

Immunity Hearings – Preparing and Conducting Immunity Hearings

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Note: This handout is designed to help you with preparing for an immunity hearing under the Protection of Persons and Property Act.

It is a quick reference, but you should not rely on it without reviewing the relevant statutes or case law yourself and conducting your own research in your cases.

Introduction to the Protection of Persons and Property Act (“The Act”)

In 2006, the Protection of Persons and Property Act codified the common law Castle Doctrine. It recognizes that a person’s home is her castle and extended the doctrine to include occupied vehicles and the person’s place of business, as well as places the person has right to be.

The Act - Statutes

§ 16-11-410, Citation of Article

This article may be cited as the “Protection of Persons and Property Act.”

§ 16-11-420, Intent and findings of General Assembly

(A) It is the intent of the General Assembly 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.

(B) The General Assembly finds that it is proper for 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.

(C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds 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.

§ 16-11-430, Definitions

As used in this article, the term:

(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.

(2) “Great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(3) “Residence” means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(4) “Vehicle” means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

§ 16-11-440, Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle, or place of business

(A) 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.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

(2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using the force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in *Section 16-1-60*.

(D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in *Section 16-1-60*.

(E) A person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

§ 16-11-450, Immunity from criminal prosecution and civil actions; law enforcement officer exception; costs.

(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 and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

(B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.

(C) The court shall award reasonable attorneys' fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).

Self-Defense Elements

1. Without fault in bringing on the difficulty
2. Actual imminent danger of death or serious bodily injury or believed in imminent danger of death or serious bodily injury
3. If believed in imminent danger, a reasonably prudent person would have believed the same
4. No other means to avoid the danger (duty to retreat)

The Act Takes Away the Duty to Retreat

- Longstanding rule that there is no duty to retreat in your home (includes curtilage)
- Under the Act, if you are in another place where you have a right to be, then you have no duty to retreat and have the right to stand your ground and meet force with force
- 16-11-440(C) extends the right to other places where you have a right to be and includes a dwelling if (A) does not apply
- 16-11-420(E) – language that no person should be required to surrender personal safety to a criminal or needlessly retreat in the face of an intrusion or attack

Asserting Immunity

Should you assert a claim for immunity?

- Analyze your case under the Act and determine if your client has a claim to immunity
- Consider the pros and cons of doing a hearing
 - May win immunity and client goes free
 - Plea negotiations – will the hearing hurt or help?
 - Locking in witness and client testimony
 - How will your client testify?
 - Will witnesses be reluctant to testify at trial after the hearing?
 - Burden is lower than it will be at trial
 - No duty to retreat
 - Presumption of fear added in the Act
 - Creates an issue for appeal if you lose
 - Even if unsuccessful, you may learn how to improve your defense for trial
 - If you have a hearing, it may allow for the Solicitor to better attack your case at trial

Asserting Immunity: Filing a motion and memorandum

- Must assert a claim to immunity
- File a motion (samples provided)
- Consider filing a memorandum in support of your motion
 - Helps your preparation
 - Provide it to the court in advance of the hearing – not the day of
 - Allows the judge to understand the case before the hearing even starts
 - Address bad facts head on
 - Case law – Does it help? If no, can you distinguish your case?
 - Provides court with legal analysis and pathway to immunity

Practice Tip: In the statement of facts, keep it to what the solicitor already knows and include a footnote that testimony may establish further facts for consideration.

Preparing for an Immunity Hearing

Investigate your case

- Don't rely on the police investigation
- Interview the witnesses and really consider all of the evidence yourself

Potential Exhibits

What exhibits could help tell your client's story and help to put the judge in your client's shoes when the incident happened?

- 911 calls
- Crime scene photos
- Medical records
- Toxicology reports
- SLED reports – GSR, prints, DNA
- Diagrams of the scene
- Body cam

Preparing Witnesses

Are there witnesses who help your client's case?

- Don't rule out police officers just because they are officers – they often have information helpful to your defense
- Subpoena any officers or other witnesses you want there to testify – DO NOT rely on the Solicitor's office to have witnesses there. Remember you have the burden.
- Prepare your witnesses – you need to know what they are going to say under oath; don't just wing it

Preparing Your Client to Testify

This can be one of the most challenging parts of preparing for an immunity hearing. Your relationship with your client matters. You have to be able to help them get ready for court.

- Prepare your client for direct examination AND cross examination. Review client's prior statements.
- Look out for:
 - Client that tries to make his story fit the law vs. just telling his side of the story
 - Client who is scared to testify
 - Client who may be particularly vulnerable to bullying by the Solicitor
 - Re-enactments: solicitors love to try and get your client to demonstrate how things happened and this can be very confusing for the client
- Don't be afraid to bring in another lawyer to help your client prepare for his testimony; maybe have that lawyer play the role of the solicitor and/or give honest feedback
- Change/adjust your strategy with the questioning style/format if you need to

Conducting an Immunity Hearing

The statute does not provide a procedure for determining immunity from criminal prosecution. Under *State v. Duncan*, when a party raises the question of statutory immunity prior to trial, the proper standard for the trial court to use is the preponderance of the evidence. 709 S.E.2d 662 (2011). Therefore, the burden is on the Defendant to prove by a preponderance of the evidence that he is entitled to immunity under the statute, and a hearing on the matter should be held pre-trial.

- Entitled to a pretrial hearing
- Burden on defense: preponderance of the evidence (NOT beyond a reasonable doubt)
- Incorporate your memorandum into the record
- Any stipulations? Only consider if it will help your case and you do not need testimony from the witness.
- Put up your case
 - Witnesses
 - Exhibits
 - Consider use of visual aids or courtroom demonstrations if they will help
 - Client testimony
- State will present its witnesses
- Be on the lookout for evidence that either corroborates or contradicts your client's testimony. That will impact the judge's decision because your client's credibility is a factor in the hearing.
- Legal arguments to the court
- Be prepared for issues the court raises during the hearing
- Rules of evidence apply: make your objections and treat this as a formal hearing (watch for attempts by solicitor to admit inadmissible testimony or exhibits)
- Preserve and build your record
- If you are not successful, the judge's decision is not immediately appealable by the defendant. The State is allowed to appeal the granting of immunity immediately.

Practice Tips

- The judges must make findings of fact and not simply say, “there is inconsistent evidence, and as a result, immunity is denied.” See *Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019) – filed March 27, 2019.
- At the appellate level, the Attorney General’s Office continues to argue on appeal that “attack” requires a physical attack. At the trial level, pursue clarifying that “attack” does not mean physical attack, if appropriate.
- Remember the statute does allow for protection against violent offenses as defined under Section 16-1-60
- Some judges are holding defendants to too high of a burden. Remind the judge that the burden is a preponderance – NOT beyond a reasonable doubt. This is a much lower burden.
- The immunity statute mirrors self-defense. It does not create additional elements to self-defense. In fact, it takes away the duty to retreat. Do not argue entitlement to immunity by saying, “we’ve met the statute and self-defense.”
- This is a formal hearing and objections should be made as to inadmissible evidence (hearsay, prior bad acts, etc.). Don’t make the mistake of being too relaxed or too casual at the hearing.
- The Courts will need to resolve the question of whether someone is acting lawfully under the statute if the person is armed in self-defense, but is not in lawful possession of a gun. *State v. Burriss* indicates that a person in a regular self-defense scenario is acting lawfully in that scenario. 334 S.C. 256, 513 S.E.2d 104 (1999). We do not have case law yet addressing this issue specifically under the Act. If you are raising immunity but your client was unlawfully carrying the weapon or is not in lawful possession of a gun (minor, felon in possession, etc.), be ready to argue this is not the kind of unlawful conduct the General Assembly contemplated as barring immunity. Section 16-11-450(A) notes that “A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune....” It can be argued that this section allows for one to rely on common law self-defense principles.
- Interpretation of the statute is not well established. There are a limited number of cases that have been reviewed by the appellate courts. Read the cases. Understand the law and how previous interpretations may affect the outcome of your hearing.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	Warrant: 2012A1010202313
	)	Charge: Murder
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	
	)	DEFENDANT’S MOTION AND
WHITLEE JONES,	)	MEMORANDUM IN SUPPORT OF
	)	CASTLE DOCTRINE IMMUNITY
Defendant.	)	
_____	)	

Defendant moves the Court, through her attorney Mary A. Ford, to be granted immunity from prosecution based on the Protection of Persons and Property Act (the “Act”), found in § 16-11-410, *et seq*, of the S.C. Code.

