally v. General Constr. Co.</u> , 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322 (1926)....	39
<u>Conn. v. Schaffel</u> , 229 A.2d 552 (Conn. Cir. Ct. 1996).....	16
<u>Dep't of Revenue v. Blue Moon, Inc.</u> , 387 S.C. 467, 693 S.E.2d 21 (Ct. App. 2010)...	24
<u>Diggs v. Hous. Auth.</u> , 67 F. Supp. 2d 522 (D. Md. 1999).....	17, 21, 36, 37, 38
<u>D.L. v. Fla.</u> , 87 So.3d 824 (Fla. Dist. Ct. App. 2012).....	15-16
<u>Folgueras v. Hassle</u> , 331 F.Supp. 615 (W.D. Mich., 1971).....	14
<u>Greenville v. Peterson</u> , 293 S.C. 298, 122 S.E.2d 826 (1961).....	25
<u>Hicks v. Va.</u> , 535 S.E.2d 678, 686 (Va. Ct. App. 2000).....	39
<u>In re Antoine M.</u> , 907 A.2d 158 (Md. Ct. Spec. App. 2006).....	26, 27
<u>In re Jason Allen D.</u> , 733 A.2d 351 (Md. Ct. Spec. App. 1999).....	13, 25, 27, 28
<u>Johnson v. United States</u> , 135 S. Ct. 2551 (U.S. 2015).....	39

<u>Jones v. Va.</u> , 443 S.E.2d 189 (Va. Ct. App. 1994).....	24
<u>L.D.L. v. Fla.</u> , 569 So.2d 1310 (Fla. Dist. Ct. App. 1990).....	15
<u>Lancor v. Lebanon Hous. Auth.</u> , 760 F.2d 361, 363 (1st Cir. 1984).....	36
<u>Mass. v. Nelson</u> , 909 N.E.2d 42 (Mass. App. Ct. 2004).....	13, 14, 21, 27
<u>Mass. v. Richardson</u> , 48 N.E.2d 678 (Mass. 1943).....	13, 14, 18, 21, 27, 28
<u>Minn. v. Hoyt</u> , 304 N.W.2d 884 (Minn. 1981).....	17, 23, 26, 27
<u>Neil v. Byrum</u> , 288 S.C. 472, 343 S.E.2d 615 (1986).....	19
<u>Nolan v. California Coastal Comm’n</u> , 483 U.S. 825 (1987).....	19
<u>O’Banion v. Va.</u> , 519 S.E.2d 817 (Va. Ct. 1991).....	23
<u>Or. v. Schneider</u> , 265 P.3d 36 (Or. Ct. App. 2011).....	14
<u>Pa. v. Burford</u> , 73 A. 1064 (Pa., 1909).....	16
<u>Peterson v. Greenville</u> , 373 U.S. 244 (1963).....	25
<u>Shramek v. Walker</u> , 152 S.C. 88, 149 S.E. 331 (1929).....	19
<u>Springdale v. Butler</u> , 299 S.C. 276, 384 S.E.2d 697 (1989).....	22, 41
<u>State v. Duncan</u> , 392 S.C. 404, 709 S.E.2d 662 (2011).....	10
<u>State v. Douglas</u> , 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2015).....	10, 34
<u>Todisco v. Tishman Realty & Const. Co.</u> , 62 N.Y.S.2d 459 (Sup. Ct. 1946).....	16
<u>Vt. v. Dixon</u> , 725 A.2d 920 (Vt. 1999).....	14
<u>Wash. v. Green</u> , 239 P.3d 1130 (Wash. Ct. App. 2010).....	42
<u>Williams v. Nagel</u> , 643 N.E.2d 816 (Ill. 1994).....	28
<u>Wright v. United Parcel Service, Inc.</u> , 315 S.C. 521, 445 S.E.2d 657 (Ct. App. 1994)....	22
<u>Wolff v. McDonald</u> , 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).....	42

Constitutions

U.S. CONST. amend. XIV, § 1; Const. art. 1, § 3.....41

Statutes

S.C. Code Ann § 16-1-60.....11

S.C. Code Ann § 16-11-410.....32, 33, 34, 39

S.C. Code Ann § 16-11-420.....10, 31

S.C. Code Ann § 16-11-440(C).....2, 11, 30

S.C. Code Ann § 16-11-450(A).....2, 32, 35

S.C. Code Ann § 16-11-620.....9, 11, 12, 13, 20, 22, 23, 24, 26, 29, 30, 32, 40, 41, 42

United States Housing Act, 42 U.S.C. § 1437.....1, 16, 17, 36, 37

HUD Regulation, 24 C.F.R. § 966.4(d)(1).....1, 16, 17, 36, 37

Other Authorities

75 Am. Jur. 2d Trespass § 87 (1974).....23

Black's Law Dictionary 168 (7th ed. 1999).....24

Elena Goldstein, Responding to Public Housing No-Trespass Policies, 38 HARV. C.R.-
C.L. L. REV. 215 (2003) 17

Gregory A. Beck, Ban Lists: Can Public Housing Authorities Have Unwanted Visitors
Arrested?, 2004 U. ILL. L. REV. 1223 (2004).....17, 24, 37, 38, 39, 40

S.C. Attorney General Opinion, Op. S.C. Att'y Gen. (June 5, 2013).....12, 13, 20, 22

Restatement (Second) of Torts § 821D (1979).....19

Right of Third Person to Enter Premises Against Objection of the Landlord, 6 A.L.R.
465.....16

STATEMENT OF ISSUES ON APPEAL

- I. The trial court's denial of Appellant's Motion for Immunity pursuant to S.C. Code Ann. § 16-11-450(A) solely on the ground that Appellant was in violation of a three, year old Trespass Notice for loitering was an abuse of discretion because Appellant, as an invitee of a tenant, was in fact in a place where he had a right to be when he was forced to defend himself, a position consistent with a recent and well-reasoned opinion of the South Carolina Attorney General's Office, South Carolina property law jurisprudence, and the canons of statutory construction.
- II. The housing project's use of S.C. Code Ann. § 16-11-620 in conjunction with the project's "Ban List" is in violation of the United States Housing Act's statutory mandate and HUD's implementing regulations such that they cannot constitute the grounds for the forfeiture of an individual's statutory right to self-defense.
- III. The use of a general non-specific allegation of loitering as a basis for a summary adjudication of a trespass violation on a public housing project property is unconstitutionally vague.
- IV. The use of a three year old trespass notice as a bar to statutory immunity under the PPPA deprives the Appellant of his right to due process of law.

STATEMENT OF THE CASE

This is an appeal from criminal proceedings in the matter of State v. Marquez Devon Glenn. See generally State v. Glenn, 2013A2330203357 and 2013A2330203356.

This appeal concerns matters of law in trial court criminal proceedings and specifically the immunity hearing that was held pursuant to S.C. Code Ann. §§ 16-11-450(A) and 16-11-440(C).

The trial Court criminal proceedings before the Greenville County Court of General Sessions concerned charges for Attempted Murder, Assault, Assault and Battery of a High and Aggravated Nature, and Possession of a Weapon During a Violent Crime. See generally Glenn, 2013A2330203357 and 2013A2330203356. The charges arise out of an incident wherein Appellant defended himself with the use of a handgun from an unprovoked attack by two (2) individuals while Appellant was leaving an apartment complex. See Immunity Hr'g Tr., R. pp. 72:11–202:24.

Appellant 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 Appellant 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 to consider Appellant's Motion for Statutory Immunity began on August 3, 2015 and concluded on August 4, 2015. See Immunity Hr'g Tr., R. pp. 68:18–230:10. The pretrial hearing was conducted outside of the presence of the jury and was considered and ruled upon by Judge John C. Hayes III. See id.

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

Following the trial court's denial of Appellant's pretrial Motion for Statutory Immunity, Appellant was tried by jury in a trial that began on August 4, 2015 and concluded on August 5, 2015. On August 5, 2015, the jury acquitted Appellant on the charge of Attempted Murder, but convicted Appellant 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 R. pp. 232-33.

Appellant'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 Appellant's Motion for Statutory Immunity "solely on the issue of whether or not [Appellant] had a right to be [on the property]" at the time Appellant was attacked and forced to act in self-defense. See Notice of Appeal, R. p. 234-35; Immunity Hr'g Tr., R. pp. 230:15–231:14. In seeking review of the trial court's oral ruling denying immunity, Appellant is also appealing his convictions for Assault and Battery of a High and

Aggravated Nature and Possession of a Weapon During a Violent Crime that resulted from the trial court's denial of Appellant's pretrial Motion for Statutory Immunity.

For the reasons stated in this Brief, it is the Appellant's position that the trial court committed an abuse of discretion by denying Appellant's Motion for Statutory Immunity, that Appellant is entitled to Statutory Immunity as a matter of law, and that, in light of Appellant's entitlement to Statutory Immunity, Appellant's conviction for Assault and Battery of a High and Aggravated Nature and Possession of a Weapon During a Violent Crime must be vacated.

STATEMENT OF FACTS

The 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"), in the County of Greenville, South Carolina. 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. 287-302.

The individuals involved in the events of the night in question are Marquez Glenn (hereinafter "Mr. Glenn"), a social guest of Shelricka Duncan (hereinafter "Shelricka"), who was a tenant at Spring Grove at the time, Kevin Bruster (hereinafter "Kevin"), and Elfonzo Bruster (hereinafter "Elfonzo"), Kevin's nephew. See Immunity Hr'g Tr., R. p. 159:10–23, p. 164:16–18, p. 189:4–12. Both Kevin and Elfonzo are substantially larger than Mr. Glenn, who is fairly small in stature. See id. Tivarius Henderson (hereinafter

“Tivarius”) was also involved in events earlier in the evening that ultimately led Kevin and Elfonzo to attack Mr. Glenn. See id. at R. pp. 69:8–71:19.

On the evening of April 12, Kevin, who was heavily intoxicated at the time, arrived at Spring Grove to find and speak with 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. 213:10–20, p. 218:15–18. Gloria previously had a romantic relationship with Kevin. See id. 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. 94:13–98:2, pp. 160:9–161:3, p. 197:11–24. Shelricka’s apartment is also the same apartment to which Mr. Glenn had been invited by Shelricka and in which Mr. Glenn had been hanging out with friends prior to taking a friend to the convenience store. See id. Having already left on the aforesaid errand, Mr. Glenn was not present at Shelricka’s apartment when Kevin forcibly entered Shelricka’s apartment. See id.

Upon determining Gloria’s location, Kevin forcibly entered Shelricka’s apartment (hereinafter “27C”). See id. at R. p. 95:3–13. After violently forcing his way into 27C uninvited, 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, p. 118:3–13, p. 124:1–7, p. 169:13–15, p. 213:14–214:7. 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. 63:2–10.

At approximately the same time Kevin was recruiting and urging Elfonzo join him in attacking Tivarius and his family, Mr. Glenn returned to Spring Grove from sober-driving several friends to the convenience store. See id. at R. pp. 160:9–161:3, p. 197:11–24. Upon returning to Spring Grove, Mr. Glenn was 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. 161:9–14, pp. 163:20–164:5. 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.

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 the 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. 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.

At that point Kevin then 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. **The trial court's denial of Mr. Glenn's Motion for Immunity pursuant to S.C. Code Ann. § 16-11-450(A) solely on the ground that Mr. Glenn was in violation of a three year old Trespass Notice for loitering was an abuse of discretion because Mr. Glenn, as an invitee reasonably egressing the residence to which he was invited at the time he was attacked, was in fact in a place where he had a right to be when he was forced to defend himself.**

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 hang out with a group of mutual friends. Immunity Hr'g Tr., R. pp. 69:22-70:14. Despite the violent assault perpetrated by Kevin while Mr. Glenn was driving some 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 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 said nothing of Mr. Glenn not being allowed to be on Spring Grove property, and shared his knowledge, or lack thereof, concerning the assault perpetrated by Kevin, Mr. Glenn's visit to his friend's apartment 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 of the trial court 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 trial court, in direct opposition to the expressly stated legislative intent of the South Carolina Protection of Persons and Property Act (hereinafter "the PPPA") and as a misinterpretation of South Carolina trespass laws, nonetheless denied Mr. Glenn's Motion for Immunity "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, and specifically S.C. Code Ann. § 16-11-620, it is fundamentally a determination of the scope of a bona fide individual's right to defend himself against attack. Accordingly, in the final analysis, 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).

Stated more simply, the PPPA is intended to extend the right to defend one’s self to victims of crime and other bona fide individuals indiscriminate of where an attack may occur and without obligation to flee when attacked. 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 quotation marks omitted).

Despite the exceedingly clear legislative intent of the PPPA and the applicable canons of statutory construction, the trial court nevertheless interpreted the PPPA, and specifically S.C. Code Ann. § 16-11-440(C), in a manner that not only led to an absurd result in the case at bar, but that, from a policy standpoint, also vitiates the plainly stated purpose of the PPPA—that no victim of a crime should be required to surrender his personal safety to a criminal.¹

A. Mr. Glenn’s status as a guest and licensee of a resident of the apartment complex conferred on Mr. Glenn a license to ingress and egress through the common areas of the complex such that Mr. Glenn, while reasonably exercising his license to egress, was “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 fact that the trial court’s sole ground for the denial of immunity flies directly in the face of 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

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).

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 trial court's 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 plainly and inexorably 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 from a myriad of other jurisdictions.

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). The Attorney General's opinion provides in-depth and persuasive analysis of the respective property rights of landlords and tenants in housing complexes and the ability of tenants to lawfully invite persons to a complex over objection of the landlord.

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). In arriving at its conclusion, the Attorney General found the “reasoning [of the Massachusetts appellate courts] to be sound, stating that:

Particularly instructive here, the courts of one state have held that a person placed on trespass notice with regards to an apartment complex or housing project is not guilty under a statute similar to § 16-11-620 if the person enters the property at the invitation of a tenant and the person’s presence in the common areas of the property is limited to [] that which is necessary for the purpose of entering and leaving the tenant’s residence.

Op. S.C. Att’y Gen., p. 4 (June 5, 2013); see Mass. v. Richardson, 48 N.E.2d 678 (Mass. 1943); Mass. v. Nelson, 909 N.E.2d 42 (Mass. App. Ct. 2009).

Thus, turning to the reasoning of the Richardson and Nelson courts, those courts adroitly weighed and balanced the respective rights of tenants and landlords to conclude that:

It is settled that, when a landlord lets a property to be occupied by several tenants, although he retains for certain purposes control of the common doorways, passageways, stairways and the like, he grants to his tenants a right of way in the nature of an easement, appurtenant to the premises let, through those places that afford access thereto It is also settled that this easement extends to members of the tenant’s family and to all his guests and invitees.

Richardson, 48 N.E.2d at 682 (citations omitted and emphasis added); Nelson, 909 N.E. 2d 42, 45-46 (extending the holding of Richardson to public housing developments on the grounds that “[a]lthough Richardson involved a private landlord, its reasoning did not depend on the identity of the landlord, but on the nature of residential tenancy,” and

holding accordingly that “a conviction for trespass cannot stand against a defendant who is found to be passing through the halls of a [] property in order to reach a tenant’s apartment at the tenant’s invitation.”).

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 the Richardson and Nelson cases (see Immunity Hr’g Tr., R. p. 230:3-7), the cases espousing the reasoning and underlying principals of the Richardson and Nelson decisions are legion. See 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); 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); Vt. v. Dixon, 725 A.2d 920, 922 (Vt. 1999) (“The common law is clear that the landlord may not prevent invitees or licensees of the tenant from entering the tenant’s premises by passing through the common area. Moreover the law is clear that an invitee or licensee who does so, even after a specific prohibition by the landlord is not a trespasser and does not violate a criminal trespass statute.”) (emphasis added); 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,” and that “[w]hether the court regards the question of access to [a tenant’s dwelling] as one of constitutional law, the rights surrounding the ownership of

real property or the rights of tenants in relation to their landlord, the law compels a single conclusion. The fundamental underlying principle is simply that real property ownership does not vest the owner with dominion over the lives of those people living on his property.”); Anthony v. Chicopee Mfg. Corp., 147 S.E. 887, 888-89 (Ga. 1929) (“Where premises are rented to another, the landlord has no right, during the tenancy, to forbid a third person to go upon the rented premises for a lawful purpose with the permission of the tenant.”); Albee v. Collins, 463 S.E.2d 922, 925 (Ga. App. 1995) (“The tenant’s invitation to a third party carries with it the same rights enjoyed by the tenant to ingress and egress to the rented premises to the extent such ingress and egress are necessary to the purpose of the invitation. It follows that the invitation 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.”) (citations omitted); Bremerton v. Widell, 51 P.3d 733, 738-39 (Wash. 2002) (reaffirming and holding that “landlords and tenants possess joint control over the common areas of a multiunit dwelling” such that an invitee of a tenant cannot be guilty of trespass so long as the invitee “proceed[s] only through those common areas necessary for ingress and egress from the tenant’s unit.”); 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); D.L. v. Fla., 87 So. 3d 824, 825 (Fla.

Dist. Ct. App. 2012) (holding that a landlord generally does not have the right to deny entry to a tenant's invitees and accordingly reversing and discharging a trespass conviction where the prosecution "failed to rebut [defendant's] testimony that he had been invited onto the property by a tenant"); Conn. v. Schaffel, 229 A.2d 552, 562 (Conn. Cir. Ct. 1966) ("The implication which necessarily flows from the tenant's control and possession is that it is the tenant, not the landlord, who has the final word as to the person or persons who may enter upon the demised premises. The landlord has neither the power of exclusion nor the power of selection."); Pa. v. Burford, 73 A. 1064, 1067 (Pa., 1909) ("The right [to ingress and egress] being appurtenant to [a rental property], it included not only the right of the lessee to the use of it, but that it might be used by his family and others who with the permission of the tenant visited his home for any lawful purpose."); see also Todisco v. Tishman Realty & Const. Co., 62 N.Y.S.2d 458, 459 (Sup. Ct. 1946) (holding that tenants' invitees have the right to reasonable use of the tenants' means of ingress and egress of the building without being considered a trespasser); 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).

