STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LAURENS	)	INDICTMENT NOs. 2012-GS-30-1044 and 1045
	)	
	)	
State of South Carolina	)	
	)	
vs.	)	ORDER DENYING IMMUNITY UNDER
	)	S.C. CODE ANN. § 16-11-410, ET SEQ.
Juan E. Burns	)	
	)	
	)	
	)	

Dates of Hearing:	February 25-27, 2013
Court Reporter:	Ms. Joy Holston
For the State:	Warren Mowry, Esq. and Ruston Neely, Esq.
For the Defendant:	Jim Bannister, Esq. and Alex Stalvey, Esq.

THIS MATTER COMES BEFORE THE COURT on motion of defendant Juan Burns (Burns) seeking immunity from prosecution under the Protection of Persons and Property Act (the PPPA), S.C. Code Ann. § 16-11-410, et seq. I find as follows:

FACTS

Many facts in this case are not in dispute. Burns is a forty (40) year old man with no prior criminal record who was licensed to carry a concealed weapon. The sequence of events leading up to this murder charge began when Burns separated from his wife in January 2012 and moved into a small house located at 1117 Skillet Road in Waterloo, South Caroolina. 1117 Skillet Road abuts another parcel owned by Mr. Edwards, the grandfather of decedent's brother's girlfriend. The driveway to Burns' house crosses this parcel and terminates at Burns' property.

Sometime after he moved to Skillet Road, Burns alleges he learned that several of his neighbors were involved in illicit methamphetamine use, trade, or manufacturing. Burns then took it upon himself to establish a "neighborhood watch" in an effort to eliminate drugs on his street. He testified he believed that if he made the drug users' lives difficult, they may move away. The primary focus of Burns' campaign was the decedent, Charles Lyons.

From the time of his initial "neighborhood watch" meeting in his yard, Burns' behavior became strangely erratic. One afternoon, a neighbor asked Burns to turn down the volume on his music. The neighbor testified that Burns suggested he could install a button at the end of his

driveway so any neighbor could press it to turn off his music. That way, he reasoned, he would not know with which neighbor he should be angry. The neighbor also testified that Burns told her he was an undercover operative working for the sheriff's office to shut down the meth labs on Skillet Road and that he had trained meth-detection dogs.

Burns' quarrel with Lyons began in earnest on April 3rd. That night, Burns was driving along Skillet Road on his way to visit a neighbor when he passed Lyons and some family members parked in Lyons' mother's driveway. Testimony differs as to what led Burns to approach the group. Burns claims he was flagged down by a female in the group. The female, however, insists that Burns drove by slowly and then stopped his car before approaching the group without invitation. Regardless, Burns claims he believed then that he was coming upon a drug deal. Burns maintains that, at some point during the conversation with the group, he thought Lyons had a weapon hidden behind his back. Believing Lyons to be armed, Burns drew his pistol and activated a laser light mounted under the pistol's barrel. He trained the laser on Lyons, who indicated his unwillingness to escalate the exchange. Burns left the group without firing his weapon, but both Burns and the group called the Laurens County Sheriff's Office later that night. The authorities determined that no investigation was warranted.

In response to the perceived increase in the threat level on the street, Burns installed non-functioning surveillance cameras on Skillet Road, pointed in the direction of Lyons' house. The next day after installing them, Burns found one of the cameras in the street destroyed. Burns testified he immediately suspected Lyons had destroyed the camera. Burns responded to the destroyed cameras by drawing chalk outlines of bodies in the street where he found the camera. He also admits that, later that day, he threw a significant number of carpenter tacks in Lyons' driveway in retaliation. He testified that he felt some response was in order in retaliation for the camera's destruction, but that the incident was not serious enough to contact law enforcement.

Burns' peculiar behavior came to a head on Easter Sunday. That morning, allegedly moved by a sermon at church,[1] Burns left a mirror in the shape of a cross, a candle bearing the image of Jesus, and a note that read "Blue[2] and Company Turn or Burn A, B, or C U Choose ?

[1] Interestingly, although Burns testified that the title to this Easter Sunday sermon was "If you're going down the wrong path, you should turn or burn," he offered no corroborating evidence – such as a church bulletin or the testimony of the minister, Rev. Abercrombie, or the congregants – to corroborate his adaptation of the sermon's supposed title in the note left for Lyons.

