THE STATE OF SOUTH CAROLINA

In the Supreme Court

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

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S.C. SUPREME COURT

Appellate Case No. 2018–001478

State of South Carolina.....Respondent,

vs.

Marquez D. Glenn.....~~Appellant~~ Petitioner.

~~APPELLANT~~ MARQUEZ D. GLENN'S BRIEF

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QUESTIONS PRESENTED

I. In light of the this Court's August 29, 2018 decision in State v. Scott, which held that a party successfully proving each of the elements of common law self-defense constitutes a standalone ground for immunity under the Protection of Persons and Property Act ("PPPA" or "the Act"), did the trail court and the Court of Appeals err by denying Appellant immunity "solely" on the determination that Appellant was a trespasser in the absence of any causal connection between the alleged trespass and the conflict that arose?

II. In concluding that Appellant was not in a place where he had a right to be when he was forced to defend himself and that he, accordingly, was not entitled to immunity under the PPPA, did the Court of Appeals improperly constrain the scope of immunity granted by the PPPA to bona fide individuals to defend themselves against attack?

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

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

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

STATEMENT OF THE CASE

This is an appeal from criminal proceedings in the matter of State v. Marqeuz Devon Glenn, and specifically concerns the denial of immunity to Appellant Marquez D. Glenn (hereinafter "Appellant" or "Mr. Glenn") at the conclusion of the pre-trial hearing that was held pursuant to S.C. Code Ann. §§ 16-11-450(A) and 16-11-440. See generally State v. Glenn, 2013A2330203357 and 2013A2330203356 App. pp. 285-86. The proceedings before the Greenville County Court of General Sessions concerned charges for Attempted Murder and

Possession of a Weapon During a Violent Crime, which arose out of an incident wherein Appellant defended himself with the use of a handgun from an violent and unprovoked surprise attack by two (2) individuals while Appellant was leaving an apartment complex. See generally Immunity Hr'g Tr., App. pp. 72:11–235:14.

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 based on S.C. Code Ann. § 16-11-440, the common-law of self-defense, and under the facts and circumstance of this case 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, App. pp. 5-7. The pretrial hearing was conducted outside of the presence of the jury and was considered and ruled upon by Judge John C. Hayes III.

On August 4, 2015, Judge Hayes ruled from the bench, orally denying Appellant's Motion for Statutory Immunity because Judge Hayes found "that the immunity argument fail[ed] solely on the issue of whether or not [Mr. Glenn] had a right to be there" at the time he acted in self-defense. Immunity Hr'g Tr., App. p. 234:15–17, p. 235:5-14 (emphasis added). Though he denied immunity to Appellant, Judge Hayes' finding implicitly concluded that Appellant met the remaining criteria to qualify for statutory immunity under the protections of S.C. Code Ann. §§ 16-11-440(C) and 16-11-450(A). See id. App. at pp. 234:15-17, p. 235:2–14 (finding immunity argument failed "solely" because Appellant was not at a place he had a lawful right to be at the time of the incident, but also finding that Appellant was not engaged in any activity that would bar him "immunity but for his not being allowed on the property").

Following the trial court's denial of immunity, Appellant was tried by jury, which, after nearly eight (8) hours of deliberation resulted in the jury acquitting Appellant on the charge of Attempted Murder, but convicting 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 Sentencing Sheet, App. pp. 285-86.

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 [Mr. Glenn] had a right to be [on the property]" at the time he was attacked and forced to act in self-defense. See Notice of Appeal, App. pp. 306-07; Immunity Hr'g Tr., App. pp. 234:15–235:14. The Court of Appeals affirmed the judgment of the circuit court. State v. Marquez D. Glenn, Op. No. 2018-UP-169 (S.C. Ct. App. filed Apr. 25, 2018), App. pp. 406-409. Certiorari to review the Court of Appeals' decision was subsequently granted by this Honorable Court.

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). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007).

RELEVANT FACTS

This appeal arises out of an incident on the evening of April 12, 2013 at the Spring Grove Apartment Complex, a Section VIII, government-subsidized housing complex, located at 1900

Boling Road Extension, Taylors, SC 29687 (hereinafter "Spring Grove" or "the Complex"). See Immunity Hr'g Tr., App. pp. 73:10–74:22; see also 2010 Model Lease for Subsidized Programs, App. pp. 291-304.

The individuals involved in the events of the night in question are Marquez Glenn (hereinafter "Mr. Glenn"), who was a social guest of Spring Grove tenants Shelricka Duncan (hereinafter "Shelricka") and Kiana Grayson, Kevin Bruster (hereinafter "Kevin"), and Kevin's nephew Elfonzo Bruster (hereinafter "Elfonzo"). See Immunity Hr'g Tr., App. p. 163:10–23, p. 168:16–18, p. 193:4–12, p. 206:11-16. Tivarius Henderson (hereinafter "Tivarius"), who is Mr. Glenn's brother, was also attacked earlier in the evening by Kevin, which ultimately lead to Kevin and Elfonzo attacking Mr. Glenn. See id. at App. pp. 73:8–75:23, pp. 121:2–122:13, p. 217:11-15, p.218:5-7, pp. 221:20-222:5.

On the evening of April 12, despite having been put on trespass notice less than twenty-four (24) hours prior for criminal activity, Kevin, who was heavily intoxicated at the time, came to Spring Grove to find and harass his ex-girlfriend Gloria Duncan (hereinafter "Gloria"), the mother of Shelricka. See Immunity Hr'g Tr., App. pp. 74:23–75:3, pp. 98:13–102:20, p. 113:4–20, p. 217:10–20, p. 222:15–18. 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 App. pp. 73:22–75:3, pp. 98:13–102:4, pp. 164:2–165:3, p. 201:11–22. The guests at Shelricka's apartment were there at Shelricka's invitation for a cookout. See id. Included in those social invitees was Mr. Glenn, who had been peaceably enjoying the company of friends at Shelricka's prior to sober-driving friends to the convenience store. See id. Having already left on the aforesaid errand, Mr. Glenn was not present at Shelricka's apartment