In addition to the vast majority of case law from jurisdictions that have considered the question of whether an invitee of a tenant can be considered a trespasser, the propriety of the conclusion reached by the Attorney General's opinion finds further support in 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. Sec. 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"). Consistent with both the available caselaw and the Housing Act and HUD implementing regulations, modern law review articles have also engaged in in-depth analysis of the trespass issue and concluded that:

[I]t is important to stress that tenants, not landlords, have the right to choose who may enter the property in order to visit a tenant in her place of residence. Since a tenant may determine who shall be allowed to enter her home, persons who enter a building with the permission of a tenant cannot be deemed a trespasser, even if they have been forbidden from entering by the landlord. The same analysis applies to persons using roads or walkways to reach a tenant's apartment pursuant to an invitation.

Elena Goldstein, Responding to Public Housing No-Trespass Policies, 38 HARV. C.R.-C.L. L. REV. 215, 221 (2003) (emphasis added); see also Gregory A. Beck, Ban Lists: Can Public Housing Authorities Have Unwanted Visitors Arrested?, 2004 U. Ill. L. Rev. 1223, 1224-38, 1259 (2004) (discussing the common law and statutory background for tenants' right to invite guests to their residence over the objection of landlords and recommending that "ban list policies should recognize an exception for invitees [for] [w]hile an invitation may not give the visitor the right to unrestricted access to the premises, it should at least allow visitation to the tenant's apartment and access to all the common areas necessary for ingress and egress").

Moreover, though the volume of caselaw supporting the position espoused by the Attorney General's June 5, 2013 Opinion is impressive, the more persuasive fact is that each of the above-cited cases are based on consistent and generally applicable legal touchstones that are consistent with those found in South Carolina jurisprudence. Specifically, in reaching the consistent conclusion that tenants may invite guests to a leased property over the objection of a landlord, the courts have frequently focused on the principle that a tenant's easement is equivalent to a license by which tenants and their social invitees may pass through the complex's common areas in order to access the tenant's apartment. See Minn. v. Hoyt, 304 N.W.2d 884, 890 (Minn. 1981) (holding that "[o]ne in possession of premises by permission of a tenant who is entitled to possession is not a trespasser but a licensee," and that license bestowed by the tenant "is actually a justification for acts done under the license, a sort of immunity from trespass") (emphasis in original, citation omitted). Consequently, as a "license for tenants to grant or withhold, one embraced within the easement conferred upon them by the letting...and one which the tenants could exercise notwithstanding the objections of the landlord," the landlord or owner "could not revoke the license any more than he could an invitation extended by the tenant to one calling upon any legitimate business." Richardson, 48 N.E.2d at 683.

Although the courts of South Carolina have yet to have the opportunity to join the chorus of courts that have properly concluded that, based on the rights of tenants, an invitee of a tenant cannot be guilty of trespass so long as the invitee stays within the scope of the invitation, our appellate courts have nevertheless hinted around the edges of

such a principle when discussing various other aspects 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 Supreme Court’s holding in Babb is the converse conclusion 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 of ingress and egress within the scope of the invitation of the tenant, regardless of the objection of the landlord. See 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 to enter and remain there, and that he also has the right to expel from the room or building any one who abuses the privilege

which has been thus given him.”)(citation omitted; emphasis added); Babb v. Lee County Landfill SC, LLC, 405 S.C. 129, 747 S.E.2d 468 (2013) (“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. . . .”). 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 in leasing the property, such that the landlord cannot exercise a right he has previously given up to a tenant. This premise is further proven by the fact that even a landlord who owns a property can be convicted of trespass after notice.² The fact that the right to place someone on trespass notice arises from a right to exclusive possession also indicates that trespass notices are gross in nature because they benefit a particular person or entity and not the land itself.³

Furthermore, existing South Carolina property jurisprudence also implies that to permit a landlord or property manager’s placement of a resident’s social guest on a trespass notice and thereby prohibit visitation by a tenant’s invitees would breach tenant’s

² In addressing this issue directly the Court of Appeals in State v. Tyndall, 336 S.C. 8, 17, 518 S.E.2d 278, 283 (Ct. App. 1999) held that “regardless of who owned the property on the date in question, the home was Tyndall’s father’s “dwelling house.” The language of section 16-11-620 does not exclude an owner from the class of persons who may be convicted of trespass after notice. The section provides that “[a]ny person” who violates the statute may be convicted. A record owner’s right to be on the property may be circumscribed if another person peaceably possesses the property. For example, the South Carolina Residential Landlord and Tenant Act restricts the access of a landlord, even one who is the owner, to property in the possession of a tenant. See S.C. Code Ann. § 27-40-530 (1991) (restricting a landlord’s access to property in possession of a tenant).” (emphasis in original).

³ It bears noting that between the time that Mr. Glenn was given the oral trespass notice in 2010 and the date in question, April 12, 2013, Spring Grove was sold to a different owner. Accordingly, given the gross nature of trespass notices, the trespass notice should no longer have had any force or effect after Spring Grove changed owners.

fundamental rights to use and quiet enjoyment of their leased premises. Sea Cabins On The Ocean IV Homeowners Assn. Inc. v. North Myrtle Beach, 345 S.C. 418, 431, 548 S.E.2d 595, 602 (2001) (quoting Nolan v. California Coastal Comm'n, 483 U.S. 825 (1987) for the proposition that “the right to exclude others is one of the most essential sticks in the bundle of rights that are commonly characterized as property”) (internal quotations omitted). The right to exclude, and as a corollary the right to invite, have been described as a right “valued so highly that their abolishment will result in [an] offending law being declared unconstitutional.” Op. S.C. Att’y Gen., p. 4 (Aug. 5, 2014) (quoting Jan G. Laitos, Law of Property Rights Protection: Limitations on Governmental Powers, ch. 5, § 5.03[A], p. 5-16 (1999)). These principles are also support by other courts, including 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.

Consequently, given the concord amongst the majority of states that have addressed this issue, the Attorney General’s opinion finding the reasoning of Richardson and Nelson “to be sound,” and well settled touchstones of South Carolina property jurisprudence, this Court should seize the opportunity to explicitly hold that individuals placed on trespass notice by a landlord, but who are social invitees of tenants, possess a license to reasonable ingress and egress through a complex’s passageways and common areas such that the invitee cannot be deemed a trespasser in the exercise of that license.

B. Though S.C. Code Ann. § 16-11-620 is silent as to whether intent is a requirement of the offense, the express language of the statute implies an intent requirement through the creation of a “good excuse” exception

Further supplementing the conclusion that Mr. Glenn, as a matter of law, should not have been denied immunity “solely” on the ground that Mr. Glenn was not in a place he had a right to be when he was attacked by Kevin and Elfonzo is the language of S.C. Code Ann. § 16-11-620 itself. Though S.C. Code Ann. § 16-11-620 is seemingly silent as to whether intent is a necessary element to conviction for trespass pursuant to § 16-11-620, the express language of § 16-11-620 creates an exception to liability “where a person has ‘legal cause or good excuse’ to enter the premises” or remain thereon. Op. S.C. Att’y Gen., p. 4 (June 5, 2013) (quoting S.C. Code Ann. § 16-11-620); see also Wright v. United Parcel Service, Inc., 315 S.C. 521, 523, 445 S.E.2d 657, 659 (Ct. App. 1994) (describing S.C. Code Ann. § 16-11-620 as a “statute imposing criminal liability for one to remain on the premises of another, without legal cause or good excuse, after being asked to leave”) (emphasis added).

Through the express creation of an exception trespass after notice for persons that enter or remain on property on the basis of “good excuse,” the General Assembly tacitly imposed a criminal intent requirement for violation of S.C. Code Ann. § 16-11-620. Springdale v. Butler, 299 S.C. 276, 384 S.E.2d 697, 699 (1989) (implying that trespass after notice is not a strict liability offense and holding that S.C. Code Ann. § 16-11-620 is not applicable, even in the face of an express request of a property owner to leave the premises, where the person entering or remaining on the property does so with “legal cause or good excuse”); see also Chesterfield v. Ratliff, 53 S.C. 563, 30 S.E. 593, 593-94

(1898) (discussing a statute that prohibited the shooting of firearms “without a reasonable excuse” and holding that the offense implicitly required an element of intent because “the offense denounced by the ordinance consists not merely [i]n shooting firearms...but doing so ‘without reasonable excuse...[such that] when one is prosecuted for a violation of the ordinance it must appear, not only that the accused fired a pistol...but also that he did so without reasonable excuse”).

The imposition of an intent requirement through the express creation of a “good excuse” exception to § 16-11-620 necessarily carries with it the acknowledgement of a bona fide claim of right defense to the crime of criminal trespass. See Hoyt, 304 N.W.2d at 890-91 (vacating a conviction for criminal trespass on the grounds of a bona fide claim of right and stating that “[c]riminal intent is an essential element of the statutory offense of trespass, even though the statute is silent as to intent, and if the act prohibited is committed in good faith under claim of right or color of title, although the accused is mistaken as to his right...no conviction will lie, since it will not be presumed that the legislature intended to punish criminal acts committed in ignorance, by accident or under claim of right, and in the bona fide belief that the land is the property of the trespasser, unless the terms of the statute forbid any other construction”) (quoting 75 Am. Jur. 2d Trespass § 87 (1974)); O’Banion v. Va. 519 S.E.2d 817, 821 (Va. Ct. App. 1999) (interpreting a criminal trespass statute similar to § 16-11-620 that does not contain an express requirement of intent and holding that since the courts of Virginia have uniformly required proof of intent for criminal trespass to lie, “one who enters or stays upon another’s land under a bona fide claim of right cannot be convicted of trespass”); see also

Jones v. Va., 443 S.E.2d 189, 191 (Va. Ct. App. 1994) (holding that “a good faith claim of right to be on the premises negates the requisite intent to engage in a criminal trespass”); Beck, Ban Lists: Can Public Housing Authorities Have Unwanted Visitors Arrested?, 2004 U. Ill. L. Rev. at 1231 (noting that “[e]ven some trespass statutes that do not explicitly contain [a good faith] exception have been held to implicitly contain a requirement that the trespass be willful, and courts have crafted exceptions for guests who have a good faith claim of right to be on the property”) (emphasis added).

In South Carolina “bona fide” has been defined as “in good faith[,] without fraud or deceit.” Dep’t of Revenue v. Blue Moon, Inc., 387 S.C. 467, 693 S.E.2d 21, 23 (Ct. App. 2010) (quoting Black’s Law Dictionary 168 (7th ed. 1999)). Though no South Carolina appellate court has had the opportunity to interpret “good excuse” or a bona fide claim of right as they apply to S.C. Code Ann. § 16-11-620, the South Carolina definition of bona fide is consistent with the definitions used by various other courts such that the analysis of those courts with regard to the issue of criminal trespass is instructive to the case at bar.

In the light of the prosecution’s argument in the immunity hearing that Mr. Glenn could not be a legal invitee to Spring Grove because the “model” leases the Solicitor presented to the trial court contained a provision stating that it was a default of a tenant’s lease to invite guests that had been placed on trespass notice to the Complex, the case of

In re Jason Allen D., 733 A.2d 351 (Md. Ct. Spec. App. 1999) is particularly instructive given the striking similarity between the facts of that case and Mr. Glenn's.⁴

In In re Jason Allen D. the "State argued that Morris's [the minor tenant] invitation was ineffective to confer bona fide status upon [the defendant], either because Morris was a minor, or because a tenant's right to invite a social guest is superseded by the Housing Authority's right to exclude non-residents." Id. at 363. In reversing the criminal trespass conviction of the defendant on the ground that the defendant had a bona fide claim of right as a guest of housing project tenant, the court reasoned in pertinent part that:

In our view, the State has confused an actual or enforceable legal right with a bona fide claim of right. To be sure, the term "bona fide" is not coextensive with an established legal right. On the continuum, a bona fide claim of right does not necessarily measure up to a valid claim of right. Thus, whether Jason's cousin, a Sagner resident, could lawfully invite Jason to enter the Sagner property is beside the point, because Jason only needed a bona fide claim of right to enter the Sagner property...Further, even if a minor's right to invite guests to the housing complex does not match the lessee's right, there was no evidence offered by the State to show that appellant knew or should have known that his cousin had neither authority, permission, nor the right to invite him to Sagner. Indeed, absent a sophisticated understanding by Jason of landlord-tenant rights or property rights, or knowledge that Morris had been prohibited by a parent or guardian or the lease itself from inviting Jason to visit him at Sagner, we do not see how Jason could have known that his cousin was unable to invite him lawfully to Sagner property.

⁴ At the outset, it is important to observe that Mr. Glenn would have no means of knowing what provisions were contained in the "model" lease. Additionally, no evidence was presented that the 2010 "model" lease proffered by the prosecution was the operative legal document defining Shelricka's rights as a tenant. In fact, in terms of reasonable belief, Mr. Glenn had every reason to assume the position of the South Carolina Attorney General was correct, i.e., that passage through common areas at the express invitation of a tenant was an acceptable and innocent act.

Id. at 367 overruled on other grounds by In re Antoine M., 907 A.2d 158 (Md. Ct. Spec. App. 2006); see also In re Antoine M., 907 A.2d 158, 166 (Md. Ct. Spec. App. 2006) (“To make culpable the inadvertent trespasser and the trespasser who entertains a reasonable belief that his conduct was proper would be unreasonable, illogical, inconsistent with common sense, and contrary to the interests of justice.”) (citation omitted emphasis in original).

The acknowledgement of a bona fide claim of right defense to criminal trespass under S.C. Code Ann. § 16-11-620 is logically consistent with the plain language of the statute and the intent of statute—to protect the rights of the owners or those in control of private property. Greenville v. Peterson, 239 S.C. 298, 303, 122 S.E.2d 826, 828 (1961) rev’d on other grounds sub nom., Peterson v. Greenville, 373 U.S. 244 (1963) (stating that the intent of the precursor to S.C. Code Ann. § 16-11-620 was “clearly for the purpose of protecting the rights of the owners or those in control of private property”). For, as noted by the Minnesota Supreme Court in Hoyt in discussing a bona fide claim of right defense to criminal trespass, “a false claim would not be a claim at all.” 304 N.W. 2d at 890 (citation omitted). Therefore, given that a false claim or bad excuse would be no bar to prosecution for criminal trespass, the acknowledgement of a bona fide claim of right defense neither diminishes or circumscribes the protections provided to private property owners or possessors nor expands the “good excuse” exception affirmatively created by § 16-11-620; rather it would simply expound upon and illuminate what it means for one to have a “good excuse” to a charge of criminal trespass.

Given that “good excuse” and bona fide claim of right are two sides of the same coin, the question with which the trial court concerned itself in ruling on immunity should not have been whether Mr. Glenn had a legal right to be at Spring Grove on the night in question, but rather whether Mr. Glenn had a good faith reasonable belief that he was allowed to visit his friend who invited him to her apartment. In re Antoine M. 907 A.2d 158, 169 (holding that [w]hile a teenage daughter may not, as a matter of property law, have even been able to ‘countermand’ [a trespass] notice,” that is not the appropriate standard for determining whether a defendant was guilty of criminal trespass or whether the defendant had a bona fide claim that he was permitted on the property in question”).

Thus, turning to the facts presented in the immunity hearing, it is important to again note the marked similarity to the circumstances in the Nelson and Richardson cases and those in In re Jason Allen D. and In re Antoine M. Shelricka, as a tenant of Spring Grove, had the right to bestow upon those persons she chooses to invite to her residence a right of way in the nature of an easement through such common areas, stairs, breezeways, and passageways which afford access to her apartment. Having exercised her fundamental property rights to the use and quiet enjoyment of her property by expressly inviting Mr. Glenn to her apartment on the night of April 12, 2013, Glenn was a social invitee of Shelricka that was, consequently, licensed and “entitled to use the means of ingress and egress to make such visitation possible” Hoyt, 304 N.W.2d at 890; see Immunity Hr’g Tr., R. pp. 93:11-97:5. The license bestowed upon Glenn by Shelricka “was [one] for [her] to grant or withhold . . . notwithstanding objections of the landlord, who could not revoke the license any more than he could an invitation extended by [a]

tenant to one calling upon any legitimate business. Richardson, 48 N.E.2d at 683. As noted earlier, one cannot exercise a right, of which he previously voluntarily divested himself. Therefore, acting within the scope of the invitation extended by a tenant of Spring Grove, Mr. Glenn clearly had a bona fide and good faith claim of right constituting a “good excuse” to be on the property at the time he was attacked by Kevin and Elfonzo. At no time did the prosecution offer any evidence to controvert Mr. Glenn’s plainly established and bona fide good excuse for being at Spring Grove on April 12, 2013.

Moreover, despite the Spring Grove Model Leases for Subsidized Programs that state that it is a breach of a tenant’s lease for the tenant to invite any person onto the property or into their unit who is listed on the site’s Trespass List, the tenant’s breach of her lease in no way impacts the bona fide and good faith nature of Mr. Glenn’s claim of right to visit Spring Grove at the invitation of a tenant.⁵ In re Jason Allen D., 733 A.2d at 367 (holding that a defendant was not guilty of criminal trespass at a housing project

⁵ In addition to the fact that the provisions of a lease between a landlord and tenant should have no bearing on a third party’s ability to defend a charge of criminal trespass and that the “normal remedy for a lease violation...is eviction, not criminal arrest,” the Model Leases presented by the prosecution during the immunity hearing were not the operative lease signed by Shelricka, the tenant, but were simply unsigned “model” leases for Spring Grove. See also Williams v. Nagel, 643 N.E.2d 816, 823 (Ill. 1994) (Harrison, J. dissenting) (arguing that holding that a third party not in privity to a lease between a landlord and tenant can be prosecuted for a tenant’s violation of the terms of her lease is “tantamount to finding that private parties have the right to alter the criminal law through contractual agreements”). Accordingly, given that the prosecution did not present the lease signed by Shelricka and instead proffered a “model” lease from several years before the time of the incident in question, there is no evidence establishing that Shelricka’s lease even contained a provision stating that it is a breach of a tenant’s lease for the tenant to invite any person onto the property or into their unit who is listed on the site’s Trespass List.

because the defendant had been invited to the complex by a tenant and “absent a sophisticated understanding by [defendant] of landlord-tenant rights or property rights, or knowledge that Morris had been prohibited by a parent or guardian or the lease itself from inviting [defendant] to visit him at Sagner, we do not see how [defendant] could have known that his cousin was unable to invite him lawfully to Sagner property”). Therefore, regardless of the terms of any lease that may have existed between Shelricka and Spring Grove, or whether Shelricka violated the terms of any such lease, it was an abuse of discretion for the trial court to deny Mr. Glenn immunity “solely” on the ground that Spring Grove, as Shelricka’s landlord, could impose lease provisions on whether she had a pet and who she could invite to her apartment. See Immunity Hr’g Tr., R. pp. 229:24-230:2 (denying immunity on grounds of the lease between Shelricka and Spring Grove because “[a]s the way of example, [tenants] can be told they can’t have pets, they can be told they can’t have a business, they can be told only have a certain number of occupants, they can be told that the occupants have to be relatives.”). Criminalizing a tenant’s breach of a lease as to a third party not in privity to the lease is wholly unconnected to the intent of S.C. Code Ann. § 16-11-620 and certainly leads to a result so plainly absurd that it could not possibly have been intended by the Legislature. Instead of looking to the relationship between Shelricka, as tenant, and Spring Grove, as landlord, to ascertain whether Mr. Glenn was somewhere he had a right to be at the time he was attacked by Kevin and Elfonzo, the trial court should have focused its inquiry on whether Mr. Glenn had a bona fide claim of right to be at Spring Grove on the evening of April 12, 2013.