[2] "Blue" was the decedent's nickname.

think carefully" at Lyons' driveway. Lyons' brother and his brother's girlfriend, Jennifer Edwards (Jennifer), discovered the crude sepulchre and were understandably upset by its implications. Lyons was sleeping in a recliner in his mother's home when his brother and Jennifer came in; they showed Lyons the items Burns had left and conveyed their offense at the items' meaning. Per the testimony of Jennifer, Lyons was immediately enraged. The uncontroverted toxicology report indicates that at the time Lyons learned of the items and the message, he was likely coming down from, but still under the influence of, methamphetamine he likely ingested earlier that day.

Upon arrival at Burns' house, testimony differs as to how the incident progressed. Lyons' mother, brother, and Jennifer all testified that Lyons was the only person to walk down the driveway toward Burns' property. Burns testified that all four of them descended upon him. The exact location of Lyons at the time of the fatal shots is also in dispute. Lyons' mother, brother, and Jennifer place him approximately forty (40) feet away from Burns, but Burns testified that Lyons was significantly closer. Regardless, from the testimony and the recorded 911 call, Lyons was clearly the most militant, vocal, and confrontational person in the driveway. As the party approached Burns' property, Burns was inside taking a bath.[3] As he descended the driveway, Lyons grabbed a handful of gravel and began throwing the small pebbles at Burns' home while yelling for Burns to come outside. At this point, Burns heard the commotion and proceeded outside. Although the witnesses describe Burns going to his truck that was parked just outside his front door and retrieving his pistol, Burns testified that he had the pistol with him inside the house and was already armed when he ventured outside. Lyons' mother dialed 911 when she saw the gun in Burns' hand. Burns testified that Lyons threw the candle in his general direction as Lyons was approaching him.[4]

The 911 tape records Lyons cursing at Burns and threatening him with obscenities. The family's testimony largely supports Burns' claims that Lyons was making threatening gestures, vocally taunting and threatening Burns, and taking an aggressive posture. After several seconds of Lyons yelling,[5] the tape records eleven (11) gunshots in rapid succession. Again, Lyons'

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[3] Although Burns had consumed approximately half of a beer in the bathtub, neither the State nor the defense assert that he was intoxicated or otherwise impaired.

[4] At the time the candle was thrown, Burns testified that he only saw a blurred object and did not realize it was the candle that he had left next to Lyons' driveway until after the incident.

proximity to Burns is disputed, but Burns asserts that Lyons was lunging and coming towards him and was within six (6) to eight (8) feet when Burns felt he had no choice but to open fire. The rest of the tape is the caller and family's reaction to Lyons being shot.

According to Burns, Lyons had a large rock or part of a cinderblock in his hands above his head and was threatening to strike him. Burns claims that he felt he was in imminent peril when Lyons raised the rock over his head, causing Burns to discharge all eleven (11) rounds in his weapon's magazine in Lyons' direction. Burns testified that Lyons was less than twenty-one (21) feet away when he raised the rock over his head[6] and approximately six (6) to eight (8) feet away when Burns fired the shots. The family testified that Lyons was roughly forty (40) feet away, near a shed a short distance up the driveway, when the shots were fired. Nine (9) of the eleven (11) shots struck Lyons. Two shots went through his left arm from the left and exited the inside of the arm; one of these reentered the left side of his body, striking his left lung. The third shot went through his left side and struck his liver. The fourth and fifth shots went into Lyons' right leg. Shots six and seven struck him in the lower back and exited in the upper back, indicating Lyons was crouched over when these bullets struck him. The final two shots hit Lyons in the lower back and buttock.[7] Lyons died within minutes from internal bleeding caused by the bullets that struck his lung and liver.

Immediately after the shooting, Burns returned inside to call the sheriff's office. First responders arrived to find Lyons' deceased body approximately seventy-five (75) feet up the driveway near the steps of a small shed, apparently having run in that direction while being fired upon. Burns was inside his house when deputies located him. Initially he was reluctant to talk to the responding deputies, but he ultimately cooperated with a sheriff's office investigator.[8] Burns gave a written statement that Lyons had a large rock in his hands and was closing in on Burns'

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[5] Immediately prior to the shots being fired, Lyons can be heard telling Burns: "You are going to jail!"

[6] Burns testified that his CWP training taught him that twenty-one (21) feet is the minimum distance at which he should draw his weapon if in imminent peril. He also testified that he can consistently hit a paper target at twenty-five (25) yards when firing his weapon.