(hereinafter "27C") when Kevin discovered Gloria's presence in 27C and made forcible entry thereto. See id. at App. p. 99:3–18, p. 100:11–12, pp. 102:23–103:16, pp. 164:7–165:14. After violently forcing his way into 27C, Kevin used a razor blade that he had concealed in his mouth to cut Tivarius in the eye and arm as Tivarius attempted to protect the inhabitants of 27C, leaving Tivarius bleeding and with a substantial laceration above his eye. See id. at App. pp. 74:23–75:20, p. 99:3–20. 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, begging Elfonzo to go back with him to Shelricka's to do something about "somebody jump[ing]" him. See id. at App. pp. 102:5–110:8, p. 112:4-8, pp. 121:2–122:13 ("And [Kevin] said, somebody jumped me, you [Elfonzo] not gonna do nothing?...And [Kevin] keep telling [Elfonzo], come on, let's go, come on, let's go. We didn't pay attention until [Elfonzo] walked with [Kevin towards Shelricka's]."), p. 128:1–7, p. 173:13–15, pp. 217:10–218:7. In response to Kevin having forcibly entered 27C and assaulted Tivarius with a razor blade, law enforcement was at some point contacted and dispatched to Spring Grove. See id. at App. p. 76:2–10, pp. 104:21–107:4, p. 165:9–14.

At approximately the same time Kevin was recruiting and urging Elfonzo to join him in attacking Tivarius and his family, Mr. Glenn returned to Spring Grove from sober-driving to the convenience store. See id. at App. pp. 164:9–166:24, pp. 200:10–201:22. Upon Mr. Glenn returning to Spring Grove with a bag from the convenience store, Kiana Grayson (hereinafter "Kiana"), Shelricka's neighbor, called Mr. Glenn over to her apartment to let him know an altercation occurred in his absence. See id. at App. 164:22-165:14. Speaking with Kiana at her apartment while also getting change back for a pizza Mr. Glenn had given Kiana money for

earlier, Mr. Glenn, without objection from Kiana, set his convenience store bag down inside the door of Kiana's apartment prior to being approached by the police officers who had reported to the scene as a result of Kevin's earlier assault of Tivarius. See id. at App. p. 80:2–9, p. 82:3-22; p. 105:9–16, p. 165:1–14, p. 166:1–21, pp. 167:20–168:5; p. 200:10–20, p. 206:11–13. The police officers inquired as to Mr. Glenn's knowledge of the events that had transpired at the Complex involving Kevin, to which Mr. Glenn responded that he had no knowledge of any such events as he had been away from the Complex at the time the assault in question transpired. See id. at App. pp. 165:9–166:21. At no time did the police arrest Mr. Glenn for trespass, raise any objection to Mr. Glenn being at Shelricka or Kiana's apartments, or inform Mr. Glenn he was exceeding the scope of his invitation to either Shelricka or Kiana's such that he was committing trespass after notice. See id. at App. p. 105:9–16, pp. 165:9–166:24, pp. 167:20–169:7.

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 App. p. 166:10–24. Upon concluding his conversation with the police and the police departing the scene, Mr. Glenn, out of concern over what the police had just told him transpired in his absence, retrieved his belongings from Kiana's apartment to depart from Spring Grove. See id. at App. pp. 166:10–169:7. While Mr. Glenn was walking to his car after obtaining his belongings, Kevin and Elfonzo, seeing Mr. Glenn alone, abruptly and intentionally blocked Mr. Glenn's access to his car and began threatening Mr. Glenn. See id. at App. pp. 101:12-107:4. pp. 123:22–125:16, pp. 200:10-203:14. 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 App. pp. 88:1–90:13, pp. 137:8–139:16, pp. 174:11–175:15.

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 App. p. 84:20-21, pp. 106:11–107:9, p. 108:1–7, p. 112:17-25, pp. 168:15–165:7. Having been at the store during the time of the prior assault perpetrated by Kevin, Mr. Glenn denied any involvement or knowledge of the subject about which Kevin and Elfonzo were berating him. See id. at App. p. 106:11–23, p. 166:17-24, pp. 168:11-169:7, p. 173:3–24. 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 App. p. 169:2–6; see also id. at App. p. 78:13–18, p. 106:11-23. The car to which Kevin was referring, the white Lincoln, was Mr. Glenn's vehicle. See id. at App. p. 81:12–14.

At that point Kevin suddenly and violently attacked Mr. Glenn, punching him full-force in the throat and neck. See id. at App. pp. 105:9-107:9, pp. 124:24-125:11, p. 202:2–16, p. 218:5-7, p. 219:1-3. 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 App. pp. 137:8-138:17, p. 169:11–19. 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 App. p. 89:6–25, p. 137:8–18, pp. 170:13–171:20, pp. 174:11–175:15. 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 App. pp. 77:24–78:2, p. 107:12-20, pp. 138:14–139:1, pp. 168:11–170:6, pp. 172:4-173:2. Due to Kevin and Elfonzo blocking and refusing Mr. Glenn access to his vehicle and the violent and surprise nature of the physical attack of which Mr. Glenn was the victim, Mr. Glenn neither had opportunity to retreat, nor any other probable means of avoiding the danger of losing his life or sustaining serious bodily injury than to act as he did. See id. at App. pp. 109:24-110:8, p. 125:14-16, p. 203:6-14.

ARGUMENT

I. Introduction.

Reversal of the Court of Appeals' decision is essential not only to ensure justice for Mr. Glenn, but more importantly to give proper interpretation to the PPPA and thereby ensure that "no person or victim of crime should be required to surrender his personal safety to a criminal." S.C. Code Ann. § 16-11-420(E). The denial of immunity to Mr. Glenn "solely" on the ground he was not in a place where he had a right to be incorrectly narrows the right to self-defense in direct contravention of the Legislature's clear intent to enlarge both the right of self-defense and the shield of immunity provided by the PPPA to better "protect persons in South Carolina from violence being perpetrated upon them" by criminals. State v. Jones 416 S.C. 283, 298, 786 S.E.

