THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

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Appellate Case No. 2018-001386

Common Pleas Case No: 2015-CP-10-2178

Stacy Singletary, individually and as Personal Representative of Sheldon Singletary..... Respondent

vs.

Kelvin Shuler.....Appellant

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# FINAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL JUDGE DID NOT COMMIT ERROR IN RULING THE APPELLANT WAS NOT ENTITLED TO SELF DEFENSE IMMUNITY UNDER § 16-11-440.
2. THE TRIAL JUDGE DID NOT COMMIT ERROR IN RULING THE RESPONDENT PRESENTED SUFFICIENT EVIDENCE TO SUPPORT A WRONGFUL DEATH CLAIM.
3. THE TRIAL JUDGE DID NOT COMMIT ERROR IN RULING THE RESPONDENT PRESENTED EVIDENCE OF CONSCIOUS PAIN AND SUFFERING.
4. THE TRIAL JUDGE DID NOT COMMIT ERROR IN AWARDING FUTURE DAMAGES BASED ON THE TESTIMONY OF THE DECENDENT'S INCOME.

## STATEMENTOF THE CASE

This matter arises from the Appellant's appeal from the ruling of the Master in Equity for a judgement against the Appellant in a wrongful death and survival action. The Order of the Master in Equity was signed on June 8, 2018 and entered on June 12, 2018. (Record on Appeal p.1-13)

On April 15, 2015, Respondent filed an action against Appellant for wrongful death, survival and negligence. (Record on Appeal p. 14-17). On May 22, 2015, Appellant filed an answer and counterclaim. (Record on Appeal p. 18-31). The counterclaim alleged assault and battery, tort of outrage, frivolous lawsuit, slander and libel and interference with the enjoyment of property. The Respondent filed a Reply to the Counterclaim on May 26, 2015. (Record on Appeal p. 33-35) The slander and libel claims were later dismissed by the court.

On March 29, 2018, a bench trial was held before the Charleston County Master in Equity, Mikell R. Scarborough. After evidence and witness testimony were presented to the court, the court issued its decision on June 8, 2018 entering an order in favor of Respondent. The court ruled that Respondent had meet their burden of proof on both their wrongful death and several actions. The court denied the counterclaims of the Appellant. Respondent was awarded

judgement One Million Six Hundred Thousand dollars ($1,600,000.00) in actual damages and denied punitive damages. (Record on Appeal p. 1-13).

B. Material Facts of Case

The Respondent, Stacy Singletary, individually and as a personal representative of the estate of Sheldon Singletary brought this action based on the wrongful killing of her husband, Sheldon Singletary at the hands of the Appellant, Kelvin Shuler.

On April 19, 2012, the decedent, Sheldon Singletary was an invitee at the home of the Appellant. There was a gathering in which there was food and alcohol. (Record on Appeal p. 45 lines 20-21). There were other invitees at the Appellant's residence known to both the Appellant and the Respondent. (Record on Appeal p.46 lines 1-2). At some point during the gathering. The Appellant became very intoxicated and walked up to the decedent and began to put his hand in the decedent's face a couple of times and decedent asked him to stop. (Record on Appeal p.55 lines 14-19). The Appellant then slapped the decedent. (Record on Appeal p. 56 lines 13-16). The decedent asked the Appellant to stop. The Appellant struck the decedent again and then the decedent acted in self-defense and the two became engaged in a physical altercation. (Record on Appeal p.56 lines 13-18). This altercation began as a result of the Appellant striking the decedent twice. The other invitees at the home were able to break up the fight. (Record on Appeal p. 56 lines 21). When they broke the fight up the Appellant picked up a butcher knife and threw the knife. (Record on Appeal p. 56 line 22).

Sometime later, the Appellant decided to arm himself with a knife and asked everyone to leave. At this point the decedent and the invitees were outside in the Appellant yard. (Record on Appeal p.131 lines 6-7, lines 20-22, p.135 lines 20-23). The individuals at the Appellant's residence did not move fast enough so the Appellant decided to go into his house, go upstairs in

his bedroom, retrieve a handgun and return outside into the yard (Record on Appeal p.132 lines 6-16).