[7] The court numbers the shots in this way simply for ease of reference, and not with the intent to specify the sequential nature in which the shots were fired or in which the wounds were inflicted. Additionally, as will be discussed later in more detail, assuming that Burns is as accomplished a marksman as he claims, Lyons would have been struck at least once in the chest or the front of his torso if Burns was correct in his assertion that Lyons was much closer to him than the Lyons' family members claim.

[8] Strangely, the investigator testified that when Burns agreed to talk with him, he stated he was doing so because he simply liked the investigator's cowboy boots.

property when he fired. Investigators testified that they could find no rock on the scene consistent with the rock allegedly used during the confrontation.[9]

LAW/ANALYSIS

Burns seeks immunity under the PPPA, which codified the common law castle doctrine at section 16-11-410, et seq. of the South Carolina Code. The primary rule of statutory interpretation is to ascertain and give effect to the intent of the General Assembly. State v. Duncan, 392 S.C. 404, 408, 709 S.E.2d 662, 664 (2011) (citing Mid–State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996)). Legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be interpreted in light of the intended purpose of the statute. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (quoting Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 537 S.E.2d 543 (2000)). Furthermore, the court must reject an interpretation that would lead to a result so plainly absurd that it could not have been intended by the General Assembly or would defeat the plain legislative intention. Id. at 351, 688 S.E.2d at 575 (quoting Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000)).

Here, the PPPA codifies the common law castle doctrine. S.C. Code Ann. § 16-11-420(A) (Supp. 2012). When the General Assembly codifies the common law, it does so with a strong presumption that it does not intend to change the common law. Hoogenboom v. City of Beaufort, 315 S.C. 306, 318 n.5, 433 S.E.2d 875, 884 n.5 (Ct. App. 1992) (citing Columbia Real Estate & Trust Co. v. Royal Exchange Assurance, 132 S.C. 427, 128 S.E. 865 (1924)). Therefore, a statute is not to be interpreted in derogation of the common law if another interpretation is reasonable. Id.

The common law castle doctrine developed in England as an exception to the rule that homicide was only justifiable in furtherance of the crown's interest. See Wyatt Holliday, "The Answer to Criminal Aggression Is Retaliation": Stand-Your-Ground Laws and the Liberalization

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[9] Admittedly, the responding deputies neglected to fully secure the scene and properly account for all evidence. For example, the deputies allowed Lyons' family to take his bloodied shirt from the scene "as a keepsake." It was not recovered until the next day when SLED began their investigation in earnest and directed the family to return the shirt. Although Lyons' family may have had an opportunity to relocate the rock that Lyons had supposedly raised, the court finds that, after the shooting, the family was more concerned with attending to Lyons' injuries. This conclusion is supported by the audio of the 911 call that clearly documents the family's efforts to keep Lyons alive from the time of the shooting until the ambulance arrived.

of Self-Defense, 43 U. Tol. L. Rev. 407, 409 (2012) (discussion of the development of the castle doctrine). Homicide was justified only if a man "took every precaution to avoid using violence in his own defense – he had to retreat until backed against a wall." Id. at 410. However, the requirement of retreat did not apply in a man's own home. See id. at 410-11.

While only a minority of American jurisdictions adopted this rule of retreat, the few that did also recognized the castle doctrine exception. See id. at 411. South Carolina is one of these jurisdictions. See State v. Jackson, 384 S.C. 29, 37, 681 S.E.2d 17, 21 (Ct. App. 2009) ("Unless the incident occurred in the accused's home or business or on the curtilage thereof, the accused generally has a duty to retreat." (citing State v. Wiggins, 330 S.C. 538, 548 n.15, 500 S.E.2d 489, 494 n.15 (1998))); see also State v. Jackson, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955) ("[I]t is one's duty to avoid taking human life where it is possible to prevent it even to the extent of retreating from his adversary unless by doing so the danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased."). In the mid 2000's, states began to statutorily abrogate the common law duty to retreat. See id. at 413. Florida was the first state to do so in 2005 with its "Stand Your Ground" law. Id. at 416. In 2006, South Carolina enacted the PPPA to "codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A). Our PPPA closely resembles Florida's "Stand Your Ground" statute. See Fla. Session Laws Ch. 2005-27, 107th Leg., 37th Reg. Sess. (Fla. 2005).