2d 132, 140 (2016); State v. Scott, Op. No. 27834 (S.C. Sup. Ct. filed Aug. 29, 2018) (Shearouse Adv. Sh. No. 35 at 31, 38) (holding that not only does the PPPA extend immunity to individuals meeting the elements of subsections 440(A) and 440(C), but also that "[i]t was clearly the Legislature's intent that if a person seeking immunity under subsection 16-11-450(A) could prove the [common law] elements of self-defense in an immunity hearing, immunity must be granted"); see also S.C. Code Ann. § 16-11-450(A) ("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.") (emphasis added). Reversal of the denial of immunity is dictated by the Legislature's "clearly enunciated" intent and reasons for promulgating the PPPA, the canon of statutory interpretation directing the avoidance of absurd and unjust results, the sound shift in public policy towards protecting innocent citizens and victims of crime and away from the protection of criminals, the well-founded legal principles that have developed alongside the common law doctrine of self-defense over the last 150 plus years, and most recently by the reasoning of this Court in the Scott decision.

II. In light of this Court's August 29, 2018 decision in State v. Scott, Mr. Glenn was entitled to immunity by having proven, beyond a preponderance, all elements of common law self-defense regardless of whether he was in "another place where he ha[d] a right to be."

For Mr. Glenn the evening of April 12, 2013 began like so many other unremarkable Friday nights, with an invitation from a friend who lived at the Spring Grove to come over for dinner with mutual friends. Immunity Hr'g Tr., App. pp. 73:22-74:14. Despite the violent assault perpetrated by Kevin upon Mr. Glenn's brother while Mr. Glenn was sober-driving

friends to the convenience store, Mr. Glenn's evening continued on its uneventful course upon his return from the store. See id. at App. pp. 74:18-76:7.

Unaware of the events that transpired in his absence, the danger of his soon-to-be assailants who were concealing themselves in the shadows and lying in wait, or that he allegedly did not have a right to be at the Complex, Mr. Glenn, after being called over by Kiana to her apartment, willingly cooperated with the the police officers investigating the reports of the assault perpetrated by Kevin with a razor blade. See id. at App. pp. 75:19-76:10, pp. 164:1-177:1 And, having concluded his conversation with the police, who did not arrest Mr. Glenn for trespassing, raise any objection to Mr. Glenn for being on Spring Grove property, or inform him he was exceeding the scope of his invitation to Shelricka or Kiana's apartments such that he did not have a right to be there, Mr. Glenn's visit to his friends' apartments would have concluded unremarkably but for the violent and felonious surprise attack of Kevin and Elfonzo, who without provocation attacked Mr. Glenn as he attempted to peaceably walk to his car to leave Spring Grove. See id. at App. pp. 175:1-182:20. Having his path to his vehicle blocked and being the victim of a surprise attack by multiple assailants of larger stature, one of whom Mr. Glenn had just learned from the police had already assaulted someone with a razor blade that night, Mr. Glenn had no other means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did. See id. at App. p. 108:1-20; pp. 109:24-110:8; pp. 123:25-124:5; p. 125:14-16; p. 203:6-14; p. 193:3-5; p. 218:1-7.

The error of the trial court and the Court of Appeals appears to be the result of the misconception that immunity under the PPPA required, as a predicate, proof of the common law elements of self-defense, but that proving the common law elements of self-defense without also

establishing the requisite elements of subsection 440(A) or 440(C) would be insufficient to entitle one to PPPA immunity. See Scott, Op. No. 27834 at p. 38 (noting that "[t]he State, [appellant], the court of appeals, and the circuit court spent considerable time addressing the applicability of subsections (A) and (C) of section 16-11-440 of the South Carolina Code (2015)" and holding that subsection 16-11-440(A) did not apply and that "the applicability of subsection 16-11-440(C) was not essential to the circuit court's finding of immunity in this case" because "[t]here is evidence in the record to support [defendant's] use of deadly force against [decedent] under the doctrine of self-defense [and] [t]herefore, [defendant] was entitled to immunity pursuant to Subsection 16-11-450(A)..."). Prior to this Court's August 29, 2018 decision in Scott, recent decisions interpreting the grounds for and scope of immunity granted by the PPPA seemed to indicate that the common law doctrine of self-defense had been subsumed into subsections 440(A) and 440(C) and was not a sufficient basis on its own to obtain immunity under the PPPA. See State v. Scott, __ S.C. __, 800 S.E.2d 793, 797 n.8 (Ct. App. 2017) aff'd as modified Op. no. 27834 at p. 31 ("[A] defendant must establish the elements of self-defense in order to prevail on a claim for immunity. The clear language of section 16-11-440(C), however, also requires that the defendant be actually attacked...absent a showing that a defendant has been attacked, a request for immunity, pursuant to subsection (C),...must fail, and a defendant must present his evidence of self-defense to a jury."); see also Jones, 416 S.C. at 300 n.8, 786 S.E.2d at 141 n.8 (noting the lack of clarity and "ongoing conflict over the language of section 16-11-440(C) and "invit[ing] the Legislature to evaluate the [another applicable provision of law] language of section 16-11-450,...which presumably includes the common law of self-defense" as a ground for immunity under the PPPA).

Given the confusion of the bench and bar as to the grounds upon which one is entitled to immunity under the PPPA and the lack of legislative action to answer the issues with subsections 440(C) and 450(A) that were raised by the Jones decision, this Court seized the opportunity in Scott to hold in no uncertain terms that "[s]elf-defense is the classic provision of law that justifies the use of deadly force," and that "[i]t was clearly the Legislature's intent that if a person seeking immunity under subsection 16-11-450(A) could prove the elements of self-defense in an immunity hearing, immunity must be granted." Scott, Op. No. 27834 at p. 38. In light of the illumination provided by the Scott opinion, it was an obvious error by both the trial court and the Court of Appeals to reject Mr. Glenn's entitlement to PPPA immunity "solely" on the question of whether Mr. Glenn was somewhere he had a right to be when he was the victim of an unprovoked surprise attack by multiple assailants. Id. at 34 ("[T]he trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity.") (quoting State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013)). Unfortunately this Court's decision in Scott was not filed until five (5) days after Mr. Glenn's Petition for Writ of Certiorari was submitted, and, accordingly, neither the parties, the trial court, nor the Court of Appeals had the benefit of the clarity provided by Scott with regard to the common law doctrine of self-defense constituting "another applicable provision of law" for purposes of subsection 450(A) and the precise analytical structure by which the immunity determination based on the common law elements of self-defense should be made. See Jones, 416 S.C. at 300 n.8, 786 S.E.2d at 141 n.8 (noting "ongoing conflict" as to the applicability of subsection 440(C) and raising concern and question in need of legislative answer concerning the "use of the language 'or another applicable provision of law,' which presumably includes the

common law of self-defense, [and] arguably entitles all defendants who claim self-defense to a pretrial determination of immunity under the Act") (emphasis added).