The Appellant then walked from the back of his residence through his side yard toward the front of his house. The Appellant was met in the yard by the invitee, Phillip Jones, who was asking him to put the weapon away (Record on Appeal p.132 lines 15-26). In the meantime, the decedent was attempting to leave the residence when he discovered he had left his jacket and bondsman's badge inside the residence and asked another invitee, Sharnika Morris, to go inside to retrieve his jacket and badge while he waited for her on the front porch of Appellant's residence. (Record on Appeal p.57 lines 10-11). The Respondent, in the meantime, walked along the side of his home towards the front porch with invitee, Phillip Jones, by his side urging him to out the weapon down. Appellant then bumped into Sharnika Morris who was on her way inside Appellant residence to retrieve the decedent's jacket and badge. (Record on Appeal p. 57 lines 19-21). Appellant pushed passed Ms. Morris and disregarding the pleas from Phillip Jones and found the decedent on the front porch and shot and killed him. (Record on Appeal p.57 lines 22-25, p.58 lines 17-20, p.59 lines 1-4). This was well after their initial altercation. (ROA p.138 lines 10-18). The decedent was unarmed and was attempting to retrieve his jacket and badge so that he could leave the residence. (ROA p.166 lines 7-10). The Appellant, while he was on the stand, stated he saw no with a gun or any type of weapon. The Appellant also admitted that the altercation was over when he retrieved the gun, and no one was trying to harm him at that point. (ROA p.161 lines 19-25, p.162 lines 1-3).

After the decedent was shot, he fell of the porch back first. (ROA p.58 lines 24-25, p.59 lines1-2). The decedent was saying Help me. He kept saying help me and he was gurgling in his own blood. (ROA p. 59 lines 5, 14-16). Ms. Morris then called 911. (ROA p.59 lines 6-7). The

Appellant then fled the scene and was later found in a wooded marsh area of his neighborhood and the gun the Appellant used to kill the decedent was also found in the same marsh area. Appellant admitted that he had tossed the gun in the marsh while Ms. Morris was waiting in the ambulance with the decedent. (ROA p.59, lines 17-21). Ms. Morris testified that he kept saying "help me", "please help me". (ROA p.62, lines 1-4). The decedent was eventually transported to the MUSC hospital by emergency medical services. While at the hospital there were a couple surgeries performed to try to stop the bleeding from the gunshot wound. The decedent was conscious while in the ICU. The decedent's family went back and saw him twice in between the surgeries. (ROA p. 83, lines 1-14).

He could hear what was being said and he would squeeze the hand of his brother in response. (ROA p.87, lines 17-18). Mr. Singletary was shot between 3:00-4:00pm (ROA p.85 lines 5-6). He came out of the first surgery around 8:00pm or 9:00pm (ROA p.88, lines 13-16). He was conscious and would respond by squeezing his brother's hand (ROA p. 87, lines 17-18). His head, face, neck, and whole body was swollen (ROA p.83, lines 21-25). There were numerous blood transfusions in addition to the surgeries. Every time they would give blood to the decedent, he would continue bleeding, so they took him in for a second surgery and that lasted about an hour (ROA p.84 lines 4-8). After the second surgery the bleeding was stopped for a while, but his vitals went down so they tried to revive him with electric paddles there or four times. They were unsuccessful and pronounced him dead around 1:00am on April 20, 2012. (ROA p.84, lines 16-25). He was shot between 3:00pm-4:00pm on April 19, 2012 and died at 12:16 a.m. on April 20, 2012. (ROA p.85, lines 1-6).

The court found in favor of the Respondent and awarded her One Million Five Hundred Thousand dollars ($1,500,000.00) for her wrongful death claim which included future economic

loss of decedents' earnings as Fifty Thousand dollars ($50,000.00) per year for twenty-five (25) years for an amount as One Million Two Hundred Fifty Thousand dollars ($1,250,000.00) and medical bills totaling Two Hundred and Three Thousand Two Hundred and Fifty One dollars and 25/100 ($203,251,.25). In addition, the court awarded One Hundred Thousand dollars ($100,000.00) for her survival action claim for a total award of One Million Six Hundred Thousand dollars ($1,600,000.00) in actual damages. The court awarded no punitive damages. (ROA p. 13).

## ARGUMENT

### I. THE TRIAL JUDGE DID NOT COMMIT ERROR IN RULING THE APPELLANT WAS NOT ENTITLED TO SELF DEFENSE IMMUNITY UNDER § 16-11-440.