The uncontroverted evidence offered during the immunity hearing plainly established that Mr. Glenn was invited to Spring Grove on the evening of April 12, 2013 by Shelricka to take part in a social gathering with mutual friends, a completely peaceable and lawful endeavor. See Immunity Hr'g Tr., R. pp. 69:22-70:14, pp. 94:21-95:2, pp. 159:20-160:16. In accepting Shelricka's invitation Mr. Glenn at all times operated within the scope of the invitation, passing through the common areas of the Complex only to reasonably ingress and egress from Shelricka's apartment and stopping only at the explicit request of law enforcement officers to assist them in the investigation of the assault previously perpetrated by Kevin. See id. at R. pp. 160:24-161:14. At no time during the immunity hearing did the prosecution or any witnesses therefor provide any evidence that Mr. Glenn knew anything about any alleged provision in Spring Grove leases prohibiting Shelricka or any other tenant from inviting him to the Complex. Moreover, there was also no evidence offered controverting Mr. Glenn's stated good faith belief that he was permitted to visit a tenant of Spring Grove at the tenant's invitation. Accordingly, having acted on a bona fide claim of right and only passed through the necessary common areas to visit and depart the apartment of a tenant of whom he was a guest, it was an abuse of discretion from both a matter of law and a factual standpoint for the trial court to deny Mr. Glenn immunity "solely" on the ground that "he was not at a place he had a lawful right to be" when he was violently and criminally attacked by Kevin and Elfonzo. S.C. Code Ann. § 16-11-440(C).

Based on the caselaw discussed herein and the clear intent of the General Assembly with regard to both the PPPA and S.C. Code Ann. § 16-11-620, it is abundantly

evident that the trial court's denial of immunity to Mr. Glenn "solely" on the ground that Mr. Glenn did not have a "lawful right" to be at the Complex when he was attacked was an abuse of discretion. Specifically, to uphold the trial court's ruling would fly in the face of the PPPA's intent to 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). There is no disagreement as to the fact that Mr. Glenn was at Spring Grove on the night in question for a lawful and peaceable purpose. However, to follow the reasoning of the prosecution and ultimately the trial court, despite Mr. Glenn's bona fide and peaceable presence as an invitee, he was required to surrender his personal safety in the face of a violent and criminal attack from Kevin and Elfonzo. Based on the testimony concerning the violent acts of Kevin and Elfonzo there can be no doubt that someone was going to be injured as a result of Kevin and Elfonzo's attack of Mr. Glenn. Requiring Mr. Glenn to choose between (1) suffering great bodily injury and/or death at the hands of unprovoked assailants or (2) suffering a twelve (12) year prison sentence for defending himself is certainly exactly the type of plainly absurd outcome that our canons of statutory construction are meant to protect against. This is especially true given that the intent of the PPPA clearly indicates a desire to protect persons, regardless of their location, from unprovoked attacks that arise through no fault of the victim. Moreover, upholding the trial court's denial of immunity on the stated grounds will have a undoubted chilling effect on bona fide persons ability to defend themselves under the PPPA, for where is the line drawn? Is an innocent person who is jaywalking when they

are attacked not entitled to defend themselves pursuant to the PPPA? The imposition of a bona fide element to the issue of whether an individual was in a place they had a right to be, similar to the examination of proximate cause with regard to the unlawful activity element of self-defense, gives effect to the intent of the General Assembly and is consistent with the Court's other jurisprudence concerning self-defense. See State v. Burriss, 334 S.C. 256, 262 (1997) ("[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.").

Therefore, given the uncontroverted evidence produced during the immunity hearing and based on a proper interpretation of the PPPA and S.C. Code Ann. § 16-11-620, Appellant requests that this Court reverse the trial court's denial of immunity, and grant Appellant immunity as a matter of law pursuant to S.C. Code Ann. § 16-11-450(A).

- C. Even assuming arguendo that Appellant was trespassing on the project premises, the trial court erred in denying Appellant self-defense immunity on the sole ground that Appellant did not have a right to be at the housing project, because S.C. Code Ann. § 16-11-410 et seq.'s invocation of location rights refers to relative rights versus an attacker and does not contemplate an individuals forfeiture of protections during lawful egress from a posted property**

From the intent and findings of the General Assembly, the purpose of S.C. Code Ann. § 16-11-410 et seq. was to confer rights on law abiding people as opposed to those

assaulting them. Even assuming *arguendo* that Mr. Glenn was in violation of a Trespass Notice when he crossed the common area of the Spring Grove complex, he would nonetheless have the right, and in fact, the obligation to leave the premises. When assaulted by his attackers, Mr. Glenn was in a place he had a right to be as he approached his car to leave.

The mischief that the State's argument would create if it were the law 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 leave the premises. Under the State's view, the protection of S.C. Code Ann. § 16-11-410 et seq. would not apply even though the patron was in the process of exiting the premises. Certainly in that case an individual's right to defend himself pursuant to the PPPA would not be dependent upon whether he had made it back across the threshold of the business if he was attacked by a third party while in the process of peaceably and lawfully exiting the business. Likewise, if a person parked in a parking lot that posted a sign banning firearms on the premise and was attacked returning to her car, on the Prosecution's view, the victim would be deprived of the right to the immunity statute if a firearm were in the glovebox of the car.

As was discussed supra with regard to the havoc that would be wreaked as a result of the trial court's reasoning for the denial of immunity, this example further illustrates that the trial court's interpretation of the PPPA would lead to both (1) "a result so plainly absurd that it could not possibly have been intended by the Legislature" and (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). From its findings and clear statutory language it is obvious the General Assembly intended for the PPPA to provide broad protection for innocent persons who find themselves the victim of criminal activity to have the right to defend themselves. In codifying and expanding the common law Castle Doctrine it is further evident from the findings of the PPPA that the General Assembly intended to loose an innocent person’s right to defend themselves from the archaic and technical limitations previously placed on the right to self-defense.

The clear purpose of the “another place where he has a right to be” statutory language is to preclude criminal actors from attempting to justify their use of force against others rather than to impose technical restrictions on the right of an innocent people to defend themselves. As clearly contemplated by the legislative intent of the PPPA, 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.

The fact that S.C. Code Ann. § 16-11-410’s invocation of location rights refers to relative rights versus an attacker is further implicitly supported by existing South Carolina jurisprudence concerning the right to self-defense. For purpose of invoking the right to self-defense, it has long been a requirement in this State that the individual invoking the right of self defense cannot have been engaged in an unlawful activity at the time he defended himself. Based on the reasoning by which the trial court denied immunity on the sole ground that Mr. Glenn was not in a place where he had a “lawful right” to be, the simple fact that one was carrying a concealed weapon without a

concealed weapons permit would constitute an unlawful act that would preclude a claim of self-defense—even assuming the concealed weapon was not the cause of the incident. However, this line of reasoning that puts form above function and substance has been rejected by the Supreme Court of South Carolina time and again. See State v. Burriss, 334 S.C. 256, 262 (1997) (“[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). Consistent with the reasoning of the Burriss and Goodson cases the analysis of whether an individual is in a place where he has a right to be for purposes of self-defense under the PPPA should place substance above form to give full force and effect to the plain legislative intent.

Having found that Mr. Glenn was entitled to immunity but for not being somewhere he had a “lawful right” to be, 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, 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 was clearly Mr. Glenn who was the individual who had the bona fide right to be egressing through the common area of Spring Grove when the meeting between Mr. Glenn and Kevin and

Elfonzo transpired. As the innocent victim of Kevin and Elfonzo's criminal attack, Mr. Glenn should have had the right to defend himself pursuant to the PPPA and to cloak himself in immunity thereafter. Accordingly, it was an abuse of discretion for the trial court to deny Mr. Glenn immunity, even assuming a violation of a trespass notice, on the sole ground that Mr. Glenn did not have a "lawful right" to be on the Spring Grove property.

II. The housing project's use of S.C. Code Ann. § 16-11-620 in conjunction with the project's "Ban List" are in violation of the United States Housing Act's statutory mandate and HUD's implementing regulations such that they cannot constitute the grounds for the forfeiture of an individual's statutory right to self-defense

The Housing Act, 42 U.S.C. § 1437 and the HUD implementing regulations mandate that public housing leases shall not contain any "unreasonable terms and conditions," 42 U.S.C. § 1437d(1)(2), and that public housing leases "shall" provide "reasonable accommodation" of tenants' guests, 24 C.F.R. § 966.4(d)(1).⁶ The regulation of public housing leases by the Housing Act and the HUD implementing regulation "substantively prohibits public housing authorities from unreasonably interfering with tenants' ability to entertain guests in the tenants' public housing apartments." *Diggs*, 67 F. Supp. 2d at 532.

Where a trespass policy is enforced as "a virtually permanent bar to a tenant's right to invite a guest into her own home," "all persons who have been issued a trespass citation, whether correctly or incorrectly are indefinitely prohibited from returning to the

⁶ 24 C.F.R. § 966.4(d) states in pertinent part that a "lease shall provide that the tenant shall have the right to exclusive occupancy of the leased premises which shall include reasonable accommodation of the tenant's guests or visitors...."

[housing project] property even if a tenant personally escorts them from the public sidewalk into the tenant's own apartment," and "tenants have been told that they face eviction if they invite persons known to be on the trespass long into their homes," such trespass policies have been found to violate the Housing Act and its implementing regulations because the "policy impermissibly excludes many potential guests" and as such runs afoul of the requirement of "reasonable accommodation" for tenants' guests. Diggs, 67 F. Supp. 2d at 534; see Lancor v. Lebanon Hous. Auth., 760 F.2d 361, 363 (1st Cir. 1984) (holding that a trespass policy that "gave the management unfettered discretion to approve or disapprove the tenant's request, strikes us as neither necessary nor reasonable. This regulation also cannot be said to provide for the reasonable accommodation of a tenant's guests or visitors."); see also Beck, Ban Lists: Can Public Housing Authorities Have Unwanted Visitors Arrested?, 2004 U. Ill. L. Rev. at 1229-41 (discussing subsidized housing trespass policies with regard to the requirements of the Housing Act and the HUD implementing regulations and the effect thereof).

Turning to Spring Groves ban list trespass policy, the policy bears striking resemblance to the trespass policy invalidated by the court in Diggs. As testified to during the immunity hearing, once added to the Spring Grove trespass list the effect is virtually a permanent ban. Based on the evidence in the record it appears that there is no way for a tenant or an individual on the ban list to seek an individual's removal from the ban list. In addition to the unreasonableness of a ban lasting for perpetuity, the testimony concerning Spring Grove's ban list also indicates that it vests agents of the Complex with virtually unfettered discretion to outlaw a significant amount of innocent conduct. See

Beck, Ban Lists: Can Public Housing Authorities Have Unwanted Visitors Arrested?, 2004 U. Ill. L. Rev. at 1248 (discussing the unconstitutionality of trespass policies that leaves enforcement decisions to the standardless discretion of those enforcing the trespass policy). Moreover, from the evidence provided at the immunity hearing, no one but law enforcement is apparently privy to the full list of individuals who are on the Spring Grove ban list. See Immunity Hr'g Tr., R. pp. 204:6-205:5. Finally, as with the trespass policy in Diggs, regardless of the absence of Shelricka's lease from the record, it is clear that Spring Grove's trespass policy carries the threat of eviction for tenants who invite persons on the ban list to Spring Grove. Furthermore, since the names on the ban list are not made known to the tenants, tenants are in essence forced to live beneath the ever present sword of Damocles should they dare to invite persons who do not live at Spring Grove to their apartment.

Given the ever-present specter of being evicted for unknowingly inviting the "wrong" person to Spring Grove as well as the other onerous provisions of the Spring Grove trespass policy, it is clear that the Spring Grove trespass policy "unreasonably interfere[s] with tenants' ability to entertain guests in the tenants' public housing apartments. As such the Spring Grove trespass policy should not have been enforceable against Mr. Glenn to prohibit him from visiting a tenant at Spring Grove at the tenant's invitation or against Shelricka to prohibit her from inviting Mr. Glenn, or anyone else she desired, to her apartment for lawful and peaceable purposes. Due to the Spring Grove trespass policy being unenforceable it was an error of law for the trial court to deny Mr. Glenn immunity based in any part of Spring Grove's trespass policy.

III. The use of a general non-specific allegation of loitering as a basis for a summary adjudication of a trespass violation on a public housing project property is unconstitutionally vague

Under the Fifth and Fourteenth Amendments “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” When a law fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement, the law violates this guarantee. See, Johnson v. United States, 135 S. Ct. 2551 (2015). The prohibition of vagueness in criminal statutes “is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,” and a statute that flouts it “violates the first essential of due process.” *Id.*, (citing Connally v. General Constr. Co., 269 U.S. 385, 391 (1926)).

The trial court’s interpretation of the immunity and trespass after notice statutes would deprive citizens of an important liberty interest conferred by S.C. Code Ann. § 16-11-410 et seq. in an arbitrary fashion and without appropriate due process. The predicate conduct purportedly justifying the verbal trespass notice was “loitering.”⁷ The law enforcement officer giving the notice, who at the time was on the payroll of the apartment complex owner, gave no other cause for the notice.

The use of “loitering” charges has a checkered history of discriminatory enforcement. *See, e.g., Bouie v. Columbia*, 378 U.S. 347 (1964); *cf., Chicago v. Morales*, 527 U.S. 41 (1999) (“[i]f the loitering is in fact harmless and innocent, the dispersal order

⁷ See Beck, Ban Lists: Can Public Housing Authorities Have Unwanted Visitors Arrested?, 2004 U. Ill. L. Rev. 1223, 1258 (citing Hicks v. Va., 535 S.E.2d 678, 686 (Va. Ct. App. 2000) for the proposition that “mere presence on property should never be enough to get oneself banned...”).

itself is an unjustified impairment of liberty.); see also Beck, Ban Lists: Can Public Housing Authorities Have Unwanted Visitors Arrested?, 2004 U. Ill. L. Rev. 1223, 1224-41, 1244-49 (discussing the history and use of ban lists and their impact on freedom of movement); Angela L. Clark, City of Chicago v. Morales: Sacrificing Individual Liberty Interests for Community Safety, 31 Loy. U. Chi. L. J. 113 (1999) (providing in-depth analysis of loitering laws and constitutional challenges thereto). In the case at bar, the apartment was government subsidized public housing and the law enforcement officer, though not on official public duty, acted under the color of state law by use of public resources, including his uniform, police cruiser computer, etc.

In the case at bar, the allegation was general and nonspecific. Neither the officer nor the prosecution cited the violation of any state or local ordinance prohibiting loitering. Law enforcement did not issue Mr. Glenn a citation, and he had no opportunity to be heard or challenge the verbal notice which led to his inclusion in a non-public database of "banned" individuals.

Moreover, violation of S.C. Code Ann. § 16-11-620 can only occur if the Defendant is "requested to do so by the person in possession or his agent or representative". In this case, the party in possession of the property at the time of the verbal notice was a company that sold the property several years prior to the date on which this incident occurred. Significantly, the record contains no proof of a nexus between the original verbal notice and a re-publication or ratification by the new property owner.

On this point the law is very clear. An agent's loss of capacity to do an act for the principal terminates or suspends his authority. (Restatement 2d of Agency, § 122(2) (2nd 2010)). The officer's capacity to serve as an agent of the housing project is further compromised by S.C. Code Ann. § 8-13-700(A) ("No . . . public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself.")

Under these circumstances, the State is depriving the Defendant of a fundamental liberty interest, i.e., statutory immunity, on the basis of an ill-defined offense predicated on "notice" given by one not authorized to act as an agent for the property and with no recourse to a factual or legal challenge. The alleged trespass violation on the vague and unproven claim of loitering cannot withstand judicial scrutiny.

S.C. Code Ann. § 16-11-620 provides a monetary fine or imprisonment as the remedy. (In fact, it does not even grant the landowner the right to eject. See, Springdale v. Butler, 299 S.C. 276, 279 (S.C. 1989)). To subject the availability of statutory immunity to the minimal procedural and notice standards of claims of loitering and trespass creates grave and constitutionally prohibited uncertainty as to the applicable law.

IV. The use of a three year old trespass notice as a bar to statutory immunity under the PPPA deprives the Appellant of his right to due process of law

The Fourteenth Amendment and the South Carolina Constitution both provide that no person shall be deprived of "life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1; Const. art. 1, § 3. Procedural due process requires notice and

an opportunity to be heard before the government can take a person's liberty or property interests.

Mr. Glenn's right to immunity under the PPPA constitutes an important liberty interest. The presumptions and immunities afforded under the PPPA are therefore entitled to protection as a matter of constitutional due process. As the U.S. Supreme Court has stated, "a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government." Wolff v. McDonald, 418 U.S. 539 (1974).