STATEMENT OF THE FACTS¹

On November 2, 2012, Whitlee Jones stabbed Eric Lee one time. As a result of that wound, Mr. Lee died.

Whitlee Jones and Eric Lee were in a romantic relationship and resided together at 7740 Warsaw Road in North Charleston, SC, on November 2, 2012. On that evening, the two were in a verbal argument over Mr. Lee wanting to take possession of Defendant’s phone, a phone he had paid for but given to her. Defendant was in fear for her safety, based on Mr. Lee’s actions that night and on prior occasions, and tried to leave the home. However, Mr. Lee pushed and punched her and prevented her from leaving. Defendant was eventually able to leave the home through the back door in the dwelling.

¹ The Statement of the Facts rely on the evidence provided by the State. If Defendant testifies, then more detail will be added for consideration of this hearing.

Mr. Lee followed her outside and continued to verbally and physically intimidate her to get the phone from her. He tried to force her back in the home by pulling her by her hair. According to Ms. Jones and a neighbor Ms. Smith, Mr. Lee dragged Defendant down the street by her hair while she was screaming for help.² Ms. Smith called 911 for help at 11:28 p.m. on November 1, 2012.³ Defendant attempted to call her friend Erica for help. While Erica did not answer, her voicemail came on and recorded some of the altercation between Defendant and Mr. Lee.⁴ Defendant screamed for help, hoping a neighbor would hear her, and she repeatedly asked Mr. Lee to get off of her. As can be heard on the recording, Defendant asked a male neighbor for help but Mr. Lee told him to move along and he did so. Defendant attempted to call the police for help, but Mr. Lee continued to try to force her back in the house, so she gave him the phone and ran off. While Defendant was away from the home at the back of some other apartments, a police officer came in response to Defendant's pleas for help due to the neighbor Ms. Smith calling 911. The police officer spoke to Mr. Lee. Instead of checking to see if the female requesting help was safe, the police officer took Mr. Lee's word that no assault had occurred and left the scene.

After waiting for Mr. Lee to cool down and since she had no phone to call anyone, Defendant returned to the home so that she could get her belongings and leave. Defendant's two friends Erica and Jasmine showed up to help her leave. Defendant put her belongings in the car. During this time, Mr. Lee was agitated and pushing Defendant throughout the house, including on the stairs. While going to the upstairs bedroom to get her shoes, Defendant saw Mr. Lee's

² See Ms. Smith's 911 call (Exhibit 1). In addition, police found and photographed a large portion of Defendant's hair (or rather her weave) in front of the home. (Exhibits 2 and 3)

³ See CAD report (Exhibit 4)

⁴ See voicemail recording (Exhibit 5)

knife in their bedroom and put it in her bra for protection, in case he attempted to attack her again. When Defendant was attempting to leave the house after gathering the last of her belongings, Mr. Lee attacked Defendant again. He grabbed and shook her and struck out at her. Defendant grabbed the knife from her shirt and struck out at Mr. Lee. The knife stabbed Mr. Lee one time in the heart.

Defendant left the house with her friends, who had been outside during the altercation. Not long after leaving, Defendant asked to go back to the house to check on Mr. Lee because she was concerned for him and had not known the extent of his injury. After arriving to the house, Defendant saw Mr. Lee's condition and took him to the hospital with Jasmine while Erica stayed at the house to wait for police. Erica and a neighbor called the police at 12:12 a.m.⁵ Once Defendant got to the hospital, she cooperated with police. However, she was extremely distraught and had to be treated by the hospital staff. At the police station, Defendant gave a written statement⁶ during the course of giving a recorded statement,⁷ both stating she was in fear of her safety when she acted, that she stabbed him to get away, that she believed if she had not acted, he would have killed her, and that she never intended to kill Mr. Lee.

DISCUSSION

Defendant is entitled to immunity under the Act because she was not acting unlawfully, was in a place where she had a right to be, was being attacked, and was acting in accordance with established common law principles of self-defense.

⁵ See CAD report (Exhibit 6)

⁶ See written statement (Exhibit 7)

⁷ See recorded statement (Exhibit 8).

I. Defendant is entitled to seek immunity under subsection (C) of § 16-11-440 because she was acting lawfully and was being attacked in a place where she had a right to be.

The Act is intended to allow people to protect themselves, as long as they are acting lawfully. When the General Assembly ratified the Act, it made its intent for passing the laws very clear. It even dictated its intent in § 16-11-420, S.C. Code:

(A) It is the intent of the General Assembly 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.

(B) The General Assembly finds that it is proper for 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.

....

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds 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.

And in § 16-11-440, the General Assembly set out the circumstances in which immunity may apply to people. Sections (A) and (B) refer to people being able to act if in their residence, dwelling, or occupied vehicle. However, they specifically exclude acting against other residents of someone's home. However, section (C) states:

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.

The section that would apply in the current case is (C) since Mr. Lee was a resident and was not breaking into the home.⁸ There are no allegations that Defendant was acting unlawful in any way. While Mr. Lee was not unlawfully entering her residence, since it was also his own residence, he was attacking Defendant. The statute expressly states that it applies in scenarios in which someone is attacked, even if no unlawful entry has been made. While there is some argument that the language, “in another place where he has a right to be,” would exclude a dwelling, residence, or occupied vehicle since those places are referred to in other sections of the law, that argument is contrary to the Legislature’s clear intent stated in § 16-11-420. In addition, in the statute allowing for immunity, § 16-11-450 (emphasis added), the law states:

(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 and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

This section takes the opportunity to expressly exclude law enforcement officers in most circumstances. However, it does not exclude other residents of one’s home in general. This law also refers to a person “who uses deadly force as permitted by the provisions of this article or another applicable provision of law.” The common law has never excluded people from defending themselves against other residents of a dwelling. General principles of self-defense can be used to apply to a given set of facts, including the current scenario. The South Carolina Supreme Court addressed Section (C) in *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013). In that case, it found that section (A) did not apply since the alleged victim was a social guest in the

⁸ Recently, the Court of Appeals decided *State v. Manning*, 2014 S.C. App. LEXIS 95 (S.C. App. 2014), which held that “another place” excludes one’s residence. However, this case is not final and a rehearing is pending (Rehearing granted by *State v. Manning*, 2014 S.C. App. LEXIS 193 (S.C. App., June 26, 2014)).

house and that (C) did not apply either. *Curry* at 370. However, while not specifically addressing the issue at hand, it did not find that the law did not apply due to the language of “in another place.” Instead, it found that (C) did not apply because other principles of self-defense were not met and such laws should be used in analyzing an immunity claim. *Id.* At 371.

II. Defendant should be granted immunity because her actions were in accordance with common law self-defense principles.

In South Carolina, people can use deadly force to protect themselves if certain elements are met:

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 own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). Defendant’s actions complied with these self-defense elements.