In passing the PPPA, the General Assembly's reasoning was simple: "law-abiding citizens [should be able to] protect themselves ... from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves." S.C. Code Ann. § 16-11-420(B). Furthermore, no person 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." Id. § 16-11-420(C); see also Holliday, supra, at 418-19 ("Where Florida previously followed the 'common law . . . [preference for] the sanctity of life as opposed to chivalry,' the legislature's clear intent in passing this amendment was to place the 'rights of law-abiding citizens . . . before the rights of the lawless [.]'"). In interpreting the PPPA, the court must be mindful of the General Assembly's intent to protect innocent citizens who resort to deadly force only in response to unprovoked violence.

Immunity under the PPA can come from either the statutory grounds in section 16-11-440 or from a common law right of defense of one's self or abode. S.C. Code Ann. § 16-11-450(A). Burns maintains he is entitled to immunity from prosecution under subsection (C) of section 16-11-440, which expands the common law rule regarding retreat beyond the home. He also claims he is immune from prosecution under the common law rules of self-defense and defense of habitation.

For the following reasons, the court disagrees.

A. Subsection (C) Immunity

Subsection (C) provides 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[.]"

S.C. Code Ann. § 16-11-440(C). The General Assembly drafted this subsection with the intent to abrogate the common law duty to retreat before an individual uses deadly force to protect himself in a place where he has the right to be. See Jackson, 384 S.C. at 37, 681 S.E.2d at 21. By adding this subsection, the General Assembly expanded the *locus in quo* where a person has no duty to retreat to include any place where a person "has a right to be."

By its plain language, this subsection requires four elements. First, a person must not be engaged in an unlawful activity. Second, the person must be attacked. Third, he must be in a place he has a right to be. Fourth, and finally, he must reasonably believe deadly force is necessary to prevent the commission of a violent crime. For the purposes of this immunity hearing, the evidence indicates no substantial dispute as to the third element. Burns was standing in the open space outside of his property and he was clearly standing on his property, a place where he had a right to be. As to the fourth element, Burns testified that he genuinely believed that firing his weapon was his only means to prevent being seriously assaulted or killed.[10]

[10] Whether this belief was reasonable, however, is in dispute. In part, Burns relies on Lyons' prior criminal history and the toxicology report indicating Lyons was under the influence of methamphetamines. Although Burns could not have been privy to Lyons' prior criminal history, testimony at the hearing indicates that methamphetamine use results in a heightened sense of invincibility and aggression – characteristics clearly exhibited by Lyons and observed by Burns at the time of the confrontation. Again, however, at the time of the shooting Burns lacked actual knowledge of either of these facts. Therefore, apart from the methamphetamine use explaining and corroborating what Burns observed that day with regard to Lyons' belligerent demeanor, these facts would not be relevant in

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However, the first two elements of the subsection involve disputed questions of fact and law. First, the court must interpret what the General Assembly meant by "not engaged in unlawful activity." Second, the court must determine whether Burns was actually attacked.

1. Not engaged in unlawful activity

Burns argues that the phrase "not engaged in an unlawful activity" in subsection (C) should be interpreted to mean he merely must not be violating any statutory law. In interpreting this subsection, the court must give deference to the intent of the General Assembly. Traditionally, a person was entitled to use deadly force in self-defense only in situations where he was without fault in bringing on the difficulty. State v. Bryant, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999). Although subsection (C) does not purport to recite the common law rule of self-defense, its language is eerily similar and our common law precedent is instructive in interpreting subsection (C). See id. ("To establish self-defense in South Carolina, four elements must be present. First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. 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 was actually 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." (citing State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994))). When an individual establishes that he reasonably believes he is in imminent peril, the only significant difference between subsection (C) and common law self-defense is the elimination of the requirement that he have no other probable means of avoiding the danger. However, both defenses place a requirement on the individual that he not have engaged in some specified type of behavior prior to using deadly force. Therefore, the court must determine whether the General Assembly intended the phrase "not engaged in unlawful

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determining the reasonableness of Burns belief at the time of the shooting. Additionally, a dispute exists as to Lyons' proximity to Burns at the time of the shooting. A finder of fact could conclude, if they believed Lyons' family's version of events, that Lyons was forty (40) feet away from Burns. Accordingly, the finder of fact could conclude that a reasonable person would not have believed that firing the weapon was necessary to prevent great injury or death as Lyons was too far away to pose an imminent threat. These facts also apply to the question of whether Burns was actually attacked, which is discussed further in Part A.2., infra. Regardless, the court need not address this element at this time because other issues are dispositive of Burns' motion.

activity" to have a different meaning than the common law "not at fault in bringing about the difficulty." At the very least, our common law precedent is instructive in interpreting subsection (C).