The trial court's assumption that Mr. Glenn was guilty of trespass violates his constitutional right to due process. The record shows at most that he was issued a verbal notice that he would be placed on a banned person list. No citation was ever given.⁸

A notice of trespass is not a judicial order. A trespass notice is not subject to the same deference or protections that attend judicial orders. See, e.g., Wash. v. Green, 239 P.3d 1130 (Wash. Ct. App. 2010).

As stated in Washington v. Green:

[N]otice of trespass is merely an evidentiary tool in the prosecution for trespass. . . . Service of the notice of trespass proves only that the recipient had notice that the issuing authority considered her license to enter the property to have been revoked. On these facts, issuing the notice did not relieve the State of its burden to prove the elements of criminal trespass . . .

Green, 239 P.3d at 1136.

⁸ Violation of § 16-11-620 requires issuance of a citation. § 56-7-10 explicitly states that "[t]here will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses: . . . Trespassing § 16-11-620 . . ."

The State must prove each element of criminal trespass beyond a reasonable doubt. That includes the predicate facts, such as the alleged "loitering" violation in the first instance, the presence of Mr. Glenn beyond the area of lawful egress, and so forth, as well as the constitutional validity of the trespass restriction in view of substantial authority that vague, blanket restrictions in public housing projects violate First Amendment rights to travel and to association with friends and family.

The liberty interest at stake in the case at bar is too important for the use of arbitrary action such as has occurred here. The original trespass notice gave no notice or opportunity to challenge the issue which – more than three years later – were to have the ex post facto result of depriving Mr. Glenn of fundamental self defense privileges otherwise available by statute.

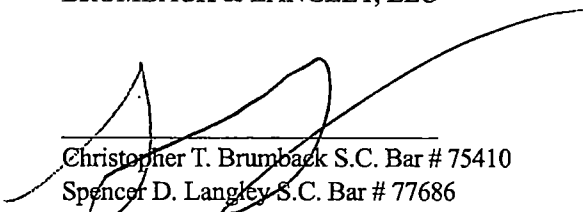
The trial court's summary conclusion that the immunity protections were unavailable based upon unproved and constitutionally deficient trespass notice cannot withstand scrutiny under due process requirements.

CONCLUSION

Appellant Marquez D. Glenn respectfully requests that this Court REVERSE the August 4, 2015 Order of the lower court denying Appellant's Motion for Immunity pursuant to S.C. Code Ann. § 16-11-450(A), GRANT Appellant immunity from prosecution in connection with the events of April 12, 2013, and VACATE Appellant's convictions for Assault and Battery of a High and Aggravated Nature and Possession of a Weapon During a Violent Crime.

[Signature on Following Page]

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Date: November 14, 2016
Greenville, South Carolina

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NOV 21 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2015-001810

State of South Carolina.....Respondent,

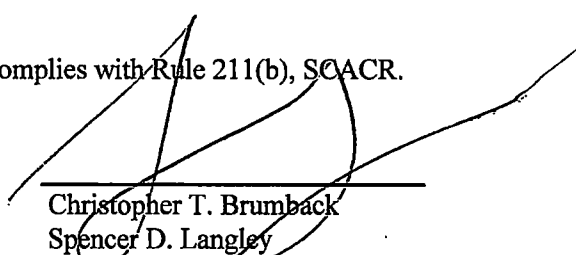
vs.

Marquez D. Glenn.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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APPEAL FROM GREENVILLE COUNTY
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THE STATE, ...RESPONDENT

v.

MARQUEZ DEVON GLENN, ...APPELLANT.

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TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	iii
Respondent's Statement of Issues on Appeal	1
Statement of the Case.....	3
Statement of Facts.....	4

Argument:

- I. The trial court properly found Appellant was not entitled to immunity from criminal prosecution under the Protection of Persons and Property Act where he failed to carry his burden of proving by a preponderance of the evidence that he was "in another place he had a right to be" when he shot Victim three times, because: (1) he was on the apartment complex's "no trespass" list due to his family being evicted from their apartment in 2010, (2) he had been being given a verbal trespass notice by police officers prior to the shooting; and (3) the resident who invited him to her apartment on the night of the shooting had previously entered into a contract with the managers of the complex whereby she specifically agreed she could not invite any person onto the property or into her unit who is listed on the site's trespass list.....19
- A. Regardless of whether Appellant could be held criminally liable for trespass on the night of the shooting, the trial court properly found he was not in a place he had a right to be because he was on the apartment complex's "no trespass" list, he had been being given a verbal trespass notice by police officers, and he could not attain the status of a lawful guest or licensee where the resident who invited him to her apartment had previously entered into a contract with the apartment complex prohibiting her from extending that invitation. 26
- B. Appellant's argument that the express language of section 16-11-620 of the Code implies an intent requirement for criminal trespass through creation of a "good excuse" exception is not preserved for appellate review because it was neither raised to

	nor ruled upon by the trial court. Furthermore, the argument is irrelevant where Appellant was not charged with or convicted of criminal trespass and where the tenant had contracted away her right to invite Appellant to her apartment.....	30
C.	Appellant's argument that section 16-11-410's invocation of location rights refers to relative rights versus an attacker and does not contemplate an individual's forfeiture of protections during lawful egress from a posted property is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court. Furthermore, the trial court's broad interpretation of the restrictive language from the Act is entirely consistent with the protections afforded by the Act in the context of an individual's right to self-defense.....	34
II.	Appellant's argument that the apartment complex's use of section 16-11-620 of the Code in conjunction with a no trespass list is in violation of the United States Housing Act and HUD's implementing regulations is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court. It also is without merit because the 2010 model lease used forms appear to have been approved by HUD.	35
III.	Appellant's argument that the use of a non-specific allegation of loitering as a basis for a summary adjudication of a trespass violation on a public housing project property is unconstitutionally vague is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court, and even if preserved, the argument lacks merit because Appellant was already on the no trespass list due to his previous eviction at the time he was given the verbal trespass notice by the police for loitering, and because he was never adjudicated guilty for a trespass violation.....	36
IV.	Appellant's argument that the use of a three year old trespass notice as a bar to statutory immunity under the Act deprives him of his right to due process of law is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court, and even if preserved, the argument lacks merit where Appellant was never charged with or found guilty of criminal trespass.	37
	Conclusion	39

TABLE OF AUTHORITIES

Cases:

<u>Commonwealth v. Nelson</u> , 909 N.E.2d 42 (Mass. App. Ct. 2009).....	26, 28, 29
<u>Commonwealth v. Richardson</u> , 48 N.E.2d 678 (Mass. 1943)	26
<u>Diggs v. Housing Authority</u> , 67 F. Supp.2d 522 (D. Md. 1999)	36
<u>Dreher v. S.C. Dep't of Health and Envtl. Control</u> , 412 S.C. 244, 772 S.E.2d 505 (2015).....	24
<u>Ex parte Littlefield</u> , 343 S.C. 212, 540 S.E.2d 81 (2000).....	25
<u>Goode v. St. Stephens United Methodist Church</u> , 329 S.C. 433, 494 S.E.2d 827 (Ct. App. 1997)	19
<u>In re Antoine M</u> , 907 A.2d 158 (Ct. App. 2006)	32
<u>In re McCracken</u> , 346 S.C. 87, 551 S.E.2d 235 (2001)	36, 37
<u>Reed v. Becka</u> , 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999)	20
<u>State v. Amerson</u> , 311 S.C. 316, 428 S.E.2d 871 (1993).....	20
<u>State v. Black</u> , 400 S.C. 10, 732 S.E.2d 880 (2012)	20
<u>State v. Curry</u> , 406 S.C. 364, 752 S.E.2d 263 (2013).....	20, 21, 22, 23
<u>State v. Dunbar</u> , 356 S.C. 138, 587 S.E.2d 691 (2003)	passim
<u>State v. Duncan</u> , 392 S.C. 404, 709 S.E.2d 662 (2011).....	passim
<u>State v. Fleming</u> , 254 S.C. 415, 175 S.E.2d 624 (1970).....	31
<u>State v. Freiburger</u> , 366 S.C. 125, 620 S.E.2d 737 (2005)	31
<u>State v. Gracely</u> , 399 S.C. 363, 731 S.E.2d 880 (2012).....	20
<u>State v. McDonald</u> , 343 S.C. 319, 540 S.E.2d 464 (2000)	20
<u>State v. Parker</u> , 391 S.C. 606, 707 S.E.2d 799 (2011).....	6, 32
<u>State v. Ramsey</u> , 409 S.C. 206, 762 S.E.2d 15 (2014)	28
<u>State v. Scott</u> , 414 S.C. 482, 779 S.E.2d 529 (2015).....	20

<u>State v. Sheldon</u> , 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001).....	20
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	6, 20, 32
<u>Wright v. PRG Real Estate Mgmt., Inc.</u> , 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015)	27

Statutes:

S.C. Code Ann. § 16-11-410.....	3, 34, 36
S.C. Code Ann. § 16-11-440(A)	21
S.C. Code Ann. § 16-11-440(C) (Supp. 2012)	22, 24
S.C. Code Ann. § 16-11-450 (Supp. 2012).....	21
S.C. Code Ann. § 16-11-620.....	26, 27, 30

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly found Appellant was not entitled to immunity from criminal prosecution under the Protection of Persons and Property Act where he failed to carry his burden of proving by a preponderance of the evidence that he was "in another place he had a right to be" when he shot Victim three times, because: (1) he was on the apartment complex's "no trespass" list due to his family being evicted from their apartment in 2010, (2) he had been being given a verbal trespass notice by police officers prior to the shooting; and (3) the resident who invited him to her apartment on the night of the shooting had previously entered into a contract with the managers of the complex whereby she specifically agreed she could not invite any person onto the property or into her unit who is listed on the site's trespass list.
 - A. If, regardless of whether Appellant could be held criminally liable for trespass on the night of the shooting, the trial court properly found he was not in a place he had a right to be because he was on the apartment complex's "no trespass" list, he had been being given a verbal trespass notice by police officers, and he could not attain the status of a lawful guest or licensee where the resident who invited him to her apartment had previously entered into a contract with the apartment complex prohibiting her from extending that invitation.
 - B. Whether Appellant's argument that the express language of section 16-11-620 of the Code implies an intent requirement for criminal trespass through creation of a "good excuse" exception is preserved for appellate review where it was neither raised to nor ruled upon by the trial court, and, if preserved, whether the argument is irrelevant where Appellant was not charged with or convicted of criminal trespass and where the tenant had contracted away her right to invite Appellant to her apartment.
 - C. Whether Appellant's argument that section 16-11-410's invocation of location rights refers to relative rights versus an attacker and does not contemplate an individual's forfeiture of protections during lawful egress from a posted property is preserved for appellate review where it was neither raised to nor ruled upon by the trial court, and if preserved, whether the trial court's broad interpretation of the restrictive language from the Act is entirely consistent with the protections afforded by the Act in the context of an individual's right to self-defense.

2. section 16-11-620 of the Code in conjunction with a no trespass list is in violation of the United States Housing Act and HUD's implementing regulations is not preserved for appellate review where it was neither raised to nor ruled upon by the trial court, and if preserved, whether it is without merit because the 2010 model lease used forms appear to have been approved by HUD.
3. Whether Appellant's argument that the use of a non-specific allegation of loitering as a basis for a summary adjudication of a trespass violation on a public housing project property is unconstitutionally vague is preserved for appellate review where it was neither raised to nor ruled upon by the trial court, and if preserved, whether the argument lacks merit because Appellant was already on the no trespass list due to his previous eviction at the time he was given the verbal trespass notice by the police for loitering, and because he was never adjudicated guilty for a trespass violation.
4. Whether Appellant's argument that the use of a three year old trespass notice as a bar to statutory immunity under the Act deprives him of his right to due process of law is preserved for appellate review where it was neither raised to nor ruled upon by the trial court, and even if preserved, whether the argument lacks merit where Appellant was never charged with or found guilty of criminal trespass.

STATEMENT OF THE CASE

Marquez D. Glenn (Appellant) was indicted at the July 2014 term of the grand jury for Greenville County for attempted murder (count 1) and possession of a weapon during the commission of a violent crime (count 2) (2013-GS-23-006789). He was represented by Christopher Brumback, Esquire, and Spencer Langley, Esquire, and Respondent (the State) was represented by assistant solicitor Ryan Holloway of the Thirteenth Circuit Solicitor's Office. On August 3, 2015, the case was called for trial at the Greenville County Courthouse before the Honorable John C. Hayes, III. (R.p.19). At the call of the case, Appellant made a motion to be granted immunity from prosecution pursuant to the Protection of Persons and Property Act (S.C. Code Ann. §§ 16-11-410 to -450) (Supp. 2012) (the Act). After the parties argued their respective positions, the jury was qualified and selected. Prior to the jury being sworn, the trial court conducted a pretrial immunity hearing per the procedures set forth in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). At the close of that hearing, after taking testimony, observing evidence, and hearing additional arguments from both sides, the trial court found that Appellant had failed to establish he was entitled to immunity under the Act because, at the time of the shooting, he was not in a place he had a right to be. The trial court denied Appellant's motion to dismiss the charges and the case proceeded to trial. (R.p.22-p.231).

After hearing the evidence and the trial court's charge on the law—which included a charge on self-defense—the jury found Appellant guilty beyond a reasonable doubt of assault and battery of a high and aggravated nature (ABHAN) and possession of a weapon during the commission of a violent crime. Citing mitigating circumstances, the trial court sentenced Appellant to twelve (12) years' imprisonment for ABHAN and five (5) years' concurrent imprisonment for possession of a weapon during a violent crime. (R.p.246-p.250; p.279-p.280;

281-282). Appellant filed a notice of intent to appeal the denial of his motion for immunity and his conviction, and he subsequently filed a brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On April 12, 2013, during an altercation in the parking lot of a Greenville apartment complex, Appellant pulled a gun from the pocket of his shorts and shot Elfonso Bruster (Victim) three times, which resulted in Victim being paralyzed from the waist down. Although Appellant spoke to a responding officer shortly after the shooting, he did not give that officer the gun during the conversation. Instead, he concealed the gun and later threw it in the Reedy River. It was never recovered by the police. (R.p.159-p.193; p.211, lines 8-15; p.212-p.219). Appellant was subsequently charged with attempted murder and possession of a weapon during the commission of a violent crime. He was later indicted by the Greenville County grand jury and was taken to trial in August of 2015.

Pretrial Immunity Hearing: Preliminary Arguments

When the case was called for trial, the trial court noted Appellant had submitted a pretrial motion for immunity from prosecution under the Act, or what the judge noted was commonly called the “stand-your-ground law.” The trial judge said he had reviewed Appellant’s written memorandum in support of the motion and asked for preliminary arguments from the parties. (R.p.22-p.23).

Appellant contended the evidence presented at the immunity hearing would establish beyond a preponderance of the evidence that all of the requirements for statutory immunity in his case were met. He argued there was not much dispute about the facts of the case and that his arguments centered on a disagreement about the law as it applies to those facts. In particular, he

claimed there were two legal issues in dispute. First, Appellant argued that regardless of whether he was under a trespass notice from the apartment complex, he was attacked in a place he was lawfully permitted to be because he was an invited social guest of a tenant of the complex, and as such, he had a license to reasonable ingress and egress the apartment in order to effectuate his visit to that tenant, and that license overrode any objection of the landlord. Second, Appellant argued that although he was admittedly engaged in an unlawful activity by carrying an unpermitted concealed weapon, this did not preclude him from lawfully arming himself in self-defense, and therefore would not preclude immunity under the Act. (R.p.23-p.25).

In regard to Appellant's first point, the State responded by arguing that under the plain language in the Act Appellant had no right to stand his ground because he simply had no right to be at the apartment complex in the first place. In support of this argument the solicitor handed up copies of eviction paperwork from April 2010, a model lease for the complex from 2010, and a model lease for the complex from 2014. He outlined what he expected certain witnesses would say about those documents in regard to Appellant being subject to a no trespass notice for the apartment complex. The solicitor noted the model lease agreements included a provision stating that a current tenant cannot invite into an apartment a guest who would violate state or local laws, and that this lease provision effectively limits the scope of a tenant's authority to delegate a right of entry to a guest. In regard to Appellant's second point, the State argued Appellant was not acting lawfully because he armed himself before entering the property rather than arming himself at the moment in time he perceived a threat. (R.p.25-p.29; R.p. 283-286; 287-302).

Under questioning from the trial judge, the parties continued to advance their respective positions on the two issues raised by Appellant. Relying on case law from Massachusetts and a non-binding opinion issued by the South Carolina Attorney General's Office, Appellant argued a landlord gives up certain property rights when he or she leases property to a tenant, including the right to prohibit a person placed on trespass notice from entering the property at the invitation of the tenant. He contended that if he could not be considered a trespasser, "the State's entire argument about him not being lawfully permitted to be there is void." (R.p.30-p.35). The solicitor countered that the tenant's rights are not unlimited and could be in fact be limited by the terms of the lease the tenant signs. He read from particular paragraphs of the 2010 model lease, which the trial court found "would be the operable one in 2013," (R.p.37, lines 16-17), specifically noting the lease provided "a resident may not invite any person on the property or into a unit who's listed on the site's trespass list" and "residents may not share their property with anyone who's not on the lease."¹ The State argued Appellant's restriction against being at the apartment complex would be "more of a breach of contract issue" rather than what Appellant was claiming to be a pure question about the right of a tenant to invite guests when those guests are under a no trespass notice. (R.p.35-p.39).

In making his final pitch before calling witnesses, Appellant did not dispute he was under a no trespass notice from the apartment complex at the time of the shooting, and he did not dispute that the fact that the standard lease terms for all tenants in the apartment complex

¹ Notably, Appellant did not object to or otherwise challenge these findings of fact by the trial judge, instead arguing that the tenant's right to invite individual social guests to her apartment trumped the apartment complex's right to control access to the property by way of either trespass notice or terms of the lease. In criminal cases the appellate court sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous. State v. Parker, 391 S.C. 606, 611, 707 S.E.2d 799, 801 (2011); State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. Parker, 391 S.C. at 611-12, 707 S.E.2d at 801. Thus, this Court is bound by the factual findings of the circuit court in regard to the applicability of the 2010 model lease.

prohibited them from inviting a person on the property or into a unit who is listed on the site's trespass list. Instead, he opined: "I simply don't think that the landlord has the right to tell someone that they cannot invite someone to an apartment." Thus, Appellant maintained the tenant's right to invite guests to his or her apartment is an absolute right which is not subject to restriction, even if that restriction is part of a contract. (R.p.39-42).