Defendant stated that she believed that if she did not act as she did, then she would have been killed. There are no allegations that Defendant was at fault for bringing on the difficulty. Throughout the evening, her actions demonstrated that she wanted to get away from Mr. Lee and to retain her phone. Based on Mr. Lee’s behavior throughout the night, Defendant’s belief that she was in danger was reasonable for both her and a reasonably prudent person. Earlier in the evening, less than forty-five minutes before the final altercation, Mr. Lee had perpetrated at least two crimes against Defendant, both of which would be classified as “violent” in its everyday meaning and under Section 16-1-60 of the South Carolina Code of Laws. From his actions, Mr.

Lee could have been charged with Kidnapping and Criminal Domestic Violence of a High & Aggravated Nature (CDVHAN).

Under § 16-3-910, S.C. Code, Kidnapping is defined as occurring when someone, “unlawfully seize[s], confine[s], inveigle[s], decoy[s], kidnap[s], abduct[s] or carr[ies] away any other person by any means whatsoever without authority of law.” As for CDVHAN, Defendant and Mr. Lee were household members to which CDV laws would apply under the definitions in the S.C. Code: They fit section (4), “a male and female who are cohabiting or formerly have cohabited.” § 16-25-10. Under § 16-25-20, a criminal domestic violence is defined as follows: “(A) It is unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril. . . .” A criminal domestic violence act can be elevated to a CDVHAN under § 16-25-65 under the following circumstances:

(A) A person who violates Section 16-25-20(A) is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs. The person commits:

(1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or

(2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death.

The Act specifically allows for people to act “to prevent the commission of a violent crime as defined in Section 16-1-60.” § 16-11-440(C), S.C. Code. Mr. Lee was attacking Defendant and trying to prevent her from leaving as he had done so earlier in the evening. It is well-settled that evidence of a victim’s past acts of violence against a defendant are admissible to help establish the reasonableness of a defendant’s actions, in particular if those acts were

connected closely in time or event to the homicide, since they would be an indication of the victim's state of mind at the time of the homicide and why the defendant may have reasonably feared him. *See State v. Day*, 341 S.C. 410, 419-20, 535 S.E.2d 431 (2000).

The facts of the current case do not warrant not allowing Defendant to protect herself from Mr. Lee. The reason she went back to the home was due, according to her statements, to believing, based on prior experiences, that Mr. Lee had calmed down. In addition, the reason Defendant was able to escape Mr. Lee's violent attack of her earlier was finally conceding in giving him her phone, despite its importance to her safety and well-being. Defendant was without a phone. She was outside in the middle of the night. When she had begged neighbors for help, no one came to her aide. Going back to the residence was the only way for her to reach out to someone to get away from Mr. Lee. Her intention in going back to the residence was to leave Mr. Lee for good. The facts support that once she got home, he gave her back her phone and she was able to call for help. However, likely due to the police having arrived and talked to him, he was upset and hostile towards Defendant. It is not difficult to conclude that he was working himself up to being physical with Defendant again.

In addition, self-defense is met in that Defendant was not in a position to get away without acting. Even though Defendant had two friends outside, they were not close in proximity to her at the time of the final altercation and there is no indication that they would have been able to actually help her. Earlier in the evening, Defendant had sought help from neighbors and that did not work. Mr. Lee had been able to convince the man, whom Defendant had asked for help while she was being dragged by her hair, to just walk away. Even if the Court finds that Defendant could have retreated, since she was in her own home, she was not under a duty to retreat. *See, e.g. State v. Jackson*, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955). This

rule applies even to situations in which both parties are residents of the home in question.

"Where a house, premises, or place of business is jointly occupied, used, and possessed by two persons, as by partners, joint tenants, or tenants in common, each joint occupant, being equally entitled to possession, need not retreat when attacked while in the building or premises by the other joint occupant.'" *State v. Grantham*, 224 S.C. 41, 44, 77 S.E.2d 291 (1953), citing *People v. Tomlins*, 213 N.Y. 240, 107 N.E. 496 (NY Ct. App. 1914). In addition, people do not have to retreat if doing so would increase the danger. *See State v. McGee*, 185 S.C. 184, 190, 193 S.E. 303, 306 (1937). Since Defendant's prior pleas for help had escalated Mr. Lee's actions, she had reason to believe that asking for help, if even possible, would have had the same effect this time. Defendant acted reasonably based on a reasonable and genuine fear of Mr. Lee.

CONCLUSION

Defendant Whitlee Jones should be granted immunity under § 16-11-450, S.C. Code. The Act does apply to her because she was being attacked in her home, a place where she had a right to be, and she acted in self-defense in accordance with common law and the Act. Mr. Lee had committed multiple violent crimes against her that evening. Defendant, and a reasonably prudent person, would have believed she was in imminent danger of having more violent crimes being committed against her, including, but not limited to, Kidnapping and CDVHAN. She stated she believed he could have killed her at the time she acted, based on his actions at that moment and earlier. Therefore, the Court should grant Whitlee Jones immunity from being prosecuted.

Respectfully submitted,

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Charleston, South Carolina

_____, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL
COUNTY OF CHARLESTON	)	SESSIONS
	)	
	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	Charge: Murder
State of South Carolina,	)	Warrant No: 2012A1010202313
v.	)	
WHITLEE JONES,	)	States memorandum in support of denying
	)	defendant's plea for immunity
DEFENDANT	)	

On August 12, 2014 the Court heard the defense motion for immunity pursuant to S.C. Code Ann. §16-11-440 (C). At the conclusion of testimony the court requested both parties provide written briefs on the appropriate standard for the court to apply in order for it to reach its conclusion and what factual determinations it must make in order to resolve any disputed facts.

STATEMENT OF THE UNDISPUTED FACTS

On November 2, 2012, Whitlee Jones stabbed Eric Lee one time. As a result of that wound, Mr. Lee died.

Whitlee Jones and Eric Lee were in a romantic relationship and resided together at 7740 Warsaw Road in North Charleston, SC. The evening of November 2, 2012, the two were in a verbal argument over Mr. Lee wanting to take possession of Defendant's phone, a phone he had paid for but had given to her. This dispute escalated and became physical to some degree. During this altercation some of the Defendants hairweave was pulled out and later discovered on the ground in front of the residence.

Approximately forty-five minutes after this altercation, the Defendant returned to the home so that she could get her belongings and leave. After arriving back at the shared residence the Defendant borrowed a phone from Mr. Lee so that she could call her friends to come help her move her belongings out of the apartment. The Defendant's two friends Erica Grant and Jasmine Taylor showed up to help her gather her belongings and leave. While going to the upstairs bedroom to get her shoes, Defendant saw Mr. Lee's knife in their bedroom and put it in her bra in anticipation of an additional confrontation with Mr. Lee. Right before the Defendant left the residence she and Mr. Lee were standing face to face arguing when the Defendant grabbed the knife from her shirt and stabbed Mr. Lee one time in the heart.

Defendant then ran out of the house with her friends, but not long after leaving, asked to return to the house to check on Mr. Lee because she was concerned for him and had not known the extent of his injury. After arriving to the house, the Defendant saw Mr. Lee's condition and took him to the hospital with Taylor while Grant stayed at the house to wait for police.

DISCUSSION

1. Is the Defendant entitled to seek immunity from prosecution under §16-11-440(C)?

In June of 2006 our state Legislature enacted the Protection of Persons and Property Act. While highly touted by the NRA and individual rights activists across the state, little did they know that their attempt to increase the protections afforded to law abiding citizens would become the criminal contingent's best defense and ultimately a potential license to kill.

The intent of the statute is articulated by the General Assembly in §16-11-420. It states:

(A) It is the intent of the General Assembly 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.

(B) The General Assembly finds that it is proper for 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.

Under the plain language of the statute and understanding the goals of the legislature, this statute was designed to empower South Carolina residents to protect their homes, cars, and places of business from external and unknown threats. Understanding the intent to codify the common law Castle Doctrine first requires an understanding of what the common law Castle Doctrine was prior to the enactment of this statute. According to Black's Law Dictionary the Castle Doctrine is

[A]n exception to the retreat rule allowing the use of deadly force by a person who is protecting his or her home and its inhabitants from attack, esp. from a trespasser who intends to commit a felony or inflict serious bodily harm.