The court cannot accept Burns' argument that the language of subsection (C) merely requires that he not have been violating a statutory law at the time he fired his weapon. Such an interpretation would result in potentially absurd situation where an individual taunts or provokes a victim, causing that victim to physically and credibly threaten the individual, and then escape liability for murder by simply asserting that he was not violating any statutory law.

By way of example, the court imagines a situation where an individual does not like his next-door neighbor. He then "accidentally" cuts a tree on his property, causing it to fall on their shared fence. Knowing the neighbor is a hot head, the individual proceeds to engage in an argument over the damaged fence and fallen tree with his neighbor. When the neighbor picks up a rock, stands as if preparing to throw it, and states that he is going to come over the fence and teach the individual some responsibility, the individual pulls out his pistol and shoots the neighbor. In such a scenario, both parties are situated in places where they have the right to be, and the shooter is not in violation of any statutory law. Under Burns' reading of the statute, the individual would escape criminal responsibility for his obviously pre-meditated murder.[11]

Burns' interpretation of subsection (C) unreasonably expands the circumstances where a person can use deadly force without repercussion. Therefore, the court is inclined to interpret the subsection as being in line with the prior common law requirement that an individual not be at fault in bringing about the difficulty. The court notes that other jurisdictions that have addressed this question have come to a similar conclusion. See Dorsey v. State, 74 So. 3d 521, 527 n.3 (Fla. Dist. Ct. App. 2011) ("[D]efendant makes an alternative argument that the term "unlawful activity" in the Stand Your Ground statute should be interpreted to apply only to forcible felonies. We reject this argument without further discussion."); Kidd v. State, 105 So. 3d 1261, 1264 (Ala. Crim. App. 2012) ("Kidd does not cite any authority for his position that an 'unlawful activity[]' ... is limited to the crimes enumerated in § 13A–3–23(a)(3).").

[11] See also Elizabeth B. Megale, Deadly Combinations: How Self-Defense Laws Pairing Immunity with a Presumption of Fear Allow Criminals to "Get Away with Murder", 34 Am. J. Trial Advoc. 105, 115 (2010) (describing a similar situation where gang members confront each other, but are immune from prosecution because they each reasonably fear for their safety but are not engaged in activities that are *per se* unlawful).

Furthermore, even if the legislature intended for "unlawful activity" to represent a relaxation of the requirement that the defendant "not be at fault" in bringing on the difficulty, violation of a statute is not the sole manner by which an individual can behave unlawfully. An "unlawful act" is defined as "[c]onduct that is not authorized by law; a violation of *a civil* or criminal law." Black's Law Dictionary 1536 (7th ed. 1999) (emphasis added). Activity that is negligent, reckless, or certainly grossly negligent is clearly "unlawful" in the eyes of the law. In the present case, Burns' actions in targeting and harassing Lyons, trespassing upon his property by throwing carpet tacks in his drive with the admitted intent to cause property damage, erecting mock surveillance, and then painting chalk outlines in the roadway when that surveillance was destroyed represent intentional actions directed at Lyons and which a person of reasonable and ordinary sensibilities would find intolerably offensive.[12] Just as equity does not permit one to profit by their own wrong, the drafters of the PPPA clearly had no intention of expanding its protections to those whose conduct is negligent, grossly negligent, or reckless. Accordingly, Burns' reliance on the proposition that he had to be acting in contravention of a statutory law to forfeit the protections of the PPPA misstates the clear legislative intent and express wording of the act.