Although the lack of clarity as to the common law doctrine of self-defense being an independent basis for PPPA immunity led to unnecessary focus on the "place where he has a right to be" language of subsection 440(C) by the parties, the circuit court, and the Court of Appeals, the essence of Mr. Glenn's argument in favor of immunity has always been that regardless of an alleged trespass, Mr. Glenn was without fault in bringing on the difficulty in question.[1] Accordingly, it is proper for the Court to look past the trial court and the Court of Appeals' failure to follow the structure of the common law self-defense analysis with precision and to "glean from [the circuit court's] order the necessary findings of fact to support the conclusion that [Mr. Glenn] established the four elements of self-defense." Scott, Op. No. 27834 at p. 34; see also State v. Douglas, 411 S.C. 307, 321, 768 S.E.2d 232, 240 (Ct. App. 2014) (affirming statutory immunity pursuant to subsection 440(C) even though the "circuit court did not directly address the first element of self-defense, i.e. whether the accused was without fault in bringing on the difficulty," because although "[t]he circuit court merely stated that Respondent was not engaged in any unlawful activity at the time of the incident[,] [n]onetheless, the evidence

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[1] Since the filing of Mr. Glenn's written Motion for Immunity and the pre-trial evidentiary immunity hearing, Mr. Glenn has argued entitlement to PPPA immunity, and offered evidence in support thereof, pursuant to both subsection 440(C) and the "another applicable provision of law" language of 450(A). See Mot. for Immunity App. pp. ___ (quoting and emphasizing specifically the "another applicable provision of law" language in 450(A) and arguing that "[t]he 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)") (emphasis added).

support[ed] the circuits court's implicit finding that Respondent was without fault in bringing on the difficulty").

For purposes of determining statutory immunity on the grounds of the common law doctrine of self-defense, the elements are:

> (1) The defendant was without fault in bringing on the difficulty; (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Scott, Op. No. 27834 at p. 34 (quoting State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011)). Although at the immunity hearing the State claimed to contest each of the above elements, with regard to the second, third, and fourth elements all the evidence in the record, even the testimony of the alleged victim, Elfonzo, established that Mr. Glenn was peaceably walking to his vehicle to leave the Complex when he was violently and forcibly prevented from doing so by multiple aggressors who ultimately launched a surprise attack against Mr. Glenn that left him with no opportunity to avoid the attack and no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. Consequently, the true battleground at the immunity hearing and even at the Court of Appeals was the question of whether Mr. Glenn was without fault in bringing on the difficulty.

Interestingly, the trial court adroitly concluded that for illegal activity to deny an individual entitlement to immunity under the PPPA, the illegal activity "has to be a more active

illegal activity" that is the "proximate cause of the incident." See App. pp. 234:18-235:10; see also State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (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."); Douglas, 411 S.C. at 321 n.8, 768 S.E.2d at 240 n.8 (affirming grant of immunity under subsection 440(C) and trial court's "implicit finding" that respondent was without fault despite respondent having prior violent experience with decedent whereby he "should have known that sharing almost two full bottles of vodka with [decedent] was a bad idea" because "[o]ne who merely does an action [that] affords an opportunity for conflict is not thereby precluded from claiming self-defense... Before an act may cause forfeiture of the fundamental right of self-defense it must be willingly and knowingly calculated to lead to conflict") (emphasis in original; citation omitted). Despite the trial court's proper conclusion that Mr. Glenn's passive unlawful activity, the unpermitted concealed carry of the handgun he used to defend himself, was not the proximate cause of the incident and as such did not prevent him from having immunity, in the very same breath the trial court denied Mr. Glenn immunity "solely" on the grounds of an equally, if not more, passive unlawful activity that had no causal connection, the alleged violation of a more than three year old Trespass Notice. It bears note that the trial court's conclusion "that the immunity argument fail[ed] solely on the issue of whether or not he had a right to be there" was based exclusively on a technical analysis of the alleged right of apartment complex owners to prohibit tenants from inviting individuals to a complex over the owner's objection. See App. p.233-34. At no time did the trial court, or for that matter the Court of Appeals, make any finding in support of the denial of immunity as to the causal connection between the alleged trespass and the conflict in question

or how the alleged trespass was "willingly and knowingly calculated to lead to conflict." See Douglas, 411 S.C. at 321 n.8, 768 S.E.2d at 240 n.8.

The failure to make such necessary findings is the direct result of the absence of any evidence in support thereof in the record and the fact that the well-settled common law of self-defense is in direct opposition to improperly truncated analysis and conclusions of the trial court and the Court of Appeals. See State v. Leaks, 114 S.C. 257, 103 S.E. 549, 551 (1920) (holding that a defendant's presence at and participation in an unlawful gambling game "did not destroy the right to self-defense" because "[t]he causal connection between the unlawful act of gambling and the encounter arising during the progress of the game between participants is too remote"); State v. Gunter, 119 S.C. 844 (1923) (rebuking the dissenting opinion, which concluded that "[i]f a man is [unlawfully] laying up with a woman in a bawdy house" he would have no right to self-defense because he would be "in a place in which a man has no right to be", and refusing to hold "that a man, under the circumstances stated, is deprived of the right of self-defense, unless...his presence there was reasonably calculated to provoke a difficulty with the deceased..."); see also North Carolina v. Taylor, 190 S.E.2d 254, 257 (N.C. Ct. App. 1972) (holding that a defendant being in and living in an apartment in an adulterous relationship with the decedent's wife, a place where the trial court specifically noted the defendant "had no right to be" as a result of the unlawful and adulterous relationship, did not, standing alone, deprive defendant of his right of self-defense).