The duty to retreat does not necessarily exist during confrontations between two lawful residents. See State v. Grantham, 224 S.C. 41, 45-46 (1953). However, the absence of a duty to retreat is not the sole import of the Castle Doctrine as seen by the inclusion by our legislature of a presumption that one facing such attack be reasonable in their fear of death or great bodily harm. States such as West Virginia have more articulately defined the Castle Doctrine by requiring for one "to justify [using] deadly force resulting in death, the occupant must show that the assailant was an *intruder*." State v. Adkins, 232 W.Va. 677 (2013)(emphasis added). To conclude that the Castle Doctrine and therefore the Protections of Persons and Properties Act applies to disputes between two lawful residents of the same dwelling is not only in contradiction of the legislative intent and common law definition of the Castle Doctrine but it is also inconsistent with the plain wording and statutory construction of §16-11-440. This is due to the fact that this exact situation is specifically excluded from the statute by §16-11-440 (B)(1), which states that the reasonable fear of death or great bodily harm presumption is not applicable if the person "against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling." The inclusion of this language must be interpreted as applicable to the entire act. The intent consistent with that interpretation is further

evidenced by the legislature's use of the phrase "in another place" in §16-11-440(C). That section 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.

Accordingly, "in another place" refers to a place other than one's dwelling, residence, or occupied vehicle. State v. Manning, 2014 WL 1805319 (2014)(Opinion withdrawn).

2. If §16-11-440(C) is applicable, what standard should apply and what findings must be made?

Following State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), individuals charged with a crime are entitled to a pretrial evidentiary hearing in which they could obtain immunity from prosecution should they prove by a preponderance of the evidence the applicability of the Protection of Persons and Property Act. Our Supreme Court held that the "only way this statutorily granted right [to immunity] could be meaningfully enforced [is] for the defendant to be able to raise immunity in a *pre-trial* motion." Duncan, 392 S.C. at 409. Additionally, "the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." *Id.* at 411. On appeal, the standard of review for such a determination is an abuse of discretion. State v. Curry, 406 S.C. 364, 370 (2013).

A similar situation was recently addressed by our Supreme Court in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013). In Curry the appellant and the victim were both social guests in a residence. They engaged in a physical fight that was broken up by witnesses at the residence. Ultimately the appellant retrieved his pistol and shot the victim under disputed factual circumstances. The Court found that the analysis using the preponderance of the evidence standard

under §16-11-440(C) required specific application as to each element of self-defense. Curry, 406 S.C. at 371.

Accordingly, the court must determine by a preponderance of the evidence that 1) the defendant was without fault in bringing on the difficulty, 2) that the defendant actually believed they were in imminent danger of death or great bodily injury, 3) that a reasonably prudent man of ordinary firmness and courage would have entertained that same belief, and 4) the defendant had no other probable means of avoiding the danger death or great bodily injury than to act as they did. *See Id.* If the Protections of Persons and Properties Act and the Castle Doctrine are found to be applicable the fourth element is excused. *Id.*¹

However, without weighing in on the specific facts the Court in Curry declared that the “Appellant’s claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.” *Id.* at 372. In essence the court is saying that the reasonableness of ones beliefs and actions is not a finding appropriately made using the preponderance standard in granting immunity. Those elements of self-defense are specifically designed to be presented to a jury and are not the type appropriately resolved in a Duncan hearing. That analysis is consistent with statutory construction in that under Section (A) of the Act, the presumption of one being in fear of death or great bodily injury obviates the court from needing to make findings on those relevant elements of self-defense.

In the case at hand there was ample evidence presented for the court to conclude that 1) the defendant was not in fear for her life; and 2) even if she were, that fear was not of the sort that a reasonable person would feel that deadly force would be the only means of quelling that threat.

¹ The Court in Curry reviewed the issue regarding the applicability of Duncan at the directed verdict stage because the trial court did not have the benefit of the Duncan opinion at the time of trial. They therefore used the evidence presented at trial the same as if it were the evidence presented in a motion in limine in order to preserve the issue for review.

“Only such a degree of force may be used in self-defense as is necessary, or is honestly and reasonably believed by the accused to be necessary, to defend oneself against an attack, and may not exceed that which appears necessary to a reasonable person under similar circumstances. The use of excessive force in light of the circumstances vitiates the defense.” 6 Am. Jur. 2d Assault and Battery § 52.

The testimony and written statement of Taylor contradicts the written statement by the defendant in multiple ways. In the Defendant’s statement she claims the victim was pushing and was shaking her immediately prior to the stabbing.² However, Taylor testified that she was present the entire time and kept an eye on the victim to ensure that he did not grab or hit the Defendant. She testified that she never saw the victim grab, strike, or touch the Defendant in any way and she was standing less than six feet away from him at the time of the stabbing. Furthermore, in her written statement,³ Taylor indicated that as she and the defendant ran to the car, got in, and drove off they were “laughing.” Laughing following fatally stabbing the victim in the heart is surely indicative of a lack of fear of death or great bodily injury. Moreover, Ms. Taylor testified that the victim was outnumbered 3 to 1 and that had he laid his hands on the Defendant they would have been able to overpower him physically.⁴ Lastly, contrary to the defendant’s written statement, in Officer Bridge’s cruiser video, the defendant’s response to Officer Bridges question, why did you stab him, was “he was trying to stop me from leaving.” Officer Bridges then asked what was he doing to stop you and the Defendant answered “He was standing in front of me.”⁵ This response in the immediate aftermath of the stabbing is a clear indication of the circumstances at the time of

² In addition the defendant claims the victim was punching her and fighting her in the prior confrontation. However, the state entered the defendants mug shot from the night of the incident that shows her without any bruising or any other noticeable injury.

³ The written statement of Jasmine Taylor was entered as a State’s exhibit for purposes of this hearing.

⁴ It is uncontroverted that the victim was unarmed throughout the confrontation.

⁵ Officer Bridges cruiser video is entered into evidence as a State’s exhibit

the stabbing as the Defendant had not yet had time to formulate her self-defense theory and was speaking in more factual terms. This is evident by the consistency of the defendant's initial description and that of Ms. Taylor.

In conclusion, despite the underlying gender differences, the unarmed victim was outnumbered 3 to 1, the defendant had no physical injuries, there is no credible evidence that the victim ever struck or attempted to strike the defendant prior to his demise, and the defendant was laughing immediately after stabbing the victim and fleeing the scene. There is insufficient evidence to conclude that the defendant was in fear for her life and even if the court relies on the defendant's statement in order to reach that conclusion, such belief would be unreasonable to an ordinary person in the same circumstances.

3. Is §16-11-440 Constitutional?

The Supreme Court of the United States has held previously that:

We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta, wherein it was written, we will sell to no man, we will not deny or defer to any man either justice or right.

Klopfer v. State of N.C., 386 U.S. 213, 223 (1967). Additionally, the Court ruled that:

The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused. In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial, which exists separate from, and at times in opposition to, the interests of the accused.

Barker v. Wingo, 407 U.S. 514, 520 (1972). The Court further observed in Barker that violation of the speedy trial right "might work to the accused's advantage," since it belongs to both the defendant and society. *Id.* at 521. It also noted that the right is "a more vague concept than other

procedural rights” U.S. v. Ferebe, 332 F.3d 722, 735 (2003) (quoting Barker v. Wingo 407 U.S. 514).