The Defendant's asserted a claim under South Carolina Code of Laws §16-11-440, otherwise known as Stand Your Ground Claim. This claim fails for several reasons. First, in order to assert this claim, there must be a pre-trial determination that the Defendant is entitled to assert this claim. The Defendant must bring a pre-trial motion and the court must find at the pre-trial motion that the Defendant is entitled to assert this claim by a preponderance of the evidence and the court must issue an Order denying or granting the Motion to Dismiss on that basis. State v. Duncan, 392 S.C. 404, 411 709 S.E.2d 662,665 (2011). Immunity under the act is a bar to prosecution criminal or civil, upon motion of either party and must be decided prior to trial. A claim of immunity under this ACT requires a pretrial determination using a preponderance of the evidence standard. State v. Manning, Appellate Case No: 2010-176707, Opinion Number. 5228, p.5 (2014). State v. Curry, 406 S.C.364,370 752 S.E. 263, 266 (2013). State v. Duncan, 392 S.C. 404, 411, 709 S.E. 2d 662,665 (2011). The Court in Duncan stated by using the words "immune from criminal prosecution"' the legislature intended to create a true immunity, and not

simply an affirmative defense. "Therefore, since the Defendant did not file for a pre-trial determination of Immunity, he cannot assert the same as an affirmative defense.

Furthermore, Section 16-11-440 (A) states that "A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle and

(2) Who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

In State v. Manning, Appellate Case No: 2010-176707, Opinion Number: 5228, p.7 (2014) The Court states " 16-11-440 (A) narrowly limits using force against a person who either (1) unlawfully and forcibly entered a residence, (2) is unlawfully and forcibly entering a residence, or (3) is attempting to remove a person against his will from the residence. If the individual victim in question is a social guest, subsection 16-11-440 (A) is inapplicable." The court in Manning compared the victim in its case to the victim in State v. Curry , 406 S.C. 369, 370, 752 S.E. 2d 265,266 (2013) stating: " finding the victim, whom Curry invited to his mother's apartment, was a social guest, thus, despite Curry's allegation the victim lunged towards him while Curry was in possession of a gun, he was not entitled to the presumption of subsection 16-11-440(A). For the foregoing reasons even if Manning had the benefit of an

evidentiary hearing, he would not have been able to establish immunity under subsection 16-11-440(A)." State v. Manning, p.7 (2014).

In this case it is clear and undisputed that Sheldon Singletary was an invitee/social guest of Kelvin Shuler. In addition, it is also clear that no unlawful or forcible act was committed by Sheldon Singletary, hereafter referred to as the decedent. The previous altercation that occurred in the home was started by the Appellant as he slapped the decedent more than once before the Decedent protected himself against the Appellant. The Appellant then picked up a butcher knife and threw it at the decedent. In addition, this previous altercation was over prior to the Appellant's decision to go into his house retrieve a knife and threaten his house guests and then go back into his home a second time retrieve a handgun walk from the back of the house to the front of the house and shot the unarmed decedent. The Appellant admitted on the stand that the confrontation was over and there were no further confrontations. (ROA p.138, lines 10-18). During his walk from the back to the front of the house, another invitee Phillip Jones pleaded with him to put the gun down. (ROA p.156, lines 5-9). The Appellant admitted on the Stand, under oath, that he was in no danger during this time and that he did not see the decedent with any type of weapon. (ROA p.159, lines 1-17, p.161, lines 24-25, p.162 lines 1-3). The Appellant stated "Well at this point I'm not aware of who is trying to do bodily harm to me. The only thing that I'm trying to do at this point, sir, is to clear my yard. That's all I'm trying to do. I'm not trying to keep nobody from doing bodily harm because I don't think that's going to happen. I'm just trying to clear my yard. I want everybody to leave." (ROA p. 162, lines 4-13).

It is well established that in Order to bring a claim under 16-11-440, there must be a valid case of self- defense. State v. Dickey, 394 S.C. 491,499, 716 S.E. 2d 97, 101 (2011). The trial

court necessarily considers the elements of self- defense in determining a defendant's entitlement to immunity. State v. Curry, S.C. at p. 371-372, 752 S.E.2d p. 266-267.