Burns' activity leading up to the shooting was clearly designed to goad Lyons into a confrontation. Whether Burns intended the confrontation to turn deadly is irrelevant. The facts are that Burns knew the chalk outlines he drew in the road would likely be seen by Lyons and his family. He knew that the religious message would upset Lyons family and enrage Lyons. And no reasonable person could have expected the tacks in the driveway to lead to anything less than a full blown confrontation. Burns acts are clearly "in violation of law and reasonably calculated to produce" a confrontation with Lyons. Bryant, 336 S.C. at 345, 520 S.E.2d at 322 (citing 40 Am. Jur. 2d Homicide § 149 (1999)). His behavior clearly amounts to "bringing on the

[12] This conduct echoes the elements of the admittedly nebulous torts of outrage and/or intentional infliction of emotional distress. See Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (2004) ("To state a claim for intentional infliction of emotional distress, a plaintiff must show (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it." (citing Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981))).

difficulty" such as to prevent him from claiming the protections of the PPPA.[13] Therefore, subsection (C) does not bar Burns' prosecution for murdering Lyons.[14]

2. Actually Attacked

Testimony conflicts on whether Lyons was actually attacking or about to attack Burns when the shots were fired. Burns claims Lyons was almost on top of him, but the other witnesses claim Lyons was further away. Ultimately, the resolution of this conflicting testimony is best left to a jury. However, for the purposes of this hearing, the court has given consideration to the testimony and the forensic evidence submitted by both Burns and the State.[15] In the court's view, the totality of the evidence contradicts Burns' testimony that Lyons was attacking him.

Burns maintains that Lyons attacked, or was prepared to imminently attack, with a large rock. At the hearing, Burns demonstrated that Lyons held the rock over his head with both hands when he attacked.[16] This testimony is consistent with his statements at the scene. However, investigators and crime scene technicians could not locate any rock or stone anywhere on the property which matched Burns' description.[17] Furthermore, Burns' demonstration, and his testimony concerning Lyons' proximity to him at the time the shots were fired, indicates Lyons would have provided a large target for the trained Burns to aim his weapon upon when firing. However, the forensic analysis of Lyons wounds indicates that the majority of the bullets that struck him entered from the side or the back. Two wounds even indicate Burns fired while

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[13] Regardless, even if the court did adopt Burns interpretation of the statute as requiring a violation of criminal law, he is not saved from prosecution. Burns behavior leading up to the shooting constitutes a violation of the laws against harassment. See S.C. Code Ann. § 16-3-1700(A) ("Harassment in the first degree may include, but is not limited to: (1) following the targeted person as he moves from location to location; [...] (3) surveillance of or the maintenance of a presence near the targeted person's: (a) residence [...]; and (4) vandalism and property damage.").

[14] By finding that Burns was at fault in bringing on the difficulty, the court expressly limits this finding to the present question of whether Burns has established that he is entitled to the protections of the PPPA. Clearly, this finding should not be construed as *res judicata* on the question of whether he would be entitled to a self-defense charge at trial.

[15] See Peterson v. State, 983 So. 2d 27, 29 (Fla. Dist. Ct. App. 2008) ("The court may not deny a motion simply because factual disputes exist.").

[16] The record likely does not reflect the manner in which Burns indicated at trial that Lyons held the rock. During the hearing, Burns repeatedly demonstrated that Lyons was holding the rock with both hands over his head, similar to the manner in which a referee would signal a touchdown. Burns further testified that Lyons was facing him and continuing to taunt him while holding the rock.

[17] See Footnote 9, supra.

Lyons was turned and running in the other direction. The forensic evidence is, at best, inconsistent with Burns' recitation of the events.

Finally, Burns has asserted that he only fired upon Lyons when Lyons crossed what the parties perceived to be the property line between Burns' property and Mr. Edwards' property. To the extent Burns argues that Lyons was on Burns' property when he was shot, this assertion is misplaced. The court is aware of no precedent that says a person can be shot simply for crossing a line demarcating legal ownership. The PPPA does provide that an individual is presumed to be in reasonable fear for their life when someone attempts to forcibly enter a *dwelling*. S.C. Code 16-11-440(A) (emphasis added). However, a dwelling does not extend all the way to the property line. S.C. Code Ann. § 16-11-430(1) ("'Dwelling' means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night."). The presumption cannot exist in the mere curtilage or open fields beyond the statutorily defined dwelling. Therefore, the only relevance the property line may have relates to the question of the distance between Burns and Lyons when the shots were fired and to the non-issue of whether Burns was in a place where he had a right to be.[18] Accordingly, whether or not Lyons had stepped over the property line is not dispositive at this stage.