Moreover, even as to trespassers it is a well-settled principal of law in South Carolina and other jurisdictions that when a trespasser is confronted with unlawful force by an owner or occupant of property, then the trespasser retains the right to self-defense. See State v. Bradley,

126 S.C. 528, 120 S.E. 240, 243 (1923) (outlining four scenarios concerning the relative rights of parties with regard to the doctrine of self-defense and stating that "[i]f [a property owner or occupant] attempted to do what he had not right to do, to kill the trespasser in order to get him off the premises, the right of the trespasser to rely upon the plea of self-defense was unaffected by the fact that the deceased was on his own premises"); see also United States ex rel. Means v. Solem, 646 F.2d 322, 330-31 (8th Cir. 1980) (rejecting state's argument that "there is never any right of self defense available to a person engaged in an obstruction of justice [by peacefully remaining in a courtroom in violation of a court order] notwithstanding an alleged excessive use of force in effecting that person's removal pursuant to court order"); Colorado v. Toler, 9 P.3d 341, 352 (Colo. 2000) (discussing the application of the "right to be" language within the framework of the Colorado self-defense jurisprudence and holding that "[a] person who is not where he has a right to be in many instances retains the privilege to use force in self-defense irrespective of his status as a trespasser"); Michigan v. Townes, 218 N.W.2d 136, 142 (Mich. 1974) ("It may be conceded that everything that was done by defendant in the transaction, up to the moment of the final attack by the deceased, was unlawful and wrongful; yet, if that assault was felonious and was of such a character as to clearly indicate an intention by the assailant to take defendant's life, or to inflict on him some enormous bodily injury, there is no valid ground for holding that he was precluded from the right to defend himself against it by the mere fact that he had been, or then was, engaged in the commission of a trespass upon the property of the deceased....The general doctrine undoubtedly is that one who has taken the life of an assailant, but who was himself in the wrong, cannot avail himself of the plea of self-defense. But the wrong which will preclude him from making that defense must relate to the assault in resistance

of which the assailant was killed. If at the time the assault is made upon him, he is engaged in the commission of an act which is wrongful, but which is independent of the assault, he may lawfully defend himself against it, to the extent even of slaying the assailant, if it is felonious, unless, indeed, his act is of such a character as to justify the assault. The mere fact, then, that defendant was engaged in committing a trespass when deceased attacked him..., does not necessarily constitute him a wrong-doer in the matter of the assault, or preclude him from making the defense of self-defense." (quoting Iowa v. Perigo, 28 N.W. 452, 457 (1886))); Illinois v. Connelly, 373 N.E.2d 823, 825 (Ill. App. Ct. 1978) ("In the case of a trespasser, the use of force against a property owner may, in certain cases, be justified on the basis of self-defense if the owner uses excessive force in attempting to remove the trespasser from the owner's property.").

Given that the jurisprudence developing the common law right to self-defense has plainly concluded that a defendant being somewhere he does not have a right to be, whether as a result of presence at an illegal poker game, committing the crime of fornication, or a simple trespass, does not, standing alone, destroy his right to self-defense, it was an error of law for the trial court and the Court of Appeals to treat Mr. Glenn's alleged status as a trespasser at the Complex as dispositive to his claim for immunity under the PPPA. See Jones, 416 S.C. at 300 n.8, 786 S.E. 2d at141 n.8 (stating that language of subsection 450(A) "presumably includes the common law of self-defense" under the Act and quoting Singleton v. State, 313 S.C. 75, 82, 437 S.E.2d 53, 58 (1993) for the proposition that "[t]he common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment"). Rather, the trial court and the Court of Appeals' conclusion that Mr. Glenn was trespassing should have, just as

with the question of Mr. Glenn's unpermitted concealed carry, triggered the analysis and determination of whether there existed a proximate causal connection between Mr. Glenn's presence at the Complex and the confrontation. With regard to this question, the trial court and the Court of Appeals' silence is deafeningly telling. Between the trial court and the Court of Appeals there is not a single mention of Kevin or Elfonzo in connection with or relation to Mr. Glenn not being in a place where he had a right to be. The failure of both courts to make such an essential finding of fact is in all likelihood attributable to the complete absence of supporting evidence in the record. In fact, quite to the contrary, the only evidence in the record, as provided by the State's central witness, Elfonzo, directly and unequivocally repudiates that Mr. Glenn not having a right to be at the Complex had any nexus or causal connection to the conflict. During his testimony, Elfonzo stated that he went with Kevin to the area of Shelrika's apartment to get Kevin's moped and because of the earlier fight Kevin had been in while Mr. Glenn was at the store. See App. pp. 217:10-218:8, pp. 221:20-222:5. Furthermore, Elfonzo testified that, while he was present to help get the moped, Kevin, in light of his sudden and surprise attack of Mr. Glenn, "obviously...had other intentions...." App. p. 218:1-7, pp. 221:20-222:5. From Elfonzo's testimony it is incontrovertible that Mr. Glenn not having a right to be at the Complex had no proximate causal connection whatsoever to the conflict that transpired—taken at his own word, Elfonzo was there about a moped and Kevin was there to physically attack whomever he found in his path. In the absence of the a causal connection between either Mr. Glenn's unpermitted concealed carry or Mr. Glenn allegedly not having a right to be at the Complex and the conflict in question, Mr. Glenn cannot be said to have been at fault for purposes of the common law self-defense analysis. Thus, in light of the record and the implicit finding of the

trial court that the remaining elements of the self-defense analysis had been satisfied, Mr. Glenn should properly be granted the immunity to which he is entitled under the PPPA.

III. The Court of Appeals decision improperly constrains the scope of immunity granted by the PPPA and thereby denies bona fide individuals their right to defend themselves against unlawful attacks without fear of prosecution.