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

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his life or sustaining serious bodily injury than to act as he did in the particular instance. State v. Curry, Id. At S.C 371, 752 S.E. 2d at 266.

The Appellant would not have a valid case for self-defense for several reasons:

I. The Defendant must be without fault in bringing about the difficulty. The court heard testimony from Sharnika Morris that Appellant started the confrontation with Sheldon Singletary and that Mr. Singletary defended himself after the Appellant had struck him a few times. (ROA p.56, lines 13-18). Furthermore, at the time the Appellant shot the decedent it was well after their altercation and it was when the decedent was attempting to leave the residence. The decedent was attempting to leave when the Appellant went into his residence and retrieved a weapon went back outside and shot the decedent. In State v. Wigington, Court of Appeals of South Carolina, No. 4281, 649 S.E. 2d 186, 188, (2007), the court stated "Any act of the accused

in violation of the law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide. In that case, the found that the Defendant had injected himself into an altercation, removed himself from the controversy and returned with a loaded gun. "Therefore, the Defendant's conduct could be reasonably calculated to bring about the difficulty that arose." Wigington, p.188.

II. The Defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or he actually was in imminent danger. The Appellant stated that after the altercation, he went and retrieved a knife at all of his guests not just the decedent in the back part of his residence. (ROA p. 131, lines 6-7, 20-22, p.135 lines 20-23). When this did not work, he went back into the residence and retrieved a handgun. He walked back outside from the back of his house to the front of his house armed with the handgun. (ROA p.132, lines 6-16). Phillip Jones was walking beside him trying to get him to put the handgun down, but he refused. (ROA p.132, lines 15-26). The Appellant admitted under oath on the stand, that he was not threatened by anyone at this point and he went to get the gun to make everyone leave. (ROA p. 159, lines 2-17). He stated he did not know where the decedent was at the time. (ROA p. 138, lines 10-18). Ms. Morris stated that the decedent was on the front porch waiting for her to retrieve his clothing and keys so that he could leave the residence. (ROA p.57, lines 10-11). This is further collaborated by the Appellant because he approached the decedent on the front porch. The Appellant stated he pulled the trigger and shot the decedent who was unarmed. The Appellant stated that he did not know who he was shooting at he just saw someone and shot. (ROA p. 134, lines 19-25, p.135, lines 1-7). Therefore, he cannot claim that he shot the decedent because he was in fear of the decedent from their prior altercation because according to him, he

was unaware that the decedent was the individual he was shooting. The Appellant was not in danger of imminent of death or serious bodily injury and could not reasonably belief that he was in imminent danger of death or serious bodily injury because he approached the decedent who was attempting to leave the defendant's residence and the decedent was unarmed at the time. Furthermore, there previous altercation was over, and it was started by the Appellant.

III. Whether a reasonable prudent person would believe they were in imminent danger of death or serious bodily injury. If a reasonably prudent person was in imminent danger whether they would have to kill to save himself from death or serious bodily injury. Whether the Defendant had no other probable means of avoiding the danger of losing his life or serious bodily injury.

A reasonable prudent person would not have been in imminent danger of a loss of life or substantial bodily injury under these circumstances and would not have to kill to save themselves from death or serious bodily injury. The Appellant made a decision to get a knife to scare his guests off and when they were not frightened, he made the decision to go back into the house; go upstairs to his bedroom, walk back outside with the gun, walk from the back of his house to the front and shot and kill an unarmed decedent. These actions are not the actions of a reasonable prudent person. There is no evidence whatsoever that he was in imminent danger when he walked outside with the knife, went back inside to get the weapon, walked back outside with the weapon, walked from the back of the house to the front of the house and shot the unarmed decedent. **The Appellant admitted that he was not in danger during these times during cross exam. (ROA p.159, lines 2-17).** Because the Appellant was not in imminent danger there was no reason for him to take a life to protect himself from death or serious bodily injury.

IV. Whether the Defendant had any other probable means of avoiding the danger of losing his life or substantial/serious bodily injury. First, as previously stated the Defendant was never in danger of losing his life or of substantial or serious bodily injury. The Defendant was the only person armed and he pursued the decedent as he was trying to leave the residence. The altercation that occurred earlier was over and was started by the Defendant. Furthermore, the earlier altercation was started by the Defendant. The Defendant has no valid claim to self-defense; therefore, he has no valid claim under the Stand Your Ground Act under 16-11-440. The Defendant's fleeing the scene after the shooting and throwing the weapon into the marsh is further evidence of his culpability in this case. (ROA p.163, lines 1-25).