Pretrial Immunity Hearing: Testimony

After jury qualification and selection, and pursuant to the procedures set forth in State v. Duncan,² Appellant presented testimony to the trial court in an effort to persuade the judge he should be granted immunity under the Act. First, Appellant called his brother, Tivarius Henderson (Tivarius), to the stand. Tivarius testified that on the evening of April 12, 2013, he was sitting at home with Appellant, Jamar [a/k/a Jamarus] Smith (Jamar), and his father, John Henderson (John),³ when he got a call from Shelricka Duncan (Shelricka) asking if they all wanted to come to her apartment and "chill." He said they accepted the invitation and were later at Shelricka's playing cards when Shelricka's friend Derisha asked Appellant if he would drive with her to the store. Tivarius said that after Appellant and Derisha left, Kevin Bruster (Kevin) suddenly came busting in the door of the apartment, threw a beer can, started yelling that he was going to kill Shericka's mother, and went towards the room where she was sleeping. He said that when Shelricka tried to stop Kevin, Kevin hit her. Tivarius claimed he then got up from the table, grabbed Kevin, and tried to get him out the door, but Kevin pulled out a razor blade and sliced his face. Tivarius said Jamar and John then joined in his efforts and helped him get Kevin out of the apartment. (R.p.68-p.71).

² State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011).

³ Although the Transcript indicates Tivarius testified his father's name was John "Anderson," Appellant subsequently testified their father's name was John "Henderson," which is likely more accurate considering Henderson is the same last name shared by Appellant and Tivarius. (R.p.160, line 1).

Tivarius testified that after the altercation in Shericka's apartment, he briefly went to his grandmother's house but returned to Shelricka's apartment just as Appellant and Derisha were coming back from the store. Tivarius said he told Appellant about the incident with Kevin in part because his grandmother had asked him to go get Appellant to make sure nobody tried to hurt him. Tivarius testified Appellant stated he was going to walk to Tivarius' grandmother's house, which was in "the next court over" at the complex, when an officer pulled up and asked if anybody was fighting. Tivarius told the officer "no" and shortly after the officer pulled away, Victim and his Kevin showed up. He claimed he had just gotten back in the car while Appellant started to walk to his grandmother's house, when he saw some individuals coming around the corner of the building. Tivarius backed up and turned on his high beams and recognized the individuals as Victim and Kevin. (R.p.71-p.72).

Tivarius testified that Kevin made a comment to Victim that "you said we was gonna get one of these N-word in this car, if not all of them," and then Kevin hit Appellant, knocking a drink out of Appellant's hand and into his face. He claimed he saw Victim reaching under his shirt, and then saw a gun in Victim's hand, so he jumped out of his car and pushed Victim. He claimed Appellant was wiping the spilled drink out of his eyes when Tivarius heard a female voice say "gun." Tivarius testified he saw Victim drawing his weapon again and that he looked like he was going to shoot Appellant, when Appellant pulled out a gun and shot Victim first. He said Jamar and John were in the back of the car when the shooting took place, and that he had no idea Appellant had a gun with him. Tivarius described Victim and Kevin as "hostile" when they initially approached and claimed Victim said: "who jumped my mother fucking uncle?" (R.p.72-p.75). Tivarius proceeded to point out specific locations where these events took place in the Spring Grove Apartment complex by using an aerial photograph which was subsequently

introduced into evidence by the State. (R.p. 303; R.p.75-p.80). The solicitor then cross-examined Tivarius about details from his story. (R.p.80-p.91). Tivarius repeated his statement that rather than merely leaving Shelricka's apartment, Appellant said he was going to walk to Tivarius' grandmother's house. (R.p.89, lines 1-9). Tivarius also acknowledged he was told Appellant threw the gun he used to shoot Victim, into the river. (R.p.91, lines 7-14).

Next, Appellant put Shelricka Duncan on the stand. She explained she knows Appellant, Tivarius, Jamar, and John because she is a friend of the family and that she knows Victim through her best friend Derisha. She testified she also knows Kevin because at the time of the incident he was her mom's boyfriend. Shelricka then testified as to the events of April 12, 2013, providing a similar story as the one given by Tivarius. She said she invited Appellant, Tivarius, Jamar, and John to her apartment that evening and that despite being under a no trespass notice, Kevin showed up later. She said Kevin was drunk and angry at her mother, and had to be physically removed from the apartment. (R.p.93-p.101). Shelricka testified that about fifteen minutes after the initial altercation, she went outside and saw Appellant talking to the deputy. She said she walked towards Appellant after the deputy left and then saw Victim and Kevin approach. Shelricka said Kevin made a comment about wanting to "get somebody" and then hit Appellant, at which point she took off running. She testified she did not know Appellant had a gun and never saw anyone with a gun that evening. Shelricka described Kevin's demeanor as "amped" and Appellant's demeanor as "calm" before the incident. She testified she believed Kevin was the aggressor and that Appellant had no other option to avoid serious bodily injury than to shoot Victim. Shelricka said her invitation to Appellant to come over that evening included an invitation for him to return after going to the store with Derisha. She concluded her

testimony by describing the approximate height and weight of the four men involved in the shooting incident. (R.p.101-p.107). On cross-examination Shelricka confirmed she never saw Victim with a gun; however, she would not confirm she gave a statement to the police that suggested Appellant also had not seen a gun and instead simply assumed Victim had a gun when Victim reached for his waistband. (R.p.107-p.113).

Appellant then called Delni Nunez to the stand. Delni testified she knew all the parties involved and was hanging around outside at the apartment complex on the night of April 12, 2013, at the time of the shooting. She said she first heard Kevin yelling that somebody had "jumped him" and noticed he had blood on his shoes and a black eye. Delni said a few minutes later she saw Victim trying to speak to Appellant when Kevin suddenly hit Appellant in the face. She testified she turned her back, heard four gunshots, and then turned around again in time to see Victim lying on the ground. Delni testified Kevin and Victim were standing between Appellant and the parking lot so that he would have to pass by them to leave; however, Kevin and Victim were both "really calm" and she did not hear anything they said. She said only seconds passed between the punch and the gunshots. (R.p.115-p.121). On cross-examination, Delni emphasized Kevin was the person who attacked Appellant, not Victim, and that Victim did not make any threats to Appellant before the shooting. She testified she never saw Victim with a gun and never saw Victim move like he was going to draw a gun. (R.p.121-p.126).

Next, Appellant called Jamarus [a/k/a Jamar] Smith to the stand. He described Appellant and Tivarius as his "homeboys" and said he knew everyone involved in the two altercations that evening besides Kevin. Jamar first described the incident at Shelricka's apartment on the night of April 12, 2013, repeating the story previously told by Tivarius and Shelricka. He then described the altercation that ended in the shooting. Jamar said he was standing beside Appellant

when Kevin and Victim approached from behind the building. He claimed everybody in the neighborhood knows Victim "keeps a gun." Jamar testified Kevin said "we gonna get one of these N's in this white car," which he believed meant Kevin intended to either fight or kill him, Appellant, and Tivarius. He said Kevin then hit Appellant, knocking liquor out of his hand and into his eye. Jamar said he then noticed Appellant reaching for something and heard three shots. He claimed he did not know Appellant had a gun and that it all happened very fast. (R.p.128-p.136). On cross-examination Jamar testified he never saw Victim with a gun but saw him reaching under his shirt and figured he had a gun. (R.p.136-p.141).

Appellant then called his grandmother, Terry Glenn, to the stand. She testified she moved into the Spring Grove apartment complex in December of 2012. Ms. Glenn testified that before she moved she asked the apartment manager if Appellant was on the no trespass list and was told he was not. (R.p.143-p.146). Under cross-examination, Ms. Glenn could not explain why she would have asked the manager this question in the first place, and she then claimed she knew nothing about her own lease or whether it included a provision prohibiting her from inviting someone from the no trespass list to her apartment. (R.p.146-p.149). After denying Appellant's request to introduce a recorded audio statement from Kevin, Appellant took the stand to offer his own version of events.

Appellant testified that on the evening of April 12, 2013, he, Jamar, Tivarius, and John were invited to Shelricka's apartment to have drinks. After they arrived, he offered to drive Derisha to the store in her car because she was already intoxicated. Appellant said when they returned nobody was in the apartment, so he went outside where he saw two women named Kiana and Maria trying to flag him down from the apartment building across the street. He said as he walked over to talk to them, he was met by Jamar and they all filled him in on the events

that had happened while he was gone. Appellant claimed he set his bag down in Kiana's apartment and then saw Shelricka walking to the middle of the parking lot to talk to the officer, so he walked over as well. He said the officer asked if he had seen or knew anything about an earlier altercation and he explained he did not because he had just arrived. Appellant testified he then walked back to Kiana's apartment to get his bag and pay for a pizza she had ordered for him, while Tivarius finished talking to the officer. He said Tivarius then got in Appellant's car, backed it out of a parking space at Shelricka's apartment, and moved it closer to Kiana's apartment. (R.p.159-p.162).

Appellant testified that as he walked out of Kiana's apartment he was "greeted" by Victim and Kevin. He said Victim asked him what happened to his mother f'ing uncle and he responded that he did not know and had no part in it because he was gone to the store. Appellant testified Kevin then said to Victim: "... let's do what we said - what you just said we came to do. You said we gonna get one of these [n's] in this white Lincoln right here, we gonna get all these [n's] right here, so let's do what we came to do." (R.p.165, lines 2-6). He said Kevin then took a swing at him, which knocked him off balance and knocked a cup out of his hand, splashing alcohol into his eyes. Appellant testified he heard someone yell "gun" and when he finally wiped away the alcohol and regained his vision he saw Victim with a black handgun in his hand. He claimed approximately 45 seconds passed between being hit and hearing the word "gun", and that approximately 20 seconds passed between seeing Victim's gun and when he pulled out his own gun and shot Victim. Appellant testified he had no opportunity to avoid Kevin and Victim as he left Kiana's apartment because he had to walk past then to get to his car, and that if he could have avoided the assault he would have just left. (R.p.162-p.168).

Appellant admitted he was carrying a concealed weapon without a permit and claimed nobody knew he had it until he pulled it out and shot Victim. He noted that during the altercation Kevin was the one who was aggressive while Victim was just standing there as backup; however, when Victim started tussling with Tivarius, Appellant saw Victim holding a black gun so he pulled his own gun and shot Victim. Appellant claimed that after the shooting he told the responding officer he had shot Victim and that he was bleeding and needed help. (R.p.168-p.172). On cross-examination, Appellant claimed he did not know he was not allowed to carry a gun despite having a prior conviction for criminal domestic violence. He testified he bought the gun off the streets seven or eight months before the shooting and carried it everywhere with him. (R.p.172-p.187). On redirect, Appellant testified he was not holding or touching the gun during the altercation until he heard someone yell gun and that he immediately drew it and fired at Victim when he saw a gun in Victim's hand. (R.p.187-p.190).

Finally, Appellant called Kiana Grayson to the stand. She explained she was a friend of Appellant's and knew Kevin through Shelricka, but did not know Victim. Kiana testified that on the night of April 12, 2013, she was outside of her apartment when she saw Kevin drive up, park, go into Shelricka's apartment, and get pushed back out. She said she later saw the deputy talking to Appellant in the parking lot just before Kevin and Victim walked up. Kiana testified she saw Kevin hit Appellant, and then saw Appellant stumble back and start shooting. She described Kevin as angry. Kiana insisted that only seconds passed between Kevin's blow and when shots were fired. She testified that from her perspective, Appellant did not have any opportunity to avoid the attack and she believed Appellant's life was in jeopardy. (R.p.194-p.199). On cross-examination Kiana testified she did not see Victim with a gun and never saw him reaching for a gun. She also agreed that Kevin initiated the altercation, not Victim. (R.p.199-p.201). On re-

direct Kiana testified that when Kevin struck Appellant, both Kevin and Victim were moving towards Appellant and both were a threat. Finally, on re-cross Kiana testified she could not say Victim was attacking Appellant when he was shot. (R.p.201-p.202).

After Appellant completed presenting evidence in an attempt to establish statutory immunity, the State presented three witnesses in response, including Victim. First, Deputy Dorsy Lay of the Greenville County Sheriff's Office (GCSO) took the stand. He explained that in October of 2010 he was assigned to secondary employment at the Spring Grove Apartments where he and several other deputies were doing security detail. He said they worked for the management as far as enforcing some of the lease terms along with enforcing criminal laws under their regular jurisdiction. Deputy Lay testified that when issuing no trespass notices the deputies are acting as employees of the apartment complex, and that the notices just had to be verbal. He explained the GCSO records department keeps a database of people who have been placed on no trespass notices, and that there were several ways for an officer to confirm if a particular individual had been placed in that database, including calling records on the phone and providing the individual's name. Deputy Lay testified that in October of 2010 he made contact with a group of people congregating in a breezeway of an apartment building, including Appellant. He remembered Appellant was on a list of people whom had previously been evicted from the complex, so he and Deputy Jumper verbally placed him on trespass notice for loitering and not having a residence. Deputy Lay used Appellant's State issued ID along with a mobile mugshot on his in-car computer to verify the person he place on verbal trespass notice was in fact Appellant. (R.p.203-p.206).

Next, the State called GCSO Master Deputy Eric Whaley to the stand. Whaley explained he was working as a homicide investigator at the time of the shooting and although he did not

respond to the scene that night, he later interviewed several of the key witnesses as part of the overall investigation. He testified Tivarius, Appellant, and their father, John, all came to the law enforcement center to be interviewed. Whaley recounted the interview with Appellant, who said he was at the party, then went to the store and came back to learn there had been an altercation while he was gone. Appellant further claimed Kevin and Victim came back after the initial altercation, Kevin assaulted Appellant, Appellant was blinded by alcohol, and then Appellant pulled out a gun, fired three shots, jumped in his car, spoke to the police, and left. Whaley testified that while the officers who responded to the scene remembered talking to several people after the shooting, they did not remember if one of those people was Appellant. He said that whoever talked to those deputies did not say they had been the one who shot Victim because if they had, they would have been detained. Whaley testified that during the interview Appellant claimed the gun he used to shoot Victim was in the Reedy River. He said Appellant never came back to offer to help police try to find the gun. (R.p.208-p.211).

Finally, the State called the Victim, Elfonso Bruster, to the stand. He testified he was at the apartment complex visiting his kids on the night of April 12, 2013, and was standing in the breezeway when he heard his uncle Kevin calling his name. He said Kevin claimed someone had jumped on him and beat him down like a rag doll, and he asked Victim to come help get his moped back. Victim testified he agreed to walk towards Shelricka's apartment when they came upon Appellant, who he knew from the neighborhood. Victim said he asked Appellant what happened when suddenly Kevin punched Appellant. As Appellant was getting up off the ground, Victim saw him fumbling in his pocket. Victim testified Appellant then got up with a gun, yelled "die n-----" and started shooting. He said he hit the ground and while he was down Tivarius ran over and kicked him in the face. Victim testified he was shot in the arm and the

front of the chest and that as a result of the shooting he is paralyzed from the waist down. He testified he was not carrying a gun that night and he had no reason to carry a gun. (R.p.213-p.216). On cross-examination, Victim testified he did not go looking for trouble and that his only intention that night was to help Kevin get his moped back. (R.p.216-p.219).

Pretrial Immunity Hearing: Post-Evidentiary Arguments

At the conclusion of the pretrial immunity hearing, the trial court heard additional arguments from Appellant as to why he believed he was immune from prosecution under the Act, focusing on three particular issues. First, Appellant argued he had established by a preponderance of the evidence that was an invitee to the property that evening and that as a result, regardless of the existence of a trespass notice, he was lawfully permitted to be outside of the invited apartment for the purposes of ingress and egress, and that he was leaving the apartment to return to the vehicle and depart when the incident occurred. Second, he argued that even if he unlawfully had possession of a gun, he was nevertheless entitled to arm himself in self-defense at the time of the attack such that he would not be precluded from statutory immunity. Third, Appellant argued that because the gun was concealed and no one knew he was carrying it, it could not have had any relation to the escalation of the verbal confrontation or been the reason for the attack from Kevin and Victim. (R.p.219-p.221).

In response, the solicitor argued Appellant had failed to carry his burden of proving each and every one of the three elements of self-defense which would be required to warrant statutory immunity. He noted the contradictory facts presented by Appellant's own witnesses and argued those witnesses simply were not credible. The trial judge asked the solicitor to focus on the statutory question of whether Appellant was in a place he had a right to be. The solicitor responded by arguing the eviction and the subsequent verbal no trespass notice given to

Appellant by Deputy Lay meant Appellant did not have a right to be at the apartment complex. He then continued to argue Appellant also had failed to sufficiently prove the elements of self-defense. (R.p.221-p.226).

In reply, Appellant argued the trespass notice he was given was no longer valid at the time of the incident because it was made when the complex was under prior ownership. He also repeated his argument that a lessee who invites a person to their apartment grants a license allowing reasonable ingress and egress to that apartment even though the person is under trespass notice. Appellant referenced the out of state cases and other authorities set out in his written pretrial motion, including a 2013 opinion issued by the South Carolina Attorney General's Office, and argued a person who rents a property has a right to invite persons to their premises even over the objection of a landlord. (R.p.226-p.229).

At the conclusion of the immunity hearing, the trial court ruled as follows:

All right. Well, I'm reviewing this. And keep in mind that this ruling is solely for the purpose of this immunity motion and does not bear on any self-defense defense, but I deny the motion for immunity.

I find that to follow the Defendant's logic and the logic of the Massachusetts' cases and the other literature in essence neuters trespass notices. I think a landlord has a right, if not the duty and obligation, to protect the safety of all the tenants of a project.

I do not believe the rights of the tenant to have guests of their choice overrides the duty and right of the landlord to protect the entire community from having troublemakers, and that's generally what trespassers are, and I'm not saying that Mr. Glenn is a troublemaker, but that's generally where we find trespass, from having troublemakers on the property. This overriding duty trumps any particular rights that the tenant may have.