The Court's opinion in Kloper v. North Carolina, 386 U.S. 213 (1967), established that the right to a speedy trial is ‘fundamental’ and is imposed by the Due Process Clause of the Fourteenth Amendment on the States. The Due process clause of the Fourteenth and Eighth Amendment apply to “legal persons” and not solely individuals. Therefore, these rights similar to the Sixth Amendment right to a speedy trial belong in large part to society as a whole. Denial of society’s right to have factual disputes in criminal proceedings presented to a jury is in essence a violation of the substantive due process right of our community. Such a violation is indicative of our legislature overstepping its bounds and authority by enacting §16-11-400.

Accordingly, the right to a jury trial guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and further guaranteed by the South Carolina Constitution, in Article I, § 14 is not a right solely enjoyed by the criminally accused. Therefore, a state statute such as §16-11-440 that removes dispositive factual disputes from the hands of a jury and places it into the hands of a judge is a violation of our society’s constitutionally guaranteed right to a jury trial and the equal protection clause. U.S. Const. amend. 14.

CONCLUSION

In summary, §16-11-440(C) is inapplicable to a dispute between cohabitants of a residence when that altercation takes place in their shared residence because this scenario is specifically excluded by §16-11-440(B). Even if the court finds §16-11-440(C) applicable immunity should be denied because the defendant failed to prove by a preponderance of the evidence that she was in imminent fear of death or great bodily injury at the time she stabbed the victim and she failed to prove that such belief if existing was reasonable under the circumstances. Lastly, even if the

court were to find that §16-11-440(C) were applicable and that the defendant met her requisite burden of proof, immunity should be denied and the court should find §16-11-400 unconstitutional as being in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution.

Respectfully submitted,

E. Culver Kidd
Assistant Solicitor

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	Warrant: 2012A1010202313
	)	Charge: Murder
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	
	)	DEFENDANT’S SUPPLEMENTAL
WHITLEE JONES,	)	MEMORANDUM FOR
	)	<i>DUNCAN</i> HEARING
Defendant.	)	
	)	

I. THE STATE DOES NOT HAVE A SPECIFIC RIGHT TO TRIAL WHICH SHOULD BE CONSIDERED IN THE COURT’S CONSIDERATION OF IMMUNITY IN A *DUNCAN* HEARING, ESPECIALLY BECAUSE THE ACT IS IN FACT A TOOL FOR JUDGES TO BAR PROSECUTION.

Jury trials are an important part of the American judicial system. The United States Constitution sets out a criminal defendant’s right to a jury trial in the Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The South Carolina Constitution, in Article I, § 14, sets out the right to a jury trial as well:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

In South Carolina, while Article I, § 14 has been found to apply to non-criminal matters, it stresses the importance of a jury trial for a person charged with a crime, a defendant. In addressing jury trial issues, the State is allowed to raise certain matters and the defendant is not allowed all decisions regarding fairness. For example, a defendant does not necessarily have a

constitutional right to plead guilty. In *State v. Easler*, 322 S.C. 333, 360, 471 S.E.2d 745 (Ct. App. 1996), the circuit court was correct in refusing to accept a plea when the possible result would have been the State not being able to try the defendant for more serious charges due to possible Double Jeopardy issues. However, a defendant's rights are generally paramount. In *State v. Manning*, 329 S.C. 1, 8-9, 495 S.E.2d 191, 195 (1997), the supreme court analyzed the State's request for a change of venue and found that the trial judge erred in granting its motion due to its infringement on the defendant's trial rights: "[B]ecause a defendant's right to be tried in the county where the alleged offense occurred is defeated when the prosecution's request for a change of venue is granted, a court should exercise great care and deliberation when changing venue at the request of the prosecution, and the state's motion and evidence supporting its motion should be strictly scrutinized to ensure the defendant's right is not abused." A criminal defendant's rights are the focus in analyzing jury trial decisions.

Most importantly, the Act outright allows for and directs circuit court judges to grant immunity to a defendant if the circumstances warrant it. Nothing is set out in the Act to require the Court to weigh its consideration against the State's possible right to try a case or even general community concerns. On the contrary, the Act is intended, according to the General Assembly's express intent, to protect the individual citizens of South Carolina and is written to concentrate on the actual individual in question. In § 16-11-420(D), S.C. Code, "The General Assembly [held] that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles." It further elaborated in (E), finding 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." Everything about the Act can be read to look at an individual's rights and not even necessarily

the intent of the intruder or attacker. For example, it can be argued that many people who intrude into someone's home or business have no intention of harming anyone but instead are looking for items to steal. Despite this likely lack of dangerous intent on behalf of the intruder, the General Assembly instructed 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 someone is unlawfully and forcefully entering someone's home or vehicle. § 16-11-440(A). The General Assembly clearly intended for courts to focus on the individual who acted in self-defense.

The Act is a specific tool for the Court to take action, despite what the State may want: "The General Assembly finds that it is proper for 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." § 16-11-440 (B), S.C. Code. The Act and the possibility of immunity would not exist if the General Assembly wanted to rely on the State's ability to decide whether or not to prosecute a case.

II. DEFENDANT'S RETURN TO THE HOME DOES NOT PRECLUDE HER FROM ACTING OR CLAIMING SELF-DEFENSE BECAUSE SHE WAS FACED WITH A NEW THREAT, AND HER ASSESSMENT OF THE IMMEDIATE THREAT WAS ALLOWED TO BE BASED ON PRIOR EXPERIENCES WITH THE DECEASED.

Under common law, self-defense does not preclude people from acting and protecting themselves against people with whom they have prior disputes. On the contrary, the law specifically allows for evidence of such history to be admitted into Evidence. It is well-settled that evidence of a victim's past acts of violence against a defendant are admissible to help establish the reasonableness of a defendant's actions, in particular if those acts were connected

closely in time or event to the homicide, since they would be an indication of the victim's state of mind. *State v. Day*, 341 S.C. 410, 419-20, 535 S.E.2d 431 (2000).

However, while allowing prior incidents to be considered in a self-defense analysis, when someone is acting in defense, that action must be based on a current threat. *State v. Stockman*, 82 S.C. 388, 64 S.E. 595 (1909). In *Stockman*, the defendant and victim had an altercation in the defendant's home. However, the victim then left the house. The defendant followed him outside and ultimately shot him while the victim was having an altercation with a third person. The trial court charged the following:

"Now, a man's house is his castle; he has the right to protect every member occupying it, or there with him, and he may take life if it is necessary to do so, in order for such protection, but the danger must be imminent, must be immediate; when the danger has passed, one has no right to follow up another who has invaded his home for the purpose of taking his life; he has no right to do that under the law; no such law anywhere making the taking of human life excusable unless there be a necessity for it. But one when danger is passed, is over, is not allowed under the law to follow up another and take his life. The danger must be imminent; it must be immediate."

Id. at 401. The supreme court found the charge to be appropriate in that self-defense does require an immediate threat. *Id.*

Nothing in *Stockman* warrants precluding Defendant from acting in self-defense. When she acted, she was not merely following up on the prior attack. Instead, there was a new threat and she acted on that. However, when she acted, she was assessing the threat based on Mr. Lee's current and past actions against her, which she is allowed to do. Her return to the home did not mean she was not fearful of Mr. Lee at the time she stabbed him. She was very limited in what she could have done when she made the decision to go back to the house. It was the middle of the night. Neighbors had already declined to help her after she had been screaming for help. And the only reason she escaped Mr. Lee earlier was by surrendering her phone to him, despite it

being the object that would have allowed her to seek a safer alternative, the object that would have negated her need to go back to the home. According to her statements, she went back because she did not have a phone on her and she believed, based on prior experience, that things had perhaps calmed down. When she returned, she discovered she was right in that he did give her back her phone and allowed her to call her friends for assistance. However, while she was packing her belongings to leave the residence and him, he became more hostile. The witness Ms. Taylor testified that he was walking very closely to Defendant in an intimidating manner and that he was cursing her using degrading names. He also made comments about being upset due to the police having arrived while she was gone.¹ Based on his behavior earlier that evening² and the testimony of both witnesses of his controlling nature, it is reasonable to believe that he worked himself up into getting physical with her again.