The Appellant did not file a pretrial motion for immunity under 16-11-440 therefore he is not entitled to consideration for immunity under 16-11-440. In addition, he has no valid self-defense claim; therefore, he cannot claim immunity under 16-11-440.

The Appellant is asking the court to decide a factual issue. Whether the Appellant was entitled to a self-defense/stand your ground claim was ultimately based on the facts in the case. On appeal of a case the jurisdiction of the appellate court extends merely to the correction of errors of law. Carson v. CSX Transportation, Inc. 400, S.C. 221, 229-231, 734 S.E.2d 148, 150-152 (2012).

## II. THE TRIAL COURT DID NOT COMMIT ERROR IN RULING THE RESPONDENT PRESENTED EVIDENCE TO SUPORT A WRONGFUL DEATH AWARD.

The Respondent has met their burden of proof and has proven that the decedent is entitled to wrongful death award in this case. It is clear and undisputed from the testimony of the Respondent's witnesses and the testimony of the Appellant that the decedent was killed at the

hands of the Appellant. The Appellant has no valid claim for immunity or self- defense. The death of the decedent was caused by the wrongful act of the Defendant as defined under South Carolina Code of Laws Section 15-51-10 et seq. The Respondent, Stacey Singletary is entitled to relief and award of damages under Section 15-51-10 et seq. as the surviving spouse and personal representative of the estate of the decedent, Sheldon Singletary. The Respondent is entitled to compensation for medical bills and expenses, funeral expenses, lost wages and benefits, financial losses, pain and suffering, mental anguish suffered by the surviving spouse. In addition, loss of the decedent's care, companionship and protection. The court may also award punitive damages if the conduct that caused the death was deliberate and reckless.

It is clear from the testimony of the Respondent's witnesses and the testimony of the Appellant that this was a deliberate and reckless act by the Appellant who shot the unarmed decedent after engaging him as he was preparing to leave the residence. The Appellant has no valid claim for immunity or self-defense in this case.

The Appellant contends that the Trial Judge/Fact Finder erred in ruling that the Respondent presented sufficient evidence to support a wrongful death claim. The Appellant's argument was based on issues of fact not of law. In a case on appeal the jurisdiction of the Appellate Court extends merely to the correction of errors of law. Carson v. CSX Transportation, Inc. 400 S.C. 221, 229-231, 734 S.E.2d 148, 152 (2012).

The Trial Court heard the testimony of the witnesses and the evidence and reached a decision on the facts of the case.

There was evidence that the decedent, Sheldon Singletary was an invitee at the residence. There was testimony from Ms. Morris that the Appellant struck the decedent two or three times

before the decedent reacted and the two began to fight. (ROA p.56, lines 13-18). Testimony of Ms. Morris also reverted that the fight was broken up by other invitees. (ROA p.56 line 21). The Appellant and Ms. Morris also revealed that sometime had passed and the Appellant had decided to arm himself with a knife and decided to present that weapon not only towards the decedent but the other invitees at his residence. (ROA p.131, lines 6-7, 20-22, p.133 lines 20-23). When the invitees did not leave the home fast enough, he decided to leave the yard, go into his house, walk up the stairs to his bedroom, and retrieve a loaded handgun. The Appellant then decided to walk from the back of his residence to the front of his residence with the gun. While he was walking toward the front of the house, another invitee, Phillip Jones was pleading with him to put the gun down. The decedent was trying to leave the residence and he was waiting on his jacket and badge. The Appellant then pushes pass Mr. Jones, then shoots and kills the decedent. There is ample evidence to support a wrongful death claim. (ROA p.57, lines 22-25, p.58, lines 17-25, p.59 lines 1-4, p.138 lines 10-18). This was factual issue for the trier of fact which was in this case the Master of Equity. The Appellant did not have a valid self-defense claim so a wrongful death award was appropriate in this case. It was clear and undisputed the decedent died at the hands of the Appellant.

## III. THE TRIAL COURT WAS NOT IN ERROR IN RULING THE RESPONDENT PRESENTED SUFFICIENT EVIDENCE OF CONSCIOUS PAIN AND SUFFERING.