Even assuming arguendo that the Court were not to grant Mr. Glenn immunity in light of the Scott decision's affirmative incorporation of the common law of self-defense into the PPPA through subsection 450(A), the underlying reasoning of the Scott decision nonetheless supports a broader interpretation of the PPPA, and specifically the "place where he has a right to be" language of subsection 440(C), that focus on relative rights as between the parties and rejects the random circumstances of physical boundaries set by third parties. Bradley, 126 S.C. 528, 120 S.E. 240, 242 (discussing various claims of self-defense based on the relative rights of the parties and noting the consequent "necessity of appropriately defining the respective legal right of the parties at the time and place of the occurrence"); State v. Bethea, 241 S.C. 16, 26, 126 S.E.2d 846, 851 (1962) (Lewis, J., dissenting) (discussing the "respective legal rights of the parties at the time and place of the occurrence under inquiry" and noting that "[t]he issues which arise under a plea of self defense can only be properly determined by a proper understanding of the legal rights of the parties at the time...The legal rights of the parties at the time vitally affect the determination of the issues as to the duty to retreat, whether the shooting was necessary, and whether, being where he had a right to be, he was without fault in bringing on the difficulty."); State v. Stephenson, 85 S.C. 247, 67 S.E. 239, 240-41 (1910) (holding that defendant's right to self-defense varied based on the relative rights of the parties involved—"[a]ssuming that a husband attacked in his house by his wife, who was there by right, should retreat, such duty

would be annulled if the wife joined with a trespasser in making the assault"); see also Silas v. Bowen, 277 F. Supp. 314, 317 (D.S.C 1967) (holding defendant entitled immunity based on the relative "legal rights of the parties" and stating that "[i]n testing [self-]defense, it is necessary at the outset to note the circumstances of the parties at the scene of the controversy"); French v. Indiana, 403 N.E.2d 821, 823 (Ind. 1980) (discussing jury charge that is the "embodiment" of the pertinent self-defense principals and which raises the relative rights of the parties through limiting the effect of the "place where he has a right to be" language to only "so far as his assailant is concerned"). Prior to the Scott Court's successful move to fully extend the protections provided by the PPPA to allow all persons to protect themselves from unlawful violence being perpetrated upon them, this Court began recognizing the breadth of the Legislature's intent to extend the protections of the PPPA in Jones, in which it was held that the "clearly enunciated" legislative intent coupled with the "broadly worded" statutory language expressly dictated the rejection of an artificial and improper limitation on "the protection of the Act based on the geography of the incident and the identity of the assailant." Jones, 416 S.C. at 296-97, 786 S.E.2d at 139-40; Jones, 416 S.C. at 300 n.8, 786 S.E.2d at141 n.8 (stating that language of subsection 450(A) "presumably includes the common law of self-defense" under the Act). Not taking heed of this Court's interpretive shift away from a hyper-technical interpretation of the PPPA, the Court of Appeals' decision fails to give proper consideration to the relative rights as between the parties in favor of the random circumstances of physical boundaries set by third parties. The Court of Appeals' decision, which conflicts with and undermines the recent decision in Scott as well as the Jones Court's "find[ing] [that] the Legislature intended the protection of subsection (C) to apply to incidents, provided the other

requirements are met, without a geographical restriction," will undoubtedly have a chilling effect on the right and ability of every individual in South Carolina to defend themselves without fear of prosecution pursuant to the PPPA.

As clearly contemplated by the legislative intent of the Act and the common law of self-defense incorporated into the PPPA by Scott, and as set forth in Jones, the right to self-defense should not be dictated by the threshold of a doorway, a sign stating that a city park closes at a specific time, or an arbitrary property line that is crossed by mistake or under a bona fide claim of right. To the contrary, the Legislature's expansion and codification of the doctrine of self-defense was intended to move the doctrine of self-defense from one limited by the concept of territorial boundary-crossing to a more expansive focus on the violation of individual's rights to remain unmolested by attackers.

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

The expressly stated intent of the General Assembly in passing the PPPA was to (1) codify the right of "law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others" and (2) ensure "that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to

needlessly retreat in the face of intrusion or attack." S.C. Code Ann. §§ 16-11-420(B), (E) (emphasis added).

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

Moreover, the canons of statutory construction further require that the language of the PPPA "must be construed in the light of the intended purpose of the statute" and in such a way as to avoid (1) "a result so plainly absurd that it could not possibly have been intended by the

Legislature" or (2) an interpretation that "would defeat the plain legislative intention." State v. Douglas, 411 S.C. 307, 768 S.E.2d 232, 244 (Ct. App. 2015) (citation omitted; emphasis added). In essence, a "statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers, and the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." Id. (citation and internal quotation marks omitted). From the PPPA's "clearly enunciated" intent and the "broadly worded" language of S.C. Code Ann. § 16-11-440(C) it is apparent that the PPPA was enacted to provide broad protection for innocent persons who find themselves the victim of criminal activity to have the right to defend themselves without fear of prosecution by shifting self-defense laws away from protecting criminals to the side of victims through the extension of the common law principle that intruders enter the home at their own peril to attackers invade people's right to remain unmolested at their peril. Jones 416 S.C. at 296, 786 S.E.2d at 139.

The absurdity created by the Court of Appeals interpretation of the PPPA can be illustrated by example. A person who had been granted a permit for concealed carry could enter a business only to find that on another entrance the business posted a sign prohibiting concealed carry. Learning this, the patron promptly seeks to peaceably and lawfully leave the premises only to be attacked by a third-party prior to crossing the business' threshold. Under the Court of Appeals' interpretation, the patron would be dined the protection of the PPPA even though the patron was (1) in the process of peaceably exiting the premises when attacked and (2) the patron's unrightful presence in the business was not related to the unprovoked attack. Certainly an interpretation that makes an individual's right to defend himself from attack without fear of

prosecution pursuant to the PPPA dependent upon whether he had stepped back across the threshold of the business before being attacked is absurd and inconsistent with the intent of the PPPA. Similarly, a person peaceably jogging through Falls Park in Greenville at 8:59 p.m. would be entitled to defend herself from an attacker under the protection of the PPPA, but should the clock turn to 9:00 p.m., the time at which Falls Park "closes" and after which presence therein is prohibited by the Greenville Municipal Code, just as the jogger is attacked, then she is categorically barred from PPPA immunity and cannot defend herself without fear of prosecution due to her technically not having a right to be in Falls Park. Equally nonsensical, "a victim of an attempted robbery who flees onto a third person's property before resorting to physical force against the would-be robber" would be barred from PPPA immunity "simply by the act of trespassing onto the property of a third person." Toler, 9 P.3d at 352 (rejecting as absurd the argument that the "right to be" language would forfeit a victim's right to self-defense "simply by the act of trespassing onto the property of a third person"). Though examples of the absurdity of such an overly narrow and technical interpretation of the PPPA could fill the entirety of this Brief, by way of a final example, an individual subleasing part of a property unknowingly in violation of the master lease would never have the right to defend herself without fear of prosecution from a random armed burglar because her presence in the property, in unknowing violation of the master lease, was technically unrightful. See Jones 416 S.C. at 297, 786 S.E.2d at 140 (rejecting the State's interpretation of S.C. Code Ann. § 16-11-440(C) because it would "improperly limit the protection of the Act based on the geography of the incident and the identity of the assailant").