Many in the community and the General Assembly consider criminal domestic violence to be a serious issue. In August 2014, Charleston's The Post & Courier published a seven-part investigative series called, "Till Death Do Us Part," lamenting South Carolina being named first in the nation for domestic killings of women by men. Doug Pardue, et al, *Till Death Do Us Part*, The Post & Courier, August 20, 2014, at A1 . The series asked the question, "Why do women stay in- and return to- abusive relationships, even until their deaths," recognizing that "the fact that women do stay so often provides a convenient excuse to blame victims, rather than men who pull the trigger (or knives or fists)." *Id.* at Part Four. The article found that, "It's not a simple question to answer. Experts and survivors both describe an all-ensnaring web of hope, culture,

¹ Before Defendant had returned home, there is no indication she had any knowledge of the police presence since they never spoke to her.

² He tried to prevent her from leaving the home, he followed her outside after she got away, he tried to get her back in the house by pulling her hair to the point he tore out her weave, and he did not allow her to get away until she gave him her phone.

dependence, fear, religion and even love that binds women to their abusers. But mostly it comes down to what he controls — which often is everything, even her life.” *Id.*

Defendant’s relationship with Mr. Lee was not unusual. While the State has suggested that her lack of communicating prior abuse to her friends means that such abuse did not occur, this would not be the case in many abusive relationships. In Part One of “Till Death Do Us Part,” the series notes that “South Carolina is a state where the deck is stacked against women trapped in the cycle of abuse” and that “the problem essentially remains a silent epidemic, a private matter that is seldom discussed outside the home until someone is seriously hurt.”

Also, South Carolina courts and the General Assembly have recognized certain protections in cases in which one acts against a batterer. For example, Section 17-23-170 of the South Carolina Code allows for testimony of an expert regarding Battered Spouse Syndrome, specifically directing that “battered spouse syndrome shall not be considered a new scientific technique the reliability of which is unproven.” It does not make sense that lawmakers would wish to preclude Defendant or others in her position from protecting themselves based on their prior lack of action and perceived acceptance of abuse. To do so would be to indicate that they were at fault and therefore not allowed to act in self-defense.

When Defendant was packing her belongings and leaving the shared home, it was likely a trigger for another act of violence on the part of Mr. Lee. According to Part Four of “Till Death Do Us Part,” My Sister’s House, a shelter for battered women, warns on its website, “The most dangerous time for a victim is when leaving the relationship. Fifty percent of injuries and 75 percent of domestic homicides occur after the relationship ends.” Defendant had reason to fear Mr. Lee would perpetrate a violent crime against her and cause her great bodily injury, or even death, according to the requirements of § 16-11-440 (C) of the S.C. Code.

CONCLUSION

Defendant should be granted immunity. The General Assembly and the South Carolina Supreme Court have authorized circuit court judges to grant immunity. If the Legislature had intended for the Court to weigh considerations for the State, it could have and would have expressed this intent in the statute setting out its intent. On the contrary, the whole point to a hearing based on *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), is to take away the prosecutorial decisions of the State.

Defendant's actions were not contrary to laws established in the Act and in case law, including *Stockman*. She acted when being faced with an immediate threat in her home. Her actions were not merely based on the prior incident, less than forty-five minutes beforehand. However, this prior incident was fresh in her mind and reasonably influenced her beliefs about the danger that Mr. Lee posed to her at the time she acted, when the immediate threat existed. Such consideration is allowed for by the law.

Defendant acted in self-defense and the Court should grant her immunity, as the law allows and requires.

Respectfully submitted,

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August 25, 2014

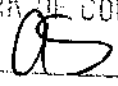
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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

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JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
BY )

v.)

WHITLEE JONES,)

DEFENDANT.)
_____)

IN THE COURT OF GENERAL
SESSIONS FOR THE NINTH
JUDICIAL CIRCUIT

Charge: Murder

Warrant No: 2012A1010202313

**ORDER GRANTING IMMUNITY
FROM PROSECUTION TO
DEFENDANT**

I.

INTRODUCTION

 After a hearing before this Court¹ and upon careful consideration of the facts and circumstances of this case, this Court finds that Defendant Whitlee Jones is hereby granted immunity from prosecution based on the Protection of Persons and Property Act (the "Act"), found in § 16-11-410, *et seq.*, of the S.C. Code (2006). Defendant is entitled to immunity under the Act because she was acting lawfully, was in a place where she had a right to be, was being attacked, and was acting in compliance with established common law principles of self-defense, based on facts established by a preponderance of the evidence.

II.

FINDINGS OF FACT

The hearing, which was held according to *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), established many facts that were either undisputed or could not be disproven. On

¹ A pre-trial immunity hearing was held in Charleston, SC, on August 12, 2014 according to *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). The State and the Defendant submitted briefs in support of their position after this Court took the matter under advisement.

November 2, 2012, Defendant stabbed Eric Lee one time. As a result of that wound, Mr. Lee died.

Defendant and the victim Eric Lee were in a romantic relationship and resided together at 7740 Warsaw Road in North Charleston, SC. On the evening of November 1, 2012, the two were in a verbal argument in their shared home over Mr. Lee wanting to take possession of Defendant's phone, a phone he purchased but gave to her. Defendant was in fear for her safety, based on Mr. Lee's actions that night and on prior occasions, and tried to leave their home. However, Mr. Lee pushed and punched her and prevented her from leaving out of the front door. Defendant was eventually able to leave the home through a back door.



Mr. Lee followed her outside and continued to verbally and physically intimidate her to retrieve the phone. He attempted to force her back in the home by pulling her by her hair. According to Defendant and a neighbor Ms. Smith, Mr. Lee dragged Defendant down the street by her hair while she was screaming for help, tearing out a large portion of her hair weave. Ms. Smith called 911 for help at 11:28 p.m. on November 1, 2012. Defendant attempted to call her friend Erica Grant for help. While Ms. Grant did not answer, her voicemail came on and recorded some of the altercation between Defendant and Mr. Lee. As can be heard on the recording, Defendant screamed for help and repeatedly asked Mr. Lee to get off of her. Defendant asked a male neighbor for help but Mr. Lee told him to move along and he did so. Defendant attempted to call the police for help, but Mr. Lee continued to try to force her back in the home, so she gave him the phone and ran away. While Defendant was behind other apartments, a police officer came in response to Defendant's pleas for help due to the neighbor Ms. Smith calling 911. The police officer spoke to Mr. Lee, took Mr. Lee's word that no assault had occurred, and left the scene without making contact with Defendant.

After waiting for Mr. Lee and herself to calm down, and unable to contact anyone else without her cell phone, Defendant returned to the home so that she could retrieve her belongings and leave. Shortly thereafter, Defendant's two friends Erica Grant and Jasmine Taylor listened to the voicemail that Defendant left on Ms. Grant's phone, and drove to assist Defendant in removing her belongings. While the women were removing her belongings, Mr. Lee again became agitated and pushed Defendant throughout the home. While going to the upstairs bedroom to get her shoes, Defendant saw Mr. Lee's knife in their bedroom and put it in her bra in case he attempted to attack her again. According to her statement, when Defendant was attempting to leave the home, Mr. Lee attacked Defendant again. He yelled at her and pushed her. As she was trying to leave, he grabbed her and shook her. As he was getting ready to hit her again, she grabbed the knife from her shirt and struck out at him in order to get away. The knife hit him one time in the heart. Her friends were outside of the house, and did not see the last altercation.