This is an issue for the fact finder it is not an issue of law. In a case on Appeal the jurisdiction of the Appellate Court extends merely to the correction of errors of law. Carson v. CSX Transportation, INC., 400 S.C. 221, 229-231, 734 S.E. 2d 148, 152 (2011). The Supreme Court has repeatedly stated "The proper amounts to be rendered, as actual or punitive damages are left, under our law, almost entirely to the trial jury and the trial judge." Scott v. Porter, 340

S.C. 158, 168, 530 S.E. 2d 389, 399 (2000), Gasque v. Heublein, Inc, 281 S.C. 278, 287, 315 S.E. 2d 5566,561 (Ct. App 1984). Appropriate damages in survival actions include those for medical, surgical, hospital bills, conscious pain and suffering and mental distress of the deceased. Scott v. Porter, 340 S.C. 158, 170, 530 S.E. 2d 389.402 (2000), Gowan v. Thomas, 237 S.C. 223, 225, 116 S.E. 2d 761, 762 (1960).

Respondent was entitled to relief under her Survival action. It is clear from the testimony of the witness, Sharnika Morris, the decedent's family who were there with him at the hospital and the comments of medical personnel, the decedent did in fact suffer conscious pain and suffering after being shot by the Appellant.

Sharnika Morris testified that the decedent fell from the porch onto the ground after he was shot. (ROA p.58, lines 24-25, p.59 lines 1-2). She further testified that he was bleeding and he was crying out and pain and asking for help. (ROA p.59, lines 5, 14-16). He was taken away by Emergency Medical Personnel from the scene and rushed to the hospital. He went through two operations that could not stop the bleeding and had several blood transfusions. The Decedent's brother, John Singletary, testified that they were told by medical professionals at the hospital to talk to him and that he could hear them. He also testified that the decedent could respond when spoken to by squeezing his hand. (ROA p. 87, lines 12-18). There was testimony from both the decedent's brother, John Singletary and his wife, Respondent, Stacy Singletary, that his body was extremely swollen from the trauma of the gun shot. (ROA p.83, lines 21-25).

Testimony and medical records show that the decedent was shot between 3-4 p.m. on April 19, 2012 and died at 12:16 a.m. on April 20, 2012. (ROA p.85, lines 1-6). The Decedent suffered approximately Eight (8) to Nine (9) hours of Conscious pain and suffering. There were also medical records and the autopsy report introduced into evidence. There is ample evidence

where the trier of fact could have inferred conscious pain and suffering prior to the decedent's death.

The Trier of Fact, in the case The Master in Equity, found that the decedent's cries for help at the scene were evidence of conscious pain and suffering. The Master in Equity further found the conscious pain and suffering did not extend beyond the scene of the shooting. This was a factual issue that should not be disturbed on Appeal. This was an a finding that was beneficial to the Appellant in light of the testimony presented by the Respondent that he actually suffered conscious pain and suffering for Eight to Nine hours after the shooting. Again, this was a factual issue for the trier of fact.

## IV. THE TRIAL JUDGE DID NOT COMMITT AN ERROR IN AWARDING FUTURE DAMAGES BASED ON THE TESTIMONY REGARDING THE DECEDENT'S INCOME.

The Appellant next argues that the Trial Court erred in awarding damages in the Respondent's Wrongful Death Case. The Appellant argues that there was no evidence to support the trial court's award. The Appellant is again arguing a question of fact. On Appeal of a case the jurisdiction of the Appellate Court extends merely to the correction of errors of law. Carson v. CSX Transportation, Inc., 400 S.C. 221, 229, 734 S.E. 2d 148, 152 (2012). "Our Supreme Court has repeatedly stated "the proper amounts to be rendered, as actual or punitive damages, are left, under our law, almost entirely to the trial jury and the trial judge." Scott v. Porter ,340 S.C. 158,_166, 530 S.E. 2d 389, 398 (2000). Gasque v. Heublein, Inc., 281 S.C. 278, 287, 315 S.E. 2d 556, 561 (Ct. App 1984).