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

In opposition to the legislative intent of empowering citizens to "protect themselves... from...attackers without fear of prosecution," the Court of Appeals decision offers protection not to Mr. Glenn, who by all accounts was the victim of an unprovoked violent attack by multiple assailants, but rather to Mr. Glenn's attackers on the nonsensical basis that Mr. Glenn had not completed the act of leaving the Complex, which even assuming he was in violation of an old Trespass Notice, he would have the right, and in fact the obligation, to leave. The untenability of the Court of Appeals' position is further brought into focus by the fact giving effect to technical geographical restrictions creates the nonsensical result in this case that Mr. Glenn would have been entitled to immunity had he been able to complete the act of entering his car prior to being assaulted, but because his attackers were able to prevent him from getting in his vehicle before he was attacked, he is not entitled to the protection of the PPPA. Jones, 416 S.C. at 295, 786 S.E. 2d at 138 (agreeing with circuit court judge's assessment that a technical geography-based interpretation of the PPPA that would create the result whereby "a person can defend themselves

from attack by their spouse, lovers, or any other co-resident while outside of their home, but not inside of their home" was "nonsensical" and "absurd").

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

Though the State sets up a straw man to prophesy that the expansive scope of S.C. Code Ann. § 16-11-440(C) intended by the Legislature would result in a shoot-first wild west, the State's argument, as tacitly adopted by the Court of Appeals, intentionally ignores the statutory requirement that an individual be "attacked" to be entitled to the protection of subsection (C).[2] Eschewing the "clearly enunciated" intent of the PPPA, the "broadly worded" language of subsection (C), and the prior decisions of this Court out of fear of everyday citizens being able to exercise their right to self-defense without the Solicitors Office looking over their shoulder lends itself to a hyper-technical interpretation of the PPPA that certainly avoids the specter of wild west shootouts, however it does so at the cost of denying persons forced to defend themselves from attack the protection of the PPPA unless they are in exactly the right location with the "right" assailant. Jones 416 S.C. at 297, 786 S.E.2d at 140 (rejecting interpretation of subsection (C) that would "improperly limit the protection of the Act based on the geography of the incident and the identify of the assailant"). To give proper effect to the intent of the PPPA and ensure that "no

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[2]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); see also Scott __ S.C. __, 800 S.E.2d at 796, aff'd as modified Op. No. 27834 at 31 (holding that subsection 440(C)'s "plain language excuses a defendant's obligation to retreat only if he is attacked") (emphasis added).

person or victim of crime should be required to surrender his personal safety to a criminal" a hyper-technical interpretation of the PPPA is neither necessary nor proper. S.C. Code Ann. § 16-11-420(E).

Rather, prior opinions of this Court indicate that proper interpretation of the Act dictates that the PPPA's invocation of location rights be viewed as relative rights versus an attacker as opposed to an exacting geographical restriction. See Jones, 416 S.C. at 292-98, 786 S.E.2d at 137-40 (interpreting the applicability of the PPPA based on relative rights of the attacker and victim and discussing the "broadly worded" language of subsection (C) and the Legislature's intent that the protection of subsection (C) not have a "geographical restriction"); State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (acknowledging implicitly that the PPPA's invocation of locations rights is a question of relative rights between a victim and attacker by holding "the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence"); see also Jeannie Suk, At Home In the Law: How the Domestic Violence Revolution Is Transforming Privacy 62-85 (Yale University Press, 2009) (discussing and interpreting the language "place where he has a right to be" as a question of the relative rights of each individual to peaceably exist and remain unmolested wherever he might be). Accordingly, looking to the prior decisions of this Court there already exists a proper and common sense framework by which to analyze whether an individual was in "another place where he had a right to be" for purposes of subsection (C). That framework is the proximate cause analysis through which it is determined whether an individual is engaged in an "unlawful activity" that would disqualify him from immunity under subsection (C). See State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104 (1999) ("[A] person can be acting lawfully, even if he is in

unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.") (emphasis added); State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1993) (holding the "burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.") (emphasis added).

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

Having found that Mr. Glenn was entitled to immunity "but for his not being allowed on the property", it is clear that the trial court found that Mr. Glenn satisfied all other requirements for immunity pursuant to S.C. Code Ann. § 16-11-450(A). Moreover, the uncontroverted evidence in the record plainly establishes that Mr. Glenn, as he approached his car to depart from Spring Grove after having just spoken to the police who raised no objection to Mr. Glenn being at the Complex, was the victim of an unprovoked attack by Kevin and Elfonzo. Given the trial court's findings and the evidence in the record, as between Mr. Glenn and Kevin and Elfonzo, it is clear Mr. Glenn's actions in egressing through the common area of Spring Grove were not the proximate cause of the attack by Kevin and Elfonzo. As the innocent victim of Kevin and Elfonzo's criminal attack, Mr. Glenn had the right to remain unmolested in the place where he

was attacked by Kevin and Elfonzo, and, when made the victim of an unprovoked attack, to defend himself pursuant to the PPPA and without fear of prosecution thereafter.

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

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

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

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

The Attorney General opinion in question, which is on all fours with the central issue presented by this appeal, was promulgated by the current South Carolina Attorney General in 2013 to respond to a request for opinion from the Honorable Danny Singleton of Seneca on the subject of whether "a person placed on trespass notice with regards to an apartment complex or

housing project may enter upon such property at the invitation of a tenant." See Op. S.C. Att'y Gen., p. 5 (June 5, 2013).