Defendant then left with her friends. Not long after leaving, Defendant asked to go back to check on Mr. Lee because she was concerned for him and she was unsure of the extent of his injury. After arriving at the home, Defendant saw Mr. Lee's condition and took him to the hospital with Ms. Taylor while Ms. Grant stayed at the house to wait for police. Ms. Grant and a neighbor called the police at 12:12 a.m. on November 2, 2012. Once Defendant got to the hospital, she cooperated with police. She was extremely distraught and had to be treated by hospital staff. At the police station, Defendant gave a written statement during the course of giving a recorded statement, both stating she was in fear of her safety when she acted, that she stabbed Mr. Lee to get away, that she believed he would have killed her if she had not acted, and that she never intended to kill him.

III.

CONCLUSIONS OF LAW

A. Standard of Review

The Act provides immunity from prosecution if applicable. S.C. Code Ann § 16-11-450(A). A claim of immunity under the Act requires a pretrial determination under a preponderance of the evidence standard. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). The South Carolina Supreme Court has found that, consistent with the text of the Act and the Castle Doctrine, a valid case of self-defense must exist and the trial court must consider the elements of self-defense to determine the defendant's entitlement to immunity under the Act. *State v. Curry*, 406 S.C. 364, 371 (2013). The court must consider all elements, save the duty to retreat.



B. The Court holds that Defendant is entitled to immunity under § 16-11-440(C) despite the fact that the Defendant and victim were co-residents in their shared home.

When the General Assembly ratified the Act, it made its intent for passing it very clear, actually stating its intent in § 16-11-420:

(E) The General Assembly finds 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.

In Section 16-11-440, the General Assembly set out the circumstances in which immunity may apply. Section (A) refers to those using force or deadly force if they are attacked in or attempting to remove an unlawful occupant from a dwelling, residence or occupied vehicle. *State v. Curry*, 406 S.C. 364, 370 (2013). The South Carolina Supreme Court states that section (A) is "the main thrust of the Act" and that it provides for the presumption of reasonable fear of imminent peril of death or great bodily injury to someone who uses deadly force to remove another from a

residence, dwelling or occupied vehicle. *Id.* Section (B) lays out exceptions to (A), stating that a person may not utilize section (A) for immunity if the victim is a lawful resident.²

If the victim is a lawful resident, then a person seeking to utilize the Act for immunity is defaulted to Section (C). Section (C) provides:

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.

Section (C) operates in a similar manner as section (A), but does not allow for the presumption of reasonable fear. Because the victim was a co-resident, subsection (A) is inapplicable to the Defendant and she is therefore defaulted into subsection (C). The State has argued that the language, "in another place where he has a right to be," would exclude the Defendant's dwelling, residence, or occupied vehicle, as those places are referred to in section (A).³ They argue that because "another place" does not encompass the Defendant's residence, she cannot utilize Section (C) for immunity. This Court disagrees, finding that the "another place" language is intended to encompass dwellings, residences or occupied vehicles, along with any other place where a person has a right to be and is acting lawfully.

It is this Court's holding that in situations where Section 16-11-440(A) does not apply because of the exceptions in (B), the "another place" language in Section (C) does not preclude one from using force or deadly force to defend themselves in one's own residence. One seeking

² § 16-11-440(B) also states that a person cannot utilize 440(A) if they are acting unlawfully, among other exceptions.

³ Recently, the Court of Appeals decided *State v. Manning*, 2014 S.C. App. LEXIS 95 (S.C. App. 2014), which held that "another place" excludes one's residence. However, this case is not final and a rehearing is pending (Rehearing granted by *State v. Manning*, 2014 S.C. App. LEXIS 193 (S.C. App., June 26, 2014)).

to utilize section (C) against another co-resident simply loses the presumption of reasonable fear of imminent peril of death or great bodily injury. This Court finds that the presumption of reasonable fear found in (A) does not apply to (C), because the presumption applies only to force or deadly force used against someone who is "unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle." S.C. Code Ann. § 16-11-440(A). Section (C) applies in those same locations, but removes the presumption of reasonable fear. In this circumstance, the Defendant does not have the presumption of reasonable fear because the victim was a resident of their shared home.

To hold that a person cannot utilize Section 16-11-440(C) if the person were inside of their own home would create a nonsensical result— that a person can defend themselves from attack by their spouses, lovers, or any other co-resident while outside of their home, but not inside of their home. When using force or deadly force against someone else that has a right to be there, but is acting unlawfully, the person defending themselves simply loses the presumption of reasonable fear under (A) and they must establish the fear element through the other principals of self defense. The Court must examine each individual factual situation to determine whether the Defendant had the reasonable belief that their actions were necessary to prevent death, or great bodily injury, or the commission of a violent crime as defined in section S.C. Code Ann § 16-1-60.

C. The Court orders that Defendant is granted immunity because her actions were in accordance with the Act and common law self-defense principles, as established by a preponderance of the evidence.

Under South Carolina common law self-defense, a person can use deadly force to protect himself or herself if certain elements are met:

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 own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

Defendant's actions complied with these self-defense elements. Defendant stated that she believed that if she did not act as she did, then she would have been killed. Nothing suggests that Defendant was at fault for bringing on the difficulty. Throughout the evening, her actions demonstrated that she wanted to get away from Mr. Lee and to retain her phone.



Based on Mr. Lee's behavior throughout the night, Defendant's belief that she was in danger was reasonable for both her and a reasonably prudent person. Earlier in the evening, less than forty-five minutes before the final altercation, Mr. Lee had perpetrated at least two crimes against Defendant, both of which would be classified as "violent" in its everyday meaning and under Section 16-1-60 of the South Carolina Code of Laws: Kidnapping and Criminal Domestic Violence of a High & Aggravated Nature ("CDVHAN"). The Act specifically allows for people to act "to prevent the commission of a violent crime as defined in Section 16-1-60." S.C. Code Ann. § 16-11-440(C).

Under Section 16-3-910, S.C. Code, Kidnapping is defined as occurring when someone, "unlawfully seize[s], confine[s], inveigle[s], decoy[s], kidnap[s], abduct[s] or carr[ies] away any other person by any means whatsoever without authority of law." As for CDVHAN, Defendant and Mr. Lee were household members to which criminal domestic violence laws would apply under the definitions in the S.C. Code: They fit section (4), "a male and female who are cohabiting or formerly have cohabited." § 16-25-10. Under § 16-25-20, a criminal domestic

violence is defined as follows: "(A) It is unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril. . . ." S.C. Code Ann. § 16-25-20(A). Section 16-25-65, provides that domestic violence that "would reasonably cause a person to fear imminent serious bodily injury or death" elevates that act to CDVHAN, which would qualify as a violent crime under Section 16-1-60.



Mr. Lee was attacking Defendant and trying to prevent her from leaving as he had done so earlier in the evening. Defendant had reason to believe that violent crimes were about to be committed against her again at the time she acted with the knife, and a reasonably prudent person could have believed that her actions were necessary to save herself from great bodily harm or death. It is well-settled that evidence of a victim's past acts of violence against a defendant are admissible to help establish the reasonableness of a defendant's actions, in particular if those acts were connected closely in time or event to the homicide, since they would be an indication of the victim's state of mind at the time of the homicide and why the defendant may have reasonably feared him. *See State v. Day*, 341 S.C. 410, 419-20, 535 S.E.2d 431, 436 (2000).

However, while allowing prior incidents to be considered in a self-defense analysis, when someone is acting in defense, that action must be based on a current threat. *See State v. Stockman*, 82 S.C. 388, 64 S.E. 595 (1909). When Defendant acted, she was not merely following up on the prior attack. Instead, a new immediate threat existed and she acted on that. Mr. Lee was yelling, pushing, grabbing, shaking, and about to hit Defendant again. When she acted, she was assessing the threat based on Mr. Lee's current and past actions against her, which she was allowed to do.