For the limited purpose of this immunity hearing, the court finds that the evidence militates against a conclusion that Burns was actually attacked. Conflicting testimony about whether Lyons was only a few feet from Burns or whether he was almost forty (40) feet away when the shots were fired may be best left for the jury to resolve. However, the court cannot ignore the forensic evidence that suggests Lyons was turned away from Burns when the deadly shots were fired. [19] Therefore, Burns is not entitled to protection from prosecution under the PPPA.[20]

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[18] As previously stated, clearly Burns had the right to stand in his own driveway next to his truck.

[19] Again, assuming that Burns is correct that Lyons had stepped over the property boundary which was about ten (10) to twelve (12) feet from where Burns was standing and then presented himself as an easy target for Burns, this version of events is contradicted by the forensic evidence indicating that Lyons was never shot in his chest or front torso.

[20] The court would have reached this conclusion even if it had interpreted subsection (C) as only requiring that Burns not have violated a statutory law before the shooting.

B. Immunity Under "Any Other Provision of Law"

Burns also maintains he is immune from prosecution under the common law defense of habitation and self-defense. The court disagrees.[21]

As stated above, Burns has not satisfied the court that he is without fault in bringing about the confrontation that led to Lyons' shooting or that he was in actual or reasonably apparent imminent peril. Because Burns engaged in conduct which was reasonably calculated to prompt Lyons' escalation of the confrontation, Burns cannot be entitled to immunity under the common law doctrine of self-defense. He is also not entitled to immunity because the evidence indicates Lyons was not attacking or about to attack Burns. Finally, Burns has not met the law's requirement that he have probable means of avoiding the danger. To the contrary, Burns' actions leading up to the shooting were calculated to provoke the confrontation. Burns cannot claim self-defense when he is substantially responsible for drawing Lyons into the driveway that day.

Likewise, Burns is not entitled to immunity under the theory of defense of habitation. Burns argues that defense of habitation allows deadly force to be used to eject trespassers. Quite to the contrary, deadly force is *never* justified in ejecting trespassers. See State v. Rogers, 130 S.C. 426, 126 S.E. 329, 331 (1925) ("[A] proprietor has the right to eject a trespasser from his premises and to use such reasonable force, *short of killing him*, as may be necessary to accomplish the expulsion." (emphasis added)). Rather, the common law defense of habitation merely states that an individual may prevent "an unwarranted intrusion through the use of reasonably necessary means of ejection." Bryant, 391 S.C. at 233, 705 S.E.2d at 470 (citing State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007)). Furthermore, this defense applies to the attempted forcible entry of a dwelling, and not necessarily to the rest of the property. See State v. Faulkner, 151 S.C. 379, 379, 149 S.E. 108, 109 (1929) ("The right to use such force, even to the taking of life, as is necessary to eject a trespasser, applies to the habitation, and perhaps to the curtilage, but not to other parts of the premises."). Thus, defense of habitation does not give an individual *carte blanch* to use deadly force against any person who crosses his property boundary. Id. ("As to the latter, the rights of the occupant are limited to immunity to the law of retreat, in case he slays or wounds the trespasser and enters the plea of self-defense."). Instead,

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[21] Again, the court's findings on these issues are without prejudice to the assertion of these defenses at trial. See Mederos v. State, 102 So. 3d 7, 11 (Fla. Dist. Ct. App. 2012) (citing Peterson, 983 So.2d at 29).

the common law defense of habitation merely removes the requirement that a person retreat if the attack occurs in the home, rather than in public. Bryant, 391 S.C. at 233, 705 S.E.2d at 470 Ultimately, defense of habitation is a subset of self-defense. Id. ("[T]he same elements required to establish self-defense apply to the defense of habitation." (citing Rye, 375 S.C. at 135, 651 S.E.2d at 329)).

In the present case, Burns was not attempting to prevent the forcible entry of his dwelling. Rather, as far as the defense of habitation may be concerned, he was attempting to prevent Lyons from crossing his property line.[22] Burns may have had the right to eject Lyons if he had been a trespasser, but he had no right to use deadly force to prevent the trespass or as an immediate, lethal response to that trespass. The use of deadly force is only justified if the trespasser escalates the conflict, and only then Burns is merely relieved of his duty to retreat. Burns made no effort to eject Lyons short of unloading his weapon in his direction. Furthermore, Burns' use of deadly force was not justified because he has not satisfied the elements of self-defense, as outlined above. For these reasons, Burns may not use the defense of habitation to justify Lyons' murder.