The Appellant challenges the award of future damages stating that there was not sufficient evidence to support the Court's award. The Appellant fails in this contention. "Under South Carolina Law the standard of admissibility for evidence which tends to establish the

nature, character and extent of injuries which are the natural and proximate consequences of the defendant's acts if otherwise competent." Burroughs v. Worsham, 352 S.C. 382, 396-397, 574 S.E. 2d 215, 229 (2002). "Whether future damages were established with "reasonable certainty" is a decision for the jury and do not impact the admissibility of the evidence." Burroughs v. Worsham, 352 S.C. 382, 398, 574 S.E. 2d 215, 230-231 (2002).

In the case at bar, there was testimony from the Respondent that the Decedent made approximately Ninety Thousand Dollars ($90.000.00) dollars a year. (ROA p.104, lines 9-11, p.106 lines 1-7). There was also testimony that he worked a couple of jobs including working as a longshoreman and owning his own Bails bondsman company. (ROA p.104, lines 6-8, p.109 p.12-17). Respondent testified that she witnessed his income first hand and that she also saw his deposit slips. (ROA p.104 lines 9-11, p.106 lines 1-7). She testified that he was often paid in cash as a bail's bondsman. She furthered testified that he also earned income as a longshoreman. (ROA p.109, lines 12-17).

The Trial heard the testimony of the Respondent and in its discretion decided the Respondent had proven her case and that she was entitled to an award on her Wrongful Death case for future damages in the form of loss of future income from the decedent.

The Appellant also contends that the Respondent should not be awarded future income damages because she stated she did not rely on the income of the decedent. The Respondent testified that the decedent made Ninety Thousand Dollars ($90,000.00) a year. (ROA p.104, lines 9-11, p.106, lines 1-7). The Respondent was asked the on the stand the income of the decedent. She was further asked if that income was missing from the household and she answered in the affirmative. (ROA p.108, lines 16-17). When she was cross examined by the Appellant's Attorney, he asked

if you were relying on the income of the decedent? And she responded, "it helped pay the bills". (ROA p.119, lines 12-13).

The Respondent was dependent on the income of the decedent and this income was important to their household. The Court made another ruling that favored the Appellant. The Appellant presented testimony that the decedent made Ninety Thousand Dollars ($90,000.00) a year through his jobs as a longshoreman and as a bail bondsman, however the court only granted an award of Fifty Thousand Dollars ($50,000.00) a year. This was a factual issue that was at the discretion of the trier of fact in this case.

The Supreme Court has ruled that under the Wrongful Death Statute, pecuniary loss and other factors may be considered in assessment of damages regardless of whether or not a statutory beneficiary was, at the time of the death, dependent upon the decedent for support." Elliott v. Black River Electric Cooperative, 233 S.C. 233, 265, 104 S.E. 2d 357, 373 (1958). The credibility of evidence is properly a question for the jury. Weaver v. Lentz, 348 S.C. 672, 680, 561 S.E. 2d 360, 364 (2002).

## CONCLUSION

The Appellant has presented an Appeal based on Issues of Fact and not of Law. The record clearly shows that the Appellant was not entitled to a self-defense immunity claim under South Carolina Code of Laws § 16-11-440. There was ample evidence to support a Wrongful death action and award. There was sufficient testimony and evidence to support an award of future damages in the form of loss of future income from the decedent. The Respondent's testimony shows that she needed and relied on the income of the decedent.

In addition, the Respondent presented clear evidence showing the decedent suffered conscious pain and suffering to support an award on the Survival action.

The court is being asked to reverse the trial court based on issues of fact and not issues of law. The decision of the lower court was proper and should be upheld by this court.

Respectfully Submitted,

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March 16, 2019

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

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Appellate Case No. 218-001386

Common Pleas Case No: 2015-CP-10-2178

Stacy Singletary, individually and as Personal Representative of Sheldon Singletary..... Respondent

vs.

Kelvin Shuler.....Appellant

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CERTIFICATE OF COUNSEL

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The undersigned hereby certifies that the Final Brief complies with Rule 211(b) SCACR.

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March 18, 2019

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

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PROOF OF SERVICE

I certify that I served the **Respondent's Final Brief** on Appellant, Kelvin Shuler, by depositing a copy in the United States mail, postage prepaid, on March 20, 2019 addressed to his Attorney of record, Eduardo K. Curry, PO Box 42270, North Charleston, SC 29423.

March 20, 2019

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