In spite of the well articulated argument and the cases, I do not believe, at least under the South Carolina -- well, there is no real South Carolina law, but I do not believe that a landlord -- a tenant has unfettered rights. As the way of example, they can be told they can't have pets, they can be told they can't have a business, they can be told they can only have a certain number of occupants, they can be told that the occupants have to be relatives.

So I do not follow the logic of the Massachusetts cases that there are certain rights, and our Appellate Courts may determine different, that there are certain rights that exist and override the rights -- and, again, I think it's an obligation and a duty.

We have cases dealing not directly with this that indicate that owners of property have a duty to keep the people who come upon the property. There's a recent case dealing with the Harbison Community in -- it's not directly on point, but my point is that the property owner has an obligation and a duty to protect anyone that comes on the premises.

So I do not -- I find that the immunity argument fails solely on the issue of whether or not he had a right to be there. I find he did not.

As to any illegal activity, I believe this phrase addresses active illegal activity such as a drug deal, an assault, armed robbery. I believe passive activity, even if it allegedly does not come under the phrase, under this phrase, does not -- let me rephrase that. Passive activity such as Mr. Glenn's carrying an illegal weapon, I don't believe comes under the phrase illegal activity as envisioned by the Legislature. I think it has to be a more active illegal activity.

I find that Mr. Glenn's, and this, again, is solely for the purposes of this motion, Mr. Glenn's illegal activity or illegal act of having the pistol was not a proximate cause of the incident. So as to the two sort of prongs, I find that immunity fails based on his not having the right to be there, but that I do not find that he was engaged in an illegal activity, which would prevent him from -- from having immunity but for his not being allowed on the property.

So I find that he is not clothed with the immunity provided by section 16-11-440 and 450 because he was not at a place he had a lawful right to be at the time of the incident. So the motion is denied.

(R.p.229-p.231) (emphasis added). After addressing additional pretrial matters and conducting a Jackson v. Denno hearing, the case proceeded to trial.

After hearing the evidence and the trial court's charge on the law—which included a charge on self-defense—the jury found Appellant guilty beyond a reasonable doubt of assault and battery of a high and aggravated nature (ABHAN) and possession of a weapon during the commission of a violent crime. Citing mitigating circumstances, the trial court sentenced

Appellant to twelve (12) years' imprisonment for ABHAN and five (5) years' concurrent imprisonment for possession of a weapon during a violent crime. (R.p.232-p.280).

ARGUMENT

I.

The trial court properly found Appellant was not entitled to immunity from criminal prosecution under the Protection of Persons and Property Act where he failed to carry his burden of proving by a preponderance of the evidence that he was "in another place he had a right to be" when he shot Victim three times, because: (1) he was on the apartment complex's "no trespass" list due to his family being evicted from their apartment in 2010, (2) he had been being given a verbal trespass notice by police officers prior to the shooting; and (3) the resident who invited him to her apartment on the night of the shooting had previously entered into a contract with the managers of the complex whereby she specifically agreed she could not invite any person onto the property or into her unit who is listed on the site's trespass list.

Appellant argues the trial court erred in failing to find he was immune from prosecution under the Act on the ground that he was not in a place he had a right to be. He contends that, even if he was in violation of a trespass notice for the apartment complex where the shooting took place, he was "in fact in a place where he had a right to be when he was forced to defend himself" because he was "an invitee reasonably egressing the residence to which he was invited at the time he was attacked." (Brief of Appellant, p.8).⁴ Appellant argues that by failing to acknowledge that his status as an invitee conferred upon him the absolute right to be at the apartment complex, the trial court's ruling was an abuse of discretion and stands in direct opposition to the expressly stated legislative intent of the Act. He contends that absent this legal

⁴ To the extent Appellant's argument hinges upon the claim, as explicitly stated in his argument heading, that he held the status of an "invitee" at the apartment complex, there is absolutely no evidence in the record to support such a claim and the argument should be denied and dismissed out-of-hand. See Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct. App. 1997) (explaining the difference between a licensee and an invitee and finding: "Goode was not a public invitee because an apartment complex is not a place held open to the public and is instead a private place only for people who are specifically invited.").

error, he is entitled to statutory immunity as a matter of law and asks that his convictions be vacated. The State disagrees with Appellant's argument as well as his prayer for relief on several grounds.

Standard of Review

This Court reviews the trial court's pretrial determination of immunity for an abuse of discretion. State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). In criminal cases, the appellate court sits to review errors of law only. State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added); see also State v. Gracely, 399 S.C. 363, 371, 731 S.E.2d 880, 885 (2012) ("The trial court will only be reversed when there is no evidence to support the ruling below."). "[T]he trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs only when the trial court's conclusions lack evidentiary support or are controlled by an error of law. State v. Scott, 414 S.C. 482, 486, 779 S.E.2d 529, 531 (2015) (quoting State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)); see also Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.'" (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993))).

The Protection of Persons and Property Act

The subsection of the Act which creates immunity provides:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer

S.C. Code Ann. § 16-11-450 (Supp. 2012). A claim of immunity under the Act must be determined pretrial and the defendant has the burden of proving entitlement to immunity by a preponderance of the evidence. State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011).

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 a defendant's entitlement to the Act's immunity. Curry, 406 S.C. at 371, 752 S.E.2d at 266. This includes each element of self-defense, save the duty to retreat. Id. at 372, 752 S.E.2d at 266-67 (“[I]mmunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.”)

Section 16-11-440 sets forth the circumstances under which the Act allows the use of deadly force. It creates a presumption of reasonable fear of imminent peril of death or great bodily injury when a person is subject to an unlawful or forceful entry of his or her dwelling, residence, or occupied vehicle, or when a person is subject to removal or attempted removal against his or her will from a dwelling, residence, or occupied vehicle, and it establishes certain exceptions to this presumption. S.C. Code § 16-11-440(A) & (B) (Supp. 2012). The Act then provides:

(C) 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.

S.C. Code Ann. § 16-11-440(C) (Supp. 2012) (emphasis added). As noted above, Appellant's overarching contention is that he was attacked in a place where he had a right to be, and that the trial court erred in finding he was not.

Improper Remedy

Initially, the State submits the relief sought by Appellant—that his convictions be vacated—is not a proper remedy under the circumstances of his case. The trial court found that Appellant's immunity argument failed "solely on the issue of whether or not he had a right to be there" and therefore, it specifically did not address whether Appellant had satisfied his burden of proving entitlement to immunity by a preponderance of the evidence. See State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) ("We hold that when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence."). 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 a defendant's entitlement to the Act's immunity. State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). This includes each element of self-defense, save the duty to retreat. Id. at 372, 752 S.E.2d at 266-67 ("[I]mmunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.").

Here, despite Appellant's claim that "it is clear that the trial court found that [Appellant] satisfied all other requirements for immunity" (Brief of Appellant, p.35), the trial court did no such thing. Indeed, the trial judge was so focused on the issue of whether Appellant was in a place he had a right to be pursuant to Section 16-11-440(C), that he asked the parties to limit

their arguments on the actual elements of self-defense. (R.p.219-p.229). The trial judge then specifically restricted his ruling to a finding that Appellant was not entitled to immunity because he was not in a place he had the right to be. The court did not rule on whether Appellant otherwise had demonstrated the elements of self-defense by a preponderance of the evidence. Appellant would only be entitled to statutory immunity “as a matter of law” if the trial court explicitly found he had proven the elements of self-defense, save the duty to retreat, by a preponderance of the evidence. Curry, supra. Because no such findings were made, vacating Appellant’s conviction would be an entirely inappropriate remedy. Instead, if this Court determines the trial court erred in finding Appellant was not in a place he had a right to be at the time of the incident, the only appropriate remedy would be to remand to the lower court with instructions to make findings as to whether Appellant carried his burden of proof as to each element of self-defense.

Discussion / Analysis

In Appellant’s case, the trial court followed the appropriate procedure under rulings from this Court and our supreme court—holding a pretrial hearing, evaluating the credibility of the witnesses and weighing the evidence, and ultimately finding Appellant did not carry his burden of proving he was entitled to immunity under the Act. Appellant’s argument cannot prevail under this Court’s standard of review. As in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), Appellant’s claim of self-defense presented a quintessential jury question, which is not a situation warranting immunity from prosecution. The trial court’s finding that Appellant failed to carry his burden of proving he was in a place he had a right to be at the time the shots were fired has evidentiary support and is not controlled by an error of law. The case was properly submitted to the jury, with the claim of self-defense being fully presented, and the State having

to disprove at least one element of self-defense beyond a reasonable doubt. The trial judge's pretrial immunity ruling must be affirmed.

In support of his position, Appellant first argues the conclusion reached by the trial court was an abuse of discretion because the trial judge's broad interpretation of the statutory language was "in direct opposition to the expressly stated legislative intent of the [Act]." (Brief of Appellant, p.9). After artfully rendering a favorable version of the facts which led to the shooting,⁵ Appellant argues the question before this Court is "fundamentally a determination of the scope of a bona fide individual's right to defend himself against attack." He references the legislative intent expressed in the language of Section 16-11-420(B) concerning the right of "law-abiding citizens to protect themselves" and "that no person or victim of crime should be required to surrender his personal safety to a criminal," and contends the Act is intended to extend the right to defend one's self to victims of crime "indiscriminate of where an attack may occur and without obligation to flee when attacked." (Brief of Appellant, p.10). Yet, the Legislature itself ensured the Act is not indiscriminate in this regard. Section 16-11-440(C) contains clear limitations, one of which provides that a person can stand his ground and meet force with force, including deadly force, only if he is attacked in a "place where he has a right to be." Generally, a specific statutory provision prevails over a more general one. Dreher v. S.C. Dep't of Health and Envtl. Control, 412 S.C. 244, 251, 772 S.E.2d 505, 509 (2015). Thus, the sweeping scope of the Act as propounded by Appellant must succumb to the more restrictive and specific provisions of the Act that were enacted by the Legislature.

⁵ Appellant claims he was "unaware of the events that transpired in his absence" at the time of the shooting; however, Tivarius testified he told Appellant what happened and Appellant himself testified Kiana, Maria, and Jamar filled him in on the events that had happened while he was gone. Appellant also describes Kevin and Victim as "concealing themselves in the shadows and lying in wait" despite testimony that the two men walked up to Appellant in view of several other people. Finally, Appellant notes he "willingly cooperated with the police officers investigating the reports of the [earlier] assault perpetrated by Kevin" but fails to mention the fact that he disposed of the gun he used to shoot Victim instead of giving it to the police. (Brief of Appellant, p.8).

The State submits the legislative intent to significantly restrict when to grant pretrial immunity where a person has used deadly force is further supported when considered in the context the principles of self-defense upon which it is founded. Prosecutors are already imbued with broad discretion to decline to prosecute where they determine the circumstances of the case do not merit pursuit of criminal charges. Ex parte Littlefield, 343 S.C. 212, 218-19, 540 S.E.2d 81, 84 (2000). Also, individuals may avail themselves of the common law Castle Doctrine and the common law defenses of habitation, of others, and self-defense in the event of a trial. Granting an individual immunity from prosecution rather than letting a jury determine whether the State has disproven self-defense beyond a reasonable doubt is an extreme result and should occur only in circumstances where a defendant has carried his burden of proof as to each and every aspect of the Act. Contrary to Appellant's assertion, any other result would be absurd and would lead to a society akin to the wild-wild-west, where an individual in an altercation can shoot first, and if he kills another person, attempt to justify his actions by giving self-serving facts which cannot be contested by the person who has been killed. Even where a person is in a place he has no right to be when attacked, he may still be able to rely on self-defense before the jury. Thus, a pretrial denial of immunity does not eliminate the presumption of innocence or the State's high burden of proof for a criminal conviction. Here, the trial court properly considered whether Appellant carried his burden of proving he was in a place he had a right to be in ruling on his request for immunity, and that ruling should be affirmed. See Duncan, 392 S.C. at 411, 709 S.E.2d at 665 (affirming the pretrial ruling on immunity because there was evidence to support the trial court's findings).

A.

Regardless of whether Appellant could be held criminally liable for trespass on the night of the shooting, the trial court properly found he was not in a place he had a right to be because he was on the apartment complex's "no trespass" list, he had been being given a verbal trespass notice by police officers, and he could not attain the status of a lawful guest or licensee where the resident who invited him to her apartment had previously entered into a contract with the apartment complex prohibiting her from extending that invitation.

After his generalized and largely unsupported reliance on the legislative intent behind the Act, Appellant moves on to the central tenet of his argument: that "[Appellant's] status as a guest and licensee of a resident of the apartment complex conferred on [Appellant] a license to ingress and egress through the common areas of the complex such that [Appellant], while reasonably exercising his license to egress, was 'in [a] place where he ha[d] a right to be' when he defended himself from an unprovoked attack." (Brief of Appellant, p.11). Appellant argues "the trial court's interpretation and application of S.C. Code Ann. § 16-11-620 resulting in the denial of immunity to [Appellant] under the [Act] constitutes clear error of law."

In making this argument, Appellant relies primarily upon an opinion issued by the South Carolina Attorney General's Office which, among other things, purported to answer the following question: "Does law enforcement have the authority to arrest someone for trespassing if it is determined that an apartment manager has had them placed on trespass notice?" 2013 WL 3133638 at 1 (S.C.A.G. June 5, 2013) (emphasis added). He contends the opinion is "on all fours with the central issue presented by this appeal" and that it "provides in-depth and persuasive analysis of the respective property rights of landlords and tenants in housing complexes and the ability of tenants to lawfully invite persons to a complex over objection of the landlord." (Brief of Appellant, p.12). Appellant further relies on two published opinions from Massachusetts, Commonwealth v. Richardson, 48 N.E.2d 678 (Mass. 1943) and Commonwealth

v. Nelson, 909 N.E.2d 42 (Mass. App. Ct. 2009), on which the South Carolina Attorney General's opinion is based, as well as published opinions from several other jurisdictions and law review articles discussing the propriety of public housing authorities having unwanted visitors arrested for trespassing. (Brief of Appellant, p.13-p.17). Next, Appellant claims the referenced the authorities cited "are consistent with those found in South Carolina [property] jurisprudence." (Brief of Appellant, p.18-p.21).

The State submits Appellant's argument fails for a number of reasons. First, he misconstrues the trial court's ruling in regard to criminal trespass. Nothing in the record suggests the trial court was making an "interpretation or application" of section 16-11-620 of the Code. In fact, the trial judge did not reference section 16-11-620 and never made a finding that Appellant should be held criminally guilty of trespass under the statute. Instead, the trial judge broadly interpreted the restrictive language from the Act to conclude Appellant was not in a place he had a right to be. The court referenced a recent case concerning a lawsuit which alleged an apartment complex was negligent in failing to providing adequate security to its tenants⁶ and concluded the landlord's obligation to its tenants was superior to that of the tenant's rights to invite social guests to that property, in the context of seeking immunity under the terms of the Act. Based on this finding, the trial court held the trespass notice given to Appellant was sufficient to mean he was not in a place he had a right to be when he disregarded that notice and accepted Shelricka's invitation to come onto the landlord's property to get to her apartment.

Appellant makes the mistake of equating the State's ability to hold an individual criminally liable for trespassing, with a private property owner's ability to determine whether an individual has the right to enter that property. Although the two concepts are related, they are

⁶ Wright v. PRG Real Estate Mgmt., Inc., 413 S.C. 276, 775 S.E.2d 399 (Ct. App. 2015) (discussing a lawsuit filed against an apartment complex located in the Harbison community in Columbia).

not one and the same. Indeed, the South Carolina Attorney General's opinion, Richardson, Nelson, and the other authorities cited by Appellant all seem to concern criminal trespass statutes and whether law enforcement has the authority to **arrest** someone for trespassing if it is determined that an apartment manager has had them placed on trespass notice. That was not the issue before the lower court; therefore, the authorities as a whole are inapplicable and certainly do not dictate the result sought by Appellant. The denial of immunity should be affirmed.

In regard to the Attorney General opinion itself, the State submits it should only be considered as to the purpose for which it was written. The municipal judge who requested the opinion did not ask any questions about the Act or whether a person on trespass notice from an apartment complex could be deemed to be in a place he had a right to be if he had been invited to the apartments by a tenant, for purposes of the Act. The opinion similarly does not address immunity under the Act; therefore, it has no applicability to the question before the trial court in Appellant's case. Furthermore, it is well settled that although it may be persuasive authority, an Attorney General's opinion is not binding on the Court. State v. Ramsey, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014). Given the limited purpose and nature of the Attorney General's opinion, and South Carolina's still developing jurisprudence on the provisions of the Act, this is a question that should be resolved under this Court's independent reasoning, not that of the Attorney General, or the appellate courts of Massachusetts.

Notably, in one of the cases Appellant finds persuasive, the Appeals Court of Massachusetts applied contract law when determining the customary usage of hallways in Boston Housing Authority (BHA) properties. Nelson, 909 N.E.2d at 45-46. It noted the BHA police department's trespass policy specifically gave a resident the right to invite an individual to visit, even if they had been served with a No Trespass Notice, and it further noted the model

BHA public housing lease terms acknowledged that residents are entitled to have guests in their apartments. Id. Stating it was “loath to construe contracts in a manner that would render any provision meaningless” the court concluded “the lease’s provisions indicate that it is customary to permit invited guests to pass through the common hallways in order to reach their tenant-host’s apartment.” Nelson, 909 N.E.2d at 46. Here, the 2010 model lease for Shelricka’s apartment included terms that are the polar opposite from those in Nelson. Specifically, the 2010 model lease provided in part:

15. Residents may not invite any person onto the property or into their unit who is listed on the site’s No Trespass List.

....

19. Under federal regulations applying to this community, **Residents may not share their apartment with anyone who is not on the lease or allow unauthorized persons in the unit or on the property.** Management has the right to prohibit anyone, other than the resident from coming on the leased premises or any part of the community for any length of time once the resident receives a copy of a written notice barring an individual from entering the community.

(R.p. 302) (emphasis added). Although he now questions the applicability of the 2010 model lease on grounds it was used by a prior management company for the apartment complex, Appellant did not object or otherwise challenge the trial court’s finding of fact that the 2010 model lease: “would be the operable one in 2013.” (R.p.37, lines 16-17). Thus, the factual finding is the law of the case. Parker, 391 S.C. at 611, 707 S.E.2d at 801; Wilson, 345 S.C. at 5-6, 545 S.E.2d 829.