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In addition, self-defense is met in that Defendant was not in a position to get away without acting, even though she did not have a duty to retreat. While Defendant had two friends nearby, they were talking to each other outside of the home at the time of the final altercation. Defendant was not required to wait for possible assistance from others. It was reasonable for her to believe that others would not be able to help her. Earlier in the evening, Defendant had sought help from neighbors and had been unsuccessful. Mr. Lee had been able to convince the male neighbor, whom Defendant had asked for help while she was being dragged by her hair, to just walk away. Mr. Lee was in close contact with Defendant and had his hands on her just prior to when he was about to hit her again. Nothing suggests that Defendant would have been able to physically overpower Mr. Lee. In addition, people do not have to retreat if doing so would increase the danger. *See State v. McGee*, 185 S.C. 184, 190, 193 S.E. 303, 306 (1937). Since Defendant's prior pleas for help had escalated Mr. Lee's actions, she had reason to believe that asking for help, if even possible, would have had the same effect this time. Defendant acted reasonably based on a reasonable and genuine fear of Mr. Lee.

Furthermore, since Defendant was in her own home, she was not under a duty to retreat. *See, e.g., State v. Jackson*, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955). This rule applies even to situations in which both parties are residents of the home in question. "Where a house, premises, or place of business is jointly occupied, used, and possessed by two persons, as by partners, joint tenants, or tenants in common, each joint occupant, being equally entitled to possession, need not retreat when attacked while in the building or premises by the other joint occupant." *State v. Grantham*, 224 S.C. 41, 44, 77 S.E.2d 291 (1953), citing *State v. Gordon*, 128 S.C. 422, 426, 122 S.E. 501, 502 (1924).

Most of the evidence presented on what happened on November 1, 2012, and November 2, 2012, was based on Defendant's statements to police. While her friends were present for part of the time, neither saw the final exchange leading to Mr. Lee's death. They did, however, corroborate that Mr. Lee was angry and intimidating towards Defendant and was possessive and controlling in general. Further, the prior attack, less than forty-five minutes beforehand, was corroborated by Ms. Smith's 911 call, the voice recording left by Defendant to Ms. Grant, and a picture taken by police of Defendant's hair weave torn out by Mr. Lee.



The State has argued, according to its reading of *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013), that the reasonableness of someone's beliefs and actions are meant for a jury and not a judge during a *Duncan* hearing. However, that interpretation would disallow any finding of immunity under section (C) of § 16-11-440. Instead, "[c]onsistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat." *Curry* at 371. The South Carolina Supreme Court specifically found that, "such immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence," saying that a trial court is allowed to make such a finding. *Id.* at 372.

This Court is satisfied that Defendant has proven, by a preponderance of the evidence, that she was reasonably in fear of great bodily injury, possibly death, and certainly the perpetration of violent crimes, and that she acted in self-defense, in compliance with the law.

D. The Court holds that the Act is constitutional and the Court is allowed, under authority of the Legislature, to grant immunity to those charged with crimes.

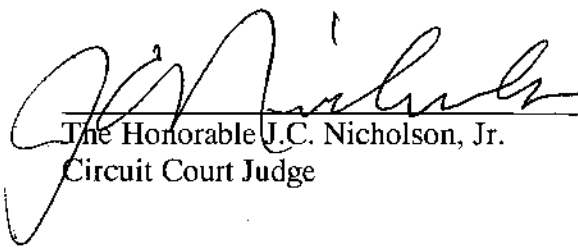
The Court does not agree with the State that the Act is unconstitutional in depriving society of its interest in a Speedy Trial. Judges are allowed to make decisions of law. Those decisions are at times necessarily based on certain decisions of fact. The Legislature created the crimes with which people such as Defendant are charged. It has set out the elements that need to be established for a person to be charged and convicted of a crime. Conversely, it can set out means to find that someone cannot be prosecuted. Society is not served by allowing the State unrestricted decision-making authority.

CONCLUSION



Whitlee Jones is granted immunity under § 16-11-450 of the S.C. Code. This Court finds that under § 16-11-440(C), the Defendant was not engaged in unlawful activity, was attacked in a place where she had a right to be, had no duty to retreat, and had the right to stand her ground and meet force with deadly force. Because her actions fell under section (C), she does not have the presumption of reasonable fear. However, the §16-11-440(C) applies to her actions because she was being attacked in her own home and she acted in self-defense based on the law. Mr. Lee had committed multiple violent crimes against her that evening. She admitted in her statement that she believed he would have killed her at the time she acted, based on his actions at that moment and earlier in the evening. A reasonably prudent person would have believed she was in imminent danger of great bodily injury, or death, or of Mr. Lee committing additional violent crimes against her. Therefore, the Court grants Whitlee Jones immunity from prosecution.

IT IS SO ORDERED!


The Honorable J.C. Nicholson, Jr.
Circuit Court Judge

Charleston, South Carolina
10/3, 2014

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY 

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

RICK GRIMES,

Defendant

) **IN THE COURT OF GENERAL SESSIONS**
) **FOR THE NINTH JUDICIAL CIRCUIT**

) Warrant No(s): XXX

) Charge(s): Murder

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**MOTION TO DISMISS, MOTION
FOR IMMUNITY FROM CRIMINAL
PROSECUTION UNDER
SC CODE § 16-11-410 *et. seq.***

The Defendant, by and through his undersigned counsel, moves this Court for an order, as soon as the matter may be heard, to dismiss the above-referenced warrants pursuant to S.C. Code Ann. 16-11-410 *et seq.*, the “Protection of Persons and Property Act.”

In support of this motion, the Defendant asserts as follows:

1. On September 10, 2011, the Defendant, Rick Grimes, was arrested for the above-captioned charge of Murder.
2. This incident occurred on or about September 10, 2011 in a field at approximately 9:00 PM. That location was part of Hershel Greene’s farm and property. The stabbing took place in the field, a place where the Defendant had a right to be. At the time he was an invited guest of Mr. Greene.
3. The Defendant was without fault in bringing on the difficulty between himself and the alleged victim, Shane Walsh. The Defendant reported stabbing his best friend, Mr. Walsh, after Mr. Walsh lured him away from their group of friends under false pretenses in order to isolate him and kill him. Mr. Walsh pointed a gun at him and made verbal threats he would kill him.
4. The Defendant actually believed that he was in imminent danger of losing his life or sustaining serious injury, and was, in fact, in such imminent danger.
5. A reasonably prudent man of ordinary firmness and courage would have entertained the same belief.
6. The Defendant was in fact in imminent danger, and the circumstances were such as would warrant a man of ordinary firmness, prudence, and courage to strike or attempt to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.

7. Based on the foregoing, the Defendant submits that, as a matter of law, he is immune from prosecution under S.C. Code § 16-11-410 *et seq.* and that such immunity is established by a preponderance of the evidence.
8. The Defendant further submits that he was justified in stabbing at his attacker, and that his actions were legally justified and excusable under the law of self-defense. See *State v. Duncan*, 392 S.C. 404 (2011).

The Defendant will present evidence, witness testimony, photographs, and his own testimony, establishing his immunity from prosecution for the above-captioned charges under the South Carolina Protection of Persons and Property Act, codified at S.C. Code § 16-11-410 *et seq.*

Therefore, the Defendant requests the following relief:

- (1) That this Court schedule an evidentiary hearing on this matter during the week of October 1, 2019;
- (2) That at such hearing, this Court allow the Defendant to present evidence and testimony regarding these matters;
- (3) At the conclusion of such proceedings, that this Court issue an order finding that the Defendant was justified in using deadly force and is immune from criminal prosecution pursuant to S.C. Code § 16-11-410 *et seq.*

Respectfully submitted,

Megan Ehrlich
Charleston County Public Defender
ATTORNEY FOR THE DEFENDANT

Charleston, South Carolina
Friday, September 20, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

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Defendant

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Charleston County Public Defender
ATTORNEY FOR THE DEFENDANT

Charleston, South Carolina
Friday, September 20, 2019