

prove by a preponderance of the evidence that he is entitled to immunity under the Act on any ground.

FACTUAL FINDINGS

This action involves the shooting death of Scott Spivey by Weldon Boyd and Kenneth “Bradley” Williams. On September 9, 2023, Spivey was driving on Highway 9 in Horry County. He began driving erratically and, according to the testimony, he engaged in “road rage” incidents with several drivers, some of whom saw him holding a handgun.

Boyd was driving his truck pulling a trailer loaded with items he had purchased at Tractor Supply, with Williams as his passenger. Boyd pulled out of the Tractor Supply parking lot and onto Highway 9, traveling in the same direction as Spivey. Boyd intended to continue on Highway 9 toward a farm he owns in Loris, South Carolina. This would have taken him past Camp Swamp Road, which intersects with Highway 9 about nine miles from Tractor Supply.

At some point Spivey passed on Boyd’s right and Williams testified Spivey pointed a handgun at Williams. Almost immediately thereafter, Spivey pulled in front of the Boyd vehicle. Once Spivey pulled in front of Boyd’s truck, he remained in front of the Defendants throughout the ordeal. According to the testimony, Spivey “brake checked” Boyd’s truck several times when the Defendants were in close proximity behind Spivey. One “brake check” maneuver forced Boyd to drive onto the grass median to avoid rear-ending the Spivey vehicle, but Boyd quickly regained control and continued to aggressively pursue Spivey’s vehicle.

The Defendants' pursuit lasted from 5 to 9 miles. Boyd eventually called 911 to report Spivey's activities and he remained on the 911 call throughout the remainder of the pursuit.² Both vehicles reached speeds in excess of 100 miles per hour during the extended and lengthy chase. Williams testified he took pictures of Spivey's vehicle because Spivey's conduct was scary. Williams conceded that they pursued Spivey for a long way in excess of the speed limit, although he maintained he did not know exactly how fast they went. Williams testified on cross-examination that he recognized immediately that Spivey was a danger, but at no time did he tell Boyd to stop the pursuit, ask to be let out of the vehicle, or insist they not turn onto Camp Swamp Road or drive up to Spivey. Williams admitted that there was nothing that kept them from discontinuing their pursuit of Spivey, but that Boyd was angry when Spivey ran them off the road into the median.

Spivey turned off Highway 9 onto Camp Swamp Road and, instead of proceeding along their intended route, the Defendants turned onto Camp Swamp Road as well. Williams testified that as they started to make their turn onto