Appellant’s entire argument hinges on whether he was a lawful guest or licensee when he was invited to Shelrick’s apartment. However, that determination depends on whether Shelricka had the right to extend the invitation. Under the model 2010 lease, which was the operable lease

in 2013, she did not. Shelricka validly and legally gave up any right to invite guests on the site's no trespass list to her apartment. Appellant was on the site's no trespass list, as confirmed by Deputies Lay and Jumper when they encountered Appellant loitering at the complex in October of 2010. At trial, the lower court appears to have acted in accordance with the contract principle espoused in Nelson by being loath to construe Shelricka's contract in a manner that would render any provision meaningless. In seeking support for his position from South Carolina property jurisprudence, Appellant comments that "the landlord cannot exercise a right he has previously given up to a tenant." (Brief of Appellant, p.20). Yet here, Appellant implores this court to let a tenant exercise a right she has previously given up to her landlord. Appellant was not a legal guest or licensee of a resident of the apartment complex; therefore, he had no right to visit Shelricka's apartment, no right to ingress and egress, and was not in a place he had a right to be for purposes of the Act.

B.

Appellant's argument that the express language of section 16-11-620 of the Code implies an intent requirement for criminal trespass through creation of a "good excuse" exception is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court. Furthermore, the argument is irrelevant where Appellant was not charged with or convicted of criminal trespass and where the tenant had contracted away her right to invite Appellant to her apartment.

In his brief on appeal, Appellant argues the express language of section 16-11-620 implies an intent requirement through creation of a "good excuse" exception to criminal trespass. He contends this further supplements his position that, as a matter of law, he should not have been denied immunity on the ground he was not in a place he had a right to be. Appellant argues he had a "bona fide claim of right" as a defense to trespass because he had a good faith reasonable belief that he was allowed to visit his friend who invited him to her apartment. (Brief

of Appellant, p.22-p.32). However, this argument is not preserved for appellate review because it was not specifically raised to and ruled upon by the trial court. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). If an error is not presented to and ruled upon by the trial court, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). Indeed, the appellate court will not consider any issues that were not presented to or passed upon by the trial court. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970). Here, Appellant did not make an argument about the level of intent required for a trespass conviction in his written motion or in his arguments to the trial court. He never claimed he had a bona fide claim of right to violate the no trespass notice and go to Shelricka's apartment. Consequently, the trial court did not make any ruling in regard to this claim. Because the argument was neither raised to nor ruled upon the trial court, it is not a proper subject of appellate review.

Nevertheless, even if preserved, this argument fails because Appellant continues to make the mistake of equating the State's ability to hold an individual criminally liable for trespassing, with a private property owner's ability to determine whether an individual has the right to enter that property. The bona fide claim of right defense and the good excuse defense are exactly that, defenses to a charge of criminal trespass. Appellant faced no such charge; therefore, these defenses are inapplicable to the Act and whether Appellant was in a place he had a right to be for purposes of the Act.

In a footnote, Appellant claims "he would have no means of knowing what provisions were contained in the "model" lease (Brief of Appellant, p.25); however, Appellant was a former resident evicted in 2010. While this does not prove he had actual knowledge of the provisions in the 2010 model lease, it certainly gave him a means of knowing those provisions. Appellant also

complains no evidence was presented that the 2010 model lease was the operative legal document defining Shericka's rights as a tenant. (Brief of Appellant, p.25). But the trial court made a finding of fact that it was operative as to all tenants of the complex in 2013, making this "fact" the law of the case and binding on this Court. Parker, 391 S.C. at 611-12, 707 S.E.2d at 801; Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829. Whatever the case, the State submits Appellant's knowledge of the lease terms or lack thereof has no bearing on whether he was in a place he had a right to be under the Act. If, as Appellant argues, his right to violate the trespass notice flows from the invitation of a tenant, then that right also terminates when the tenant voluntarily gives up the right to extend such an invitation. When a tenant executes a contract with her landlord that gives up her right to invite guests who are on the no trespass list, there is no longer a basis to contend a defendant has a right to be at that apartment by virtue of an invitation, or to contend he is entitled to immunity under the Act.

Appellant goes on to argue that in ruling on immunity, the trial court should have concerned itself not with whether he had a legal right to be at the apartment complex, but whether he had a good faith reasonable belief that he was allowed to visit his friend who invited him to her apartment. In support of this argument he references a 2006 opinion from Maryland, In re Antoine M, 907 A.2d 158 (Ct. App. 2006). (Brief of Appellant, p.27). However, the parenthetical Appellant includes from that opinion perfectly illustrates the fallacy of his argument. The Court of Appeals of Maryland stated: "While the teenage daughter may not, as a matter of property law, have been able to "countermand" the [trespass] notice, that is not the appropriate standard for determining whether the trespass was [criminal]." Here, the trial court appropriately focused not on whether Shericka's invitation would constitute a defense to criminal trespass, but on whether her invitation could "countermand" the underlying trespass

notice so as to give Appellant a right to be there for purposes of immunity. The trial court properly found it could not, and concluded Appellant was not in a place he had a right to be.

Next, Appellant turns to the facts presented at the immunity hearing and asserts:

“Shelricka, as a tenant of Spring Grove, had the right to bestow upon those persons she chooses to invite to her residence a right of way in the nature of an easement through such common areas, stairs, breezeways, and passageways which afford access to her apartment.” (Brief of Appellant, p.27). However, under the terms of the 2010 model lease, which was in effect for Shelricka at the time of the shooting, she explicitly did not have the claimed right. Appellant continues addressing the “facts” and asserts he was engaged in “a completely peaceable and lawful endeavor” despite the undisputed fact he was unlawfully carrying a concealed weapon when he went to the “social gathering with mutual friends.” (Brief of Appellant, p.30).

Appellant also insists he was “passing through the common areas of the Complex only to reasonably ingress and egress from Shelricka’s apartment and stopping only at the explicit request of law enforcement officers to assist them in the investigation of the assault previously perpetrated by Kevin.” (Brief of Appellant, p.30). Yet the testimony from the hearing does not support this claim. Tivarius testified Appellant said he was not merely egressing from Shelricka’s apartment, but was going to walk to his grand grandmother’s house, which was in “the next court over” (R.p.71-p.72; p.89, lines 1-9). Appellant himself testified that instead of merely egressing from Shelricka’s apartment, he walked to Kiana’s apartment to get his bag and pay for a pizza. (R.p.159-p.162). These facts discredit Appellant’s entire argument, because they takes his actions outside of the alleged license Appellant argues he was given by Shelricka’s invitation, and demonstrate he was not actually departing as directly as he contends.

Finally, Appellant argues it would be absurd result to require him to: "choose between (1) suffering great bodily injury and/or death at the hands of unprovoked assailants or (2) suffering a twelve (12) year prison sentence for defending himself. (Brief of Appellant, p.31). However, Appellant, like every other person, had the right to act in self-defense. The issue here is not whether Appellant had to choose one of these two options, but whether his choice should be excused by a finding of immunity, or should be presented to a jury when he was at an apartment complex where he had no right to be.

C.

Appellant's argument that section 16-11-410's invocation of location rights refers to relative rights versus an attacker and does not contemplate an individual's forfeiture of protections during lawful egress from a posted property is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court. Furthermore, the trial court's broad interpretation of the restrictive language from the Act is entirely consistent with the protections afforded by the Act in the context of an individual's right to self-defense.

In his brief on appeal, Appellant argues the trial court erred in denying immunity on grounds that he did not have the right to be at the Apartment complex because S.C. Code section 16-11-410's "invocation of location rights refers to relative rights versus an attacker and does not contemplate an individual's forfeiture of protections during lawful egress from a posted property." He contends the trial court's reasoning for denying immunity would wreak havoc on the rights of people to stand their ground and would run counter to the General Assembly's intent to "loose an innocent person's right to defend themselves from the archaic and technical limitations previously placed on the right to self-defense." (Brief of Appellant, p.32-p.34) This argument is not preserved for appellate review because it was not specifically raised to and ruled upon by the trial court. Dunbar, 356 S.C. at 142, 587 S.E.2d at 693-94. In any event, the argument is

without merit. The only person who wreaked havoc during the incident was Appellant, when he pulled out his unlawfully concealed pistol and started shooting instead of attempting to retreat, which resulted in his paralyzing an unarmed man who was with the person who punched Appellant in the head. Contrary to Appellant's assertion, the "archaic and technical" limitation previously placed on the right to self-defense, i.e., the duty to retreat, has not been eliminated by our Legislature in every situation. Instead, the Legislature deliberately restricted the circumstances in which a person does not have a duty to retreat. One of those restrictions was to only make immunity possible for someone "in another place where he has a right to be." The trial court properly found Appellant was not in a place he had a right to be, and properly denied immunity on this ground.

II.

Appellant's argument that the apartment complex's use of section 16-11-620 of the Code in conjunction with a no trespass list is in violation of the United States Housing Act and HUD's implementing regulations is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court. It also is without merit because the 2010 model lease used forms appear to have been approved by HUD.

In his brief on appeal, Appellant argues: "The housing project's use of [16-11-620] in conjunction with the project's "Ban List" are in violation of the United States Housing Act's statutory mandate and HUD's implementing regulations such that they cannot constitute the grounds for the forfeiture of an individual's statutory right to self-defense." (Brief of Appellant, p.36). This argument is not preserved for appellate review because it was not specifically raised to and ruled upon by the trial court. Dunbar, 356 S.C. at 142, 587 S.E.2d at 693-94. Furthermore, the argument is without merit. The 2010 model lease consists of forms

promulgated by HUD, each page of which bears the HUD “equal housing opportunity” logo. Even if it was raised, it is incredulous to suggest lease forms approved by HUD would be deemed by the trial court to be in violation of HUD regulations. Indeed, it is incredulous to believe a lease term prohibiting a resident from inviting a person onto the property or their unit who is listed on the site’s no trespass list would be considered by the District Court of South Carolina to be an unreasonable term or condition, notwithstanding the opinion of the District Court of Maryland in Diggs v. Housing Authority, 67 F. Supp.2d 522 (D. Md. 1999). The trial court properly considered the lease terms in the 2010 model lease in rejecting Appellant’s claim that he was in a place he had a right to be and its decision should be affirmed.

III.

Appellant’s argument that the use of a non-specific allegation of loitering as a basis for a summary adjudication of a trespass violation on a public housing project property is unconstitutionally vague is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court, and even if preserved, the argument lacks merit because Appellant was already on the no trespass list due to his previous eviction at the time he was given the verbal trespass notice by the police for loitering, and because he was never adjudicated guilty for a trespass violation.

In his brief on appeal, Appellant argues: “The trial court’s interpretation of the immunity and trespass after notice statutes would deprive citizens of an important liberty interest conferred by S.C. Code Ann. § 16-11-410 et seq. in an arbitrary fashion and without appropriate due process.” (Brief of Appellant, p.39). This argument is not preserved for appellate review because it was not specifically raised to and ruled upon by the trial court. Dunbar, 356 S.C. at 142, 587 S.E.2d at 693-94. In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (“A constitutional claim must be raised and ruled upon to be preserved for appellate review.”). Here,

Appellant did not mention the Fifth or Fourteenth Amendments in his written motion or in his arguments to the trial court. Consequently, the trial court did not make any ruling in regard to these constitutional claims. Because the argument was neither raised to nor ruled upon the trial court, it is not a proper subject of appellate review.

In any event, even if preserved, the argument lacks merit. Appellant was never adjudicated guilty of trespass, and he was not given a verbal trespass notice solely because he was loitering. Instead, the officers who encountered Appellant at the apartment complex checked the no trespass list, determined Appellant was on that list, confirmed his identity, and gave him a verbal trespass notice. Thus, contrary to Appellant's claim, none of the actions in regard to his being placed on trespass notice were unconstitutionally vague.

IV.

Appellant's argument that the use of a three year old trespass notice as a bar to statutory immunity under the Act deprives him of his right to due process of law is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court, and even if preserved, the argument lacks merit where Appellant was never charged with or found guilty of criminal trespass.

In his brief on appeal, Appellant argues his "right to immunity under [the Act] constitutes an important liberty interest" and argues: "The trial court's assumption that [Appellant] was guilty of trespass violates his constitutional right to due process." (Brief of Appellant, p.42). As with his argument about the non-specific allegation of loitering, this argument is also not preserved for appellate review because it was never raised to or ruled upon by the trial court. Dunbar, 356 S.C. at 142, 587 S.E.2d at 693-94; McCracken, 346 S.C. at 92, 551 S.E.2d at 238. In addition, the argument lacks merit. As explained above, the trial court never assumed or found Appellant was guilty of trespass. Indeed, Appellant was never charged with criminal

trespass. Had he been so charged, he would have been afforded due process of law by way of South Carolina's existing criminal procedures. Furthermore, Appellant's claim that he has a liberty interest in statutory immunity presupposes he meets the requirements in the Act. Here, after following the immunity hearing procedures set out by our supreme court in Duncan, the trial court found he did not. Appellant's right to due process was provided by the trial court and the decision to deny immunity should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that this Court affirm the trial court's ruling that Appellant was not entitled to immunity under the Protection of Persons and Property Act, and affirm Appellant's conviction and sentence.

Respectfully submitted,

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Columbia, South Carolina
November 22, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2015-001810

THE STATE,.....RESPONDENT

v.

MARQUEZ DEVON GLENN,.....APPELLANT.

CERTIFICATE OF COUNSEL

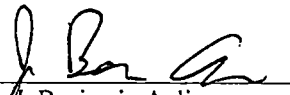
The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

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Columbia, South Carolina
November 22, 2016

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SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Marquez Devon Glenn, Appellant.

Appellate Case No. 2015-001810

Appeal From Greenville County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2018-UP-169
Heard February 6, 2018 – Filed April 25, 2018

AFFIRMED

Roy F. Harmon, III, of Harmon & Major, PA,
Christopher Todd Brumback and John Hampton Scully,
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Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia; and Solicitor William Walter Wilkins,
III, of Greenville, for Respondent.

PER CURIAM: In this criminal appeal, Marquez Devon Glenn appeals his convictions of assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime. Glenn asserts (1) the circuit court abused its discretion in denying Glenn's motion for immunity pursuant to the Protection of Persons and Property Act¹ (the Act) because Glenn was in a place where he had a right to be and was reasonably egressing the residence when he was attacked; (2) the Spring Grove Apartment Complex's (Spring Grove) use of section 16-11-620 of the South Carolina Code (2015), in conjunction with its no trespass list, violated the United States Housing Act's statutory mandate² and the United States Housing and Urban Development's implementing regulations³ in a manner that constitutes grounds for the forfeiture of an individual's statutory right to self-defense; (3) the use of a general, nonspecific allegation of loitering as a basis for summary adjudication of a trespass violation on a public housing project's property was unconstitutionally vague; and (4) the use of a three-year-old trespass notice as a bar to statutory immunity under the Act deprived Glenn of his right to due process of law. We affirm.

1. We find the circuit court did not abuse its discretion in finding Glenn was not immune from prosecution under the Act. "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [the appellate] court reviews under an abuse of discretion standard of review." *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). The circuit court abuses its discretion when its ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support. *State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). Moreover, "the abuse of discretion standard of review does not allow [the appellate] court to reweigh the evidence or second-guess the [circuit] court's assessment of witness credibility." *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014). Examining the Act in light of the plain and ordinary meaning of its language, we find the circuit court properly interpreted subsection 16-11-440(C) of the South Carolina Code to mean Glenn did not have a right to be at Spring Grove at the time of the incident. See S.C. Code Ann. § 16-11-440(C) ("A person who is not

¹ S.C. Code Ann. §§ 16-11-410 through -450 (2015).

² 42 U.S.C. §§ 1437 through 1437z-9 (2012).

³ 24 C.F.R. §§ 966.1 through 966.7 (2017).

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" (emphasis added)); *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013) (holding an issue involving statutory interpretation is a question of law); *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010) ("Whe[n] the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))).

Upon our review of the record, we find Glenn was not in a place where he had a right to be because his status at all times was that of a trespasser, regardless of Shelricka Duncan's invitation to Glenn to come to Spring Grove. *See State v. Green*, 35 S.C. 266, 268, 14 S.E. 619, 620 (1892) (holding that when the owner or tenant in possession of land forbids entry, any person with notice is liable to punishment for subsequent entry upon the land, regardless of his intent in making the entry). Additionally, despite Glenn's claim that he was unaware he did not have a right to be at Spring Grove, evidence in the record reflects that a sheriff's deputy issued Glenn a verbal trespass notice and placed Glenn on Spring Grove's no trespass list after the deputy found Glenn loitering. *See Strother v. Lexington Cty. Recreation Comm'n*, 332 S.C. 54, 63 n.6, 504 S.E.2d 117, 122 n.6 (1998) ("Actual notice means all the facts are disclosed and there is nothing left to investigate. Notice is regarded as actual whe[n] the person sought to be charged therewith either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, even though such means may not be employed by him. Generally, actual notice is synonymous with knowledge." (citations omitted)). Thus, regardless of Duncan's invitation, Glenn knew he was prohibited from being on the grounds, and as a result, he could not claim to believe he had a right to be at Spring Grove. *See Commil USA, LLC v. Cisco Sys., Inc.*, 135 S. Ct. 1920, 1930 (2015) ("[A] trespass 'can be committed despite the actor's mistaken belief that she has a legal right to enter the property.'" (quoting *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 583 (2010))). Last, Glenn was not reasonably egressing Shelricka's residence at the time of the incident. Instead, evidence in the record established Glenn was walking out of another tenant's apartment.

Accordingly, we find the circuit court properly denied Glenn immunity under the Act because the circuit court correctly interpreted subsection 16-11-440(C) and determined Glenn did not have a right to be at Spring Grove.