BOND

At the close of the case, Burns renewed his motion for bond. The court is aware that bond was previously denied twice by the court. Having heard the testimony and considered the evidence, the court finds itself in a better position to evaluate the defendant's danger to the community and risk of flight. In the court's view, the immunity hearing clearly constitutes a "material change in circumstances." S.C. Code Ann. § 17-15-55(C) (2003). Accordingly, the court shall revisit the issue of bond, especially in light of the delay which shall be occasioned by the appeal of this decision.

First, Burns has no criminal history of any kind. Second, counsel for Burns informed the court of his arrangements to ensure Burns' appearance for trial, including living arrangements during the pendency of this action. Burns is also indigent and lacks the resources to flee the jurisdiction. Third, the court is aware of similar bonds set for similarly situated defendants facing similar charges, and sufficient safeguards exist to address any concerns regarding the community's safety and the potential for flight.

[22] Assuming, *arguendo*, that the court believes Burns' testimony that Lyons crossed the boundary.

The court finds that a bond of One Hundred Thousand Dollars ($100,000) is sufficient to guarantee the Burn's appearance at trial. This bond may be satisfied by posting a surety bond or by pledging or posting property located in Laurens County. As a condition of bond, Burns' counsel must inform the court and the Solicitor of the address where he will reside once bond is posted; this information shall be filed under seal and shall not be disclosed to any individual or agency without prior approval of the court. By this order, Burns' concealed weapons permit is suspended pending the outcome of this case. The Solicitor shall also contact SLED and inform them that, by this order, Burns shall not be eligible to purchase or possess a firearm pending resolution of this case. If Burns has a passport, he shall surrender it to the Laurens County Clerk of Court, and the Solicitor shall notify the Department of State that Burns is prohibited from obtaining a passport under this order. Furthermore, Burns' counsel shall provide the court with an affidavit from the person with whom Burns will reside attesting to the fact that the home has been rendered, and shall remain, free of any firearms during the pendency of this case. Finally, Burns shall undergo a mental health assessment with a physician of his choosing and shall follow any instructions or directives from said physician. Burns' counsel shall file a copy of the physician's findings and diagnosis, if any, with the court under seal. Burns shall also abide by a dusk to dawn curfew except when he is in the company of a family member, and he shall refrain from entering into the city limits or being present in the general, unincorporated area of Waterloo, South Carolina.

CONCLUSION

The court has reviewed the evidence exhaustively. Burns bears the burden of proving that he is entitled to the protections of the PPPA by the preponderance of the evidence. Duncan, 392 S.C. at 411, 709 S.E.2d at 665. To the extent that the evidence in this case indicates equally plausible scenarios for how this shooting took place, the court finds that Burns has failed to meet his burden of proof in that the scales of justice remain evenly balanced.

Additionally, this court remains understandably troubled by the argument that one may engage in conduct calculated to escalate and incite, and then claim the protections of the PPPA because the conduct was not illegal *per se* or in violation of statutory law. The undisputed and sage state of the law in South Carolina has always been and remains that, in a civilized society, deadly force should only be used in the most exigent circumstances, where reasonably necessary

to prevent death or great bodily injury, and only as a last resort. The General Assembly's clear intent in enacting the PPPA was to remove the duty to retreat for locations that were not previously included under the castle doctrine at common law. It did not intend to declare open season for individuals to provoke confrontation in their crusade for vigilante justice. The court cannot, therefore, conceive of an interpretation of the PPPA that would encourage turning to deadly force as a first resort, especially in circumstances where the shooter clearly contributed to, or was arguably at fault in, bringing on the confrontation.

The power to enforce our laws rest solely with the State. By enacting the PPPA, the legislature did not intend to create loopholes that abrogate thousands of years of jurisprudence. Therefore, any exercise in interpretation of the PPPA must acknowledge the primacy of law enforcement and the courts in policing crimes and resolving disputes. While the court recognizes that there are certainly circumstances where an individual is justified in taking the life of another, it is not prepared to sanction the taking of life in circumstances such as the present one. Where our society has created institutions to maintain peace and order, an individual must first resort to those institutions in his quest to punish those who violate the law.

WHEREFORE, IT IS ORDERED that Defendant Juan Burns' Motion for Immunity is hereby **DENIED**. Defendant shall be entitled to bond in the amount described above and with the conditions so stated.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

April 11, 2013
Laurens, South Carolina