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

Although the trial court took apparent issue with the fact that the reasoning and conclusion of the Attorney General's opinion quoted heavily from just two Massachusetts cases (see Immunity Hr'g Tr., App. p. 234:3-7), cases from other jurisdictions espousing the same reasoning and underlying principals as those Massachusetts decisions are legion. See Or. v. Schneider, 265 P.3d 36 (Or. Ct. App. 2011) (holding that a tenant had the right to invite guests to the common areas of an apartment complex and accordingly reversing a criminal conviction for trespass because the defendant was privileged to be in the parking lot at the time of his arrest); L.D.L. v. Fla., 569 So.2d 1310, 1312 (Fla. Dist. Ct. App. 1990) (holding that "[a] landlord generally does not have the right to deny entry to persons a tenant has invited to come onto his property[,] [that] [t]his law also applies to the common areas of the premises....[and that] [o]ne who thus comes upon the premises upon the invitation of the tenant, although expressly forbidden to do so by the landlord, is not guilty of criminal trespass.") (emphasis added); Albee

v. Collins, 463 S.E.2d 922, 925 (Ga. App. 1995) ("The tenant's invitation to a third party...also carries with it the same rights enjoyed by the tenant to common areas in a multi-dwelling apartment complex to the extent the use of such common areas is connected to the purpose of the invitation.") (emphasis added; citations omitted); Folgueras v. Hassle, 331 F.Supp. 615, 625 (W.D. Mich., 1971) (holding that "[o]ne of the rights of tenancy with which the landlord may not interfere is the right to invite and associate with guests of the tenant's own choosing"); Right of third person to enter premises against objection of the landlord, 6 A.L.R. 465 (stating that a landlord generally does not have the right to deny entry to social guests a tenant has invited to come onto the tenant's property); see also In re Jason Allen D., 733 A.2d 351 (Md. Ct. Spec. App. 1999) (holding the housing authority's no-trespass order did not supersede the defendant's invitation given by a resident of the housing complex) (emphasis added); see e.g. Vt. v. Dixon, 725 A.2d 920, 922 (Vt. 1999); Anthony v. Chicopee Mfg. Corp., 147 S.E. 887, 888-89 (Ga. 1929); Bremerton v. Widell, 51 P.3d 733, 738-39 (Wash. 2002); D.L. v. Fla., 87 So. 3d 824. 825 (Fla. Dist. Ct. App. 2012); Conn. v. Schaffel, 229 A.2d 552, 562 (Conn. Cir. Ct. 1966); Pa. v. Burford, 73 A. 1064, 1067 (Pa., 1909); Todisco v. Tishman Realty & Const. Co., 62 N.Y.S.2d 458, 459 (Sup. Ct. 1946).

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

provide that the tenant shall have the right to exclusive use and occupancy of the leased premises which shall include reasonable accommodation of the tenant's guests or visitors...."). 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." Mass. v. Richardson, 48 N.E.2d 678, 683 (Mass. 1943).

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

For example, the South Carolina Supreme Court recently held that "[a] trespass is an invasion of the interest in the exclusive possession of land, as by entry upon it." Babb v. Lee County Landfill SC, LLC, 405 S.C. 129, 747 S.E.2d 468 (2013) (quoting Restatement (Second) of Torts § 821D (1979)). Implicit in the Babb holding is the corollary that where possession is not exclusive, an appropriate defense to a claim of trespass is the assertion of license, privilege, invitation, or legality. See also Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986)

(holding that "[a] social guest is a licensee. A licensee is a person who is privileged to enter or remain upon land by virtue of the possessor's consent.") (emphasis added).

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

circumscribed if another person peaceably possesses the property, such that even a landlord who owns a property can be convicted of trespass after notice.[3]

South Carolina property jurisprudence further indicates 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 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 supported 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.

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[3] 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).

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

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

Violation of S.C. Code Ann. § 16-11-620 can only occur if a person "without legal cause or good excuse, enters into...the premises of another person after having been warned not to do so by the person in possession or his agent or representative." In this case, the company in possession of Spring Grove at the time of the alleged verbal trespass notice to Mr. Glenn was not the same company that possessed Spring Grove on the date the incident in question occurred. See Immunity Hr'g Tr., App. pp. 210:19–211:11. Significantly, the record contains no proof of a nexus between the original verbal notice and a re-publication or ratification by the new party in possession of Spring Grove. Given that the right to place someone on trespass notice arises from a right to exclusive possession of property indicates that trespass notices are gross in nature because they benefit the interest of a particular person or entity and not the land itself. See Babb, 405 S.C. at 129, 747 S.E.2d at 468 ("[a] trespass is an invasion of the interest in the exclusive

possession of land, as by entry upon it.") (emphasis added; citation omitted); Williams v. Tamsberg, Opinion No. 5596 (S.C. Ct. App., Sep. 19 2018) (Shearouse Adv. Sh. No. 37 at 37) ("The character of an express easement is determined by the nature of the right and the intention of the parties creating it. An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. In contrast, an appurtenant easement inheres in the land, concerns the premises...is essentially necessary to the enjoyment thereof. It also passes with the dominant estate upon conveyance. Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross."). Accordingly, given the gross nature of trespass notices, the trespass notice should no longer have had any force or effect after Spring Grove "changed hands a couple of times." See Immunity Hr'g Tr., App. pp. 210:19–211:11.

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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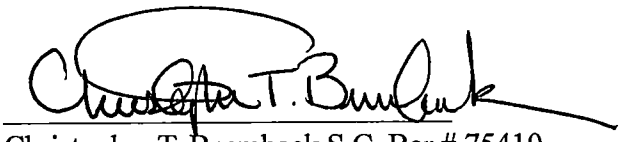

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Date:January 16, 2019
Greenville, South Carolina

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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

Appellate Case No. 2018—001478

State of South Carolina.....Respondent,

vs.

Marquez D. Glenn.....~~Appellant.~~ Petitioner

PROOF OF SERVICE

I certify that I have filed with the Supreme Court and served ~~Appellant~~ Petitioner's Brief and the Appendix on Respondent's attorney, J. Benjamin Aplin, by First Class United States Mail addressed to Post Office Box 11549, Columbia, SC 29211-1549 on January 17, 2019.

Respectfully submitted,

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