2. We find Glenn's remaining arguments unpreserved. To preserve an issue for appellate review, the issue must have been raised to and ruled upon by the circuit court. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). "An issue may not be raised for the first time on appeal, but must have been raised to the [circuit court] to be preserved for appellate review." *State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997); see *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (stating the preservation requirement "prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case"). Moreover, constitutional issues are not immune from preservation requirements, and accordingly, must be raised to and ruled upon by the circuit court. See *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005) ("The issue preservation requirement applies to assertions of constitutional violations as well."); *Bakala v. Bakala*, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003) (holding "[a] due process claim raised for the first time on appeal is not preserved"); *State v. Owens*, 378 S.C. 636, 638–39, 664 S.E.2d 80, 81 (2008) ("Neither the Confrontation Clause nor due process was raised to the [circuit] court, and accordingly neither constitutional claim is preserved for our review."). Upon our review of the record, we are unable to find any evidence to show that Glenn raised these arguments to the circuit court or that the circuit court ruled upon these issues. Thus, we find these issues unpreserved and decline to address these issues on appeal.

AFFIRMED.

LOCKEMY, C.J., and WILLIAMS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

RECEIVED
MAY 11 2018
SC Court of Appeals

Appellate Case No. 2015-001810

State of South Carolina.....Respondent,

vs.

Marquez D. Glenn.....Appellant.

**MOTION FOR REHEARING OR EN BANC REHEARING
PURSUANT TO RULES 219 & 221, SCACR**

Appellant hereby moves the Court for rehearing or an en banc rehearing pursuant to Rules 219 and 221, SCACR. This Motion is being made in good faith and for good cause as the Court has overlooked several of Appellant's main arguments, resolution of which in the favor of Appellant would result in a decision in favor of Appellant. Specifically, and despite briefing and extensive argumentation during oral arguments, the Court has failed to address Appellant's argument that to strip victims of violent attacks of their right to defend themselves and to statutory immunity where the victims presence at the place of the attack was not the proximate cause of the attack would be unreasonable, illogical, inconsistent with common sense and the

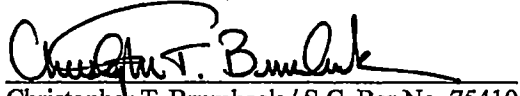
intent of the Protection of Persons and Property Act, and contrary to the interests of justice and existing case law concerning individuals' right to defend themselves. See State v. Burriss, 334 S.C. 256, 262 (1997) (“[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, 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.”). If, as it appears from the filed Opinion, the Court finds Appellant to have been a trespasser, the Court should nonetheless have moved to the second step of the analysis directed by Burriss and Goodson to determine whether Appellant’s “unlawful act,” the alleged trespass, was the proximate cause of the Appellant’s attack by Kevin and Elfonzo.

Moreover, the Court also appears to have overlooked the argument that Appellant was not a trespasser, and thus in a place he had a right to be when he defended himself, because the owner of the Spring Grove Apartment Complex who allegedly placed Appellant on trespass notice had sold the property and Appellant had never been placed on trespass notice by the subsequent owner. The fact that the right to place someone on trespass notice arises from a right to exclusive possession of land indicates that trespass notices are gross in nature because they benefit a particular person or entity and not the land itself. The underlying question of whether the right and ability to place and maintain an individual on trespass notice is gross or appurtenant in nature, and the impact of that distinction, does not appear to have been addressed in the Court’s opinion.

As to the issue of Appellant's request for an en banc rehearing, this case certainly involves a question of exceptional importance. Not only are several questions of first impression raised by this appeal, the outcome of this appeal will directly and materially impact every South Carolinians' right and ability to defend themselves and their property. As it stands, the grounds stated in the Court's Opinion will undoubtedly have a chilling effect on the right and ability of every individual in South Carolina to defend themselves pursuant the Protection of Persons and Property Act. As clearly contemplated by the legislative intent of the Protection of Persons and Property Act, the right to self-defense should not be based on 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 General Assembly's expansion and codification of the doctrine of self-defense was intended to loose an innocent person's right to defend themselves from the archaic and technical geographic limitations previously placed on the right to self-defense is certainly a question deserving of en banc consideration.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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State of South Carolina.....Respondent,

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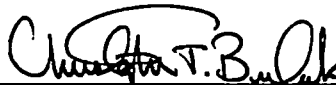
Marquez D. Glenn.....Appellant.

PROOF OF SERVICE

I certify that I have filed with the Court of Appeals and served Appellant's Motion for Rehearing or En Banc Rehearing on Respondent's attorney, J. Benjamin Aplin, by First Class United States Mail addressed to Post Office Box 11549, Columbia, SC 29211-1549 on May 8, 2018.

May 8, 2018

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The South Carolina Court of Appeals

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May 24, 2018

Mr. Christopher Todd Brumback, Esquire
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Re: The State v. Marquez Glenn
Appellate Case No. 2015-001810

Dear Counsel:

This will acknowledge receipt of your Petition for Rehearing En Banc.

By copy of this letter, opposing counsel is requested to file a return to this motion no later than ten (10) days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Roy F. Harmon, III, Esquire
John Hampton Scully, Esquire
William Walter Wilkins, III, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2018-UP-169 - Filed April 28, 2018

Appellate Case No. 2015-001810

RECEIVED

JUN 01 2018

SC Court of Appeals

THE STATE, ...RESPONDENT

v.

MARQUEZ DEVON GLENN, ...APPELLANT.

RETURN TO MOTION FOR REHEARING AND
SUGGESTION FOR REHEARING *EN BANC*

On April 25, 2018, this Court issued an unpublished opinion that affirmed Appellant Marquez Devon Glenn's convictions for assault and battery of a high and aggravated nature (ABHAN) and possession of a weapon during the commission of a violent crime. *State v. Glenn*, Op. No. 2018-UP-169 (S.C. Ct. App. filed April 25, 2018). On May 8, 2018, Appellant submitted a motion for rehearing or rehearing *en banc* pursuant to Rules 219 & 221(a), SCACR. By letter dated May 24, 2018, this Court asked Respondent (the State) to file a return to the motion. This return to motion for rehearing and suggestion for rehearing *en banc* now follows.

Procedural History

Appellant was indicted at the July 2014 term of the grand jury for Greenville County for attempted murder (count 1) and possession of a weapon during the commission of a violent crime (count 2) (2013-GS-23-006789). He was represented by Christopher Brumback, Esquire, and Spencer Langley, Esquire, and the State was represented by assistant solicitor Ryan Holloway of the Thirteenth Circuit Solicitor's Office. On August 3, 2015, the case was called for trial at the Greenville County Courthouse before the Honorable John C. Hayes, III. (R.p.19). In regard to the specific testimony, evidence, and arguments presented to the lower court, the State hereby incorporates by reference the statement of facts set forth in the Final Brief of Respondent.

At the call of the case, Appellant made a motion to be granted immunity from prosecution pursuant to the Protection of Persons and Property Act (S.C. Code Ann. §§ 16-11-410 to -450) (Supp. 2012) (the Act). After the parties argued their respective positions, the jury was qualified and selected. Prior to the jury being sworn, the trial court conducted a pretrial immunity hearing pursuant to the procedures set forth in *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). At the close of that hearing, after taking testimony, observing evidence, and hearing additional arguments from both sides, the trial court found that Appellant had failed to establish he was entitled to immunity under the Act because, at the time of the shooting, he was not in a place he had a right to be. The trial court denied Appellant's motion to dismiss the charges and the case proceeded to trial. (R.p.22-p.231).

After hearing the evidence and the trial court's charge on the law—which included a charge on self-defense—the jury found Appellant guilty beyond a reasonable doubt of ABHAN and possession of a weapon during the commission of a violent crime. Citing mitigating

circumstances, the trial court sentenced Appellant to twelve (12) years' imprisonment for ABHAN and five (5) years' concurrent imprisonment for possession of a weapon during a violent crime. (R.p.246-p.250; p.279-p.280; 281-282). Appellant filed a notice of intent to appeal the denial of his motion for immunity and his conviction, and the parties filed briefs in support of their respective positions. This Court heard oral arguments on February 6, 2018, and on April 25, 2018, filed the unpublished opinion affirming Appellant's convictions and sentence.

Motion for Rehearing

Appellant now seeks rehearing on the ground that this Court overlooked several of his main arguments, resolution of which he claims would result in a decision in his favor. First, Appellant contends this Court failed to address his argument that to strip victims of their right to defend themselves and to statutory immunity where their unlawful presence was not the **proximate cause** of the incident would be unreasonable, illogical, inconsistent with the intent of the Act, and contrary to the interests of justice and existing case law concerning individuals' rights to defend themselves. He argues that even if this Court concluded he was a trespasser, it "should nonetheless have moved to the second step of the analysis . . . to determine whether [his] "unlawful act" . . . was the proximate cause of the [incident]. Second, he contends the Court overlooked his argument that he was **not a trespasser** because the owner of the apartment complex who placed him on trespass notice had sold the property and he was never placed on trespass notice by the subsequent owner. The State submits these arguments are without merit and do not support his request for rehearing. This Court applied the proper standard of review in considering the issues raised by Appellant, affirming the trial court's denial of immunity, and affirming Appellant's convictions and sentence.

Standard of Review

The appellate court reviews the trial court's pretrial determination of immunity for an abuse of discretion. *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). In criminal cases, the appellate court sits to review errors of law only. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge's ruling is supported by *any* evidence. *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added); *see also State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 885 (2012) ("The trial court will only be reversed when there is no evidence to support the ruling below."). "[T]he trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-86 (Ct. App. 2001). An abuse of discretion occurs only when the trial court's conclusions lack evidentiary support or are controlled by an error of law. *State v. Scott*, 414 S.C. 482, 486, 779 S.E.2d 529, 531 (2015) (quoting *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)); *see also Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.'" (quoting *State v. Amerson*, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993))).

The Protection of Persons and Property Act

The subsection of the Act which creates immunity provides:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer

S.C. Code Ann. § 16-11-450 (Supp. 2012). A claim of immunity under the Act must be determined pretrial and the defendant has the burden of proving entitlement to immunity by a preponderance of the evidence. *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). 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 a defendant's entitlement to the Act's immunity. *Curry*, 406 S.C. at 371, 752 S.E.2d at 266. This includes each element of self-defense, save the duty to retreat. *Id.* at 372, 752 S.E.2d at 266-67 (“[I]mmunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.”)

Section 16-11-440 sets forth the circumstances under which the Act allows the use of deadly force. It creates a presumption of reasonable fear of imminent peril of death or great bodily injury when a person is subject to an unlawful or forceful entry of his or her dwelling, residence, or occupied vehicle, or when a person is subject to removal or attempted removal against his or her will from a dwelling, residence, or occupied vehicle, and it establishes certain exceptions to this presumption. S.C. Code § 16-11-440(A) & (B) (Supp. 2012). The Act then provides:

(C) 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.

S.C. Code Ann. § 16-11-440(C) (Supp. 2012) (emphasis added). Appellant's overarching contention in this appeal was that he was attacked in a place where he had a right to be, and that the trial court erred in finding he was not. As noted above, he now argues this Court overlooked several of his main arguments in this appeal, resolution of which he claims would result in a decision in his favor. The State disagrees.

Analysis / Discussion

In regard to Appellant's first argument, he appears to mischaracterize the basis upon which the trial court denied immunity and upon which this Court determined immunity was properly denied. He suggests the request for immunity was denied solely because his act of trespassing was an "unlawful act." This is not the case. While being "engaged in an unlawful activity" can be a reason to exclude a person from a grant of immunity under the Act, and would have been a valid basis for doing so here, failing to be "in another place where [the person] has a right to be" is a separate and independent bar to immunity.

Here, the trial court specifically denied immunity because, as a trespasser, Appellant was not in a place he had a right to be. Immunity was not expressly denied because, as a trespasser, Appellant was also engaged in unlawful activity. Appellant's proximate cause argument is based on case law in South Carolina recognizing that, in the context of self-defense, a person may be acting lawfully in self-defense even where engaging in an unlawful activity, such as unlawfully possessing a weapon. Because the trial court's decision was based not on Appellant's unlawful activity, but on the fact that his particular unlawful activity happened to put him in a place he had no right to be, no discussion of proximate cause was relevant or required. In any event, the Act itself makes clear it is intended only to provide immunity to "law-abiding citizens." This intent

informs the breadth of the Act's language barring immunity for someone "engaged in an unlawful activity." Thus, even if Appellant's unlawful activity was the basis of the trial court's ruling, it nevertheless was properly affirmed. The rules of self-defense in the context of a jury determining whether the state has proven guilt beyond a reasonable doubt are inapplicable in the context of a judicial grant of immunity from prosecution under the Act.

In regard to Appellant's second argument, rather than overlooking the argument that Appellant was not a trespasser, this Court instead addressed it head-on, finding "Glenn was not in a place where he had a right to be **because his status at all times was that of a trespasser**, regardless of Shericka Duncan's invitation to Glenn to come to Spring Grove." The Court noted the existence of evidence in the record reflecting that a sheriff's deputy issued a verbal trespass notice and placed Appellant on Spring Grove's no trespass list after the deputy found Glenn loitering. The Court concluded this demonstrated Appellant knew he was prohibited from being on the grounds and, as a result, could not claim to believe he had a right to be at Spring Grove. Finally, this Court found Appellant was not reasonably egressing Shericka's residence at the time of the incident. For all of these reasons, the timing of Appellant's original placement on a no trespass list by Spring Grove apartments, and whether that notice carried over to a subsequent owner of Spring Grove after the alleged sale of the apartment complex is of no moment. By finding Appellant was in fact a trespasser at the time of the incident, this Court did not overlook any of Appellant's claims that he was not a trespasser.

As set forth in his brief on appeal, Appellant argued the trial court erred in denying immunity on grounds that he did not have the right to be at Spring Grove because S.C. Code section 16-11-410's "invocation of location rights refers to relative

rights versus an attacker and does not contemplate an individual's forfeiture of protections during lawful egress from a posted property." He contended the trial court's reasoning for denying immunity would wreak havoc on the rights of people to stand their ground and would run counter to the General Assembly's intent to "loose an innocent person's right to defend themselves from the archaic and technical limitations previously placed on the right to self-defense." (Brief of Appellant, p.32-p.34). While this argument is not preserved for appellate review because it was not specifically raised to and ruled upon by the trial court. *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693-94, it also is without merit. The only person who wreaked havoc during the incident in question was Appellant, when he pulled out his unlawfully concealed pistol and started shooting instead of attempting to retreat, which resulted in his paralyzing an unarmed man who was with the person who allegedly punched Appellant in the head. Contrary to Appellant's assertion, the "archaic and technical" limitation previously placed on the right to self-defense, i.e., the duty to retreat, has not been eliminated by our Legislature in every situation. Instead, the Legislature deliberately restricted the circumstances in which a person does not have a duty to retreat. One of those restrictions was to only make immunity possible for someone "in another place where he has a right to be." As found by this Court, Appellant was not egressing Shelricka's apartment and was not in a place where he had a right to be. The trial court properly denied immunity on this ground. This Court properly affirmed, and rehearing should be denied.

Suggestion for Rehearing *En Banc*

Appellant further suggests rehearing *en banc* on grounds that this case involves a question of exceptional importance. He claims there are several questions of first impression

raised by this appeal and that “the outcome of this appeal will directly and materially impact every South Carolinians’ right and ability to defend themselves and their property.” Appellant argues that as it stands, this Court’s opinion will “undoubtedly have a chilling effect” on these rights and abilities under the Act. He states: “Determining whether the General Assembly’s expansion and codification of the doctrine of self-defense was intended to loose an innocent person’s right to defend themselves from the archaic and technical geographic limitations previously placed on the right to self-defense is certainly a question deserving of *en banc* consideration.” The State respectfully submits the reasons given by Appellant do not render this proceeding exceptionally important or particularly compelling for *en banc* review. Indeed, as noted in the heading of the opinion itself, as an unpublished opinion it has no precedential value and should not be cited or relied upon as precedent. Therefore, it neither directly nor materially impacts the rights or abilities of any South Carolinians to defend themselves under the plain and ordinary meaning of the language of the Act. This Court examined the Act in light of this language and agreed with the circuit court’s logical interpretation to find Appellant did not have a right to be at Spring Grove at the time of the incident. The opinion was based on the specific facts and circumstances of Appellant’s case and will not prohibit or prevent South Carolinians from seeking immunity under the Act or pursuing self-defense at trial, even if they are attempting to raise the same legal arguments put forth by Appellant in this appeal.

Conclusion

WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court deny Appellant’s motion for rehearing, deny Appellant’s suggestion for rehearing *en banc*, and let stand the unpublished opinion affirming Appellant’s convictions and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
June 1, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

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SC Court of Appeals

Unpublished Opinion No. 2018-UP-169 - Filed April 25, 2018

Appellate Case No. 2015-001810

THE STATE, ...RESPONDENT

v.

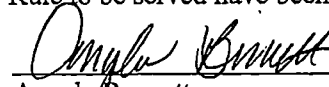
MARQUEZ DEVON GLENN, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Legal Coordinator, hereby certify that I have served the within *Return to Motion for Rehearing and Suggestion for Rehearing En Banc*, dated June 1, 2018, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorneys of record:

Christopher T. Brumback, Esquire
Spencer D. Langley, Esquire
1 Augusta Street, Suite 301
Greenville, SC 29601

I further certified that all parties required by Rule to be served have been served. This 1st day of June, 2018.


Angela Bennett
Legal Assistant

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The South Carolina Court of Appeals

The State, Respondent,

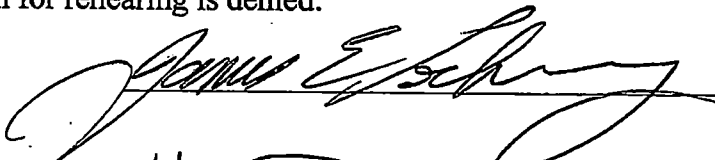
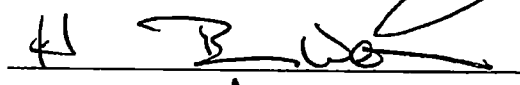
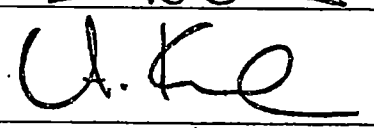
v.

Marquez Devon Glenn, Appellant.

Appellate Case No. 2015-001810

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact, principle of law, or argument has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

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FILED

July 9, 2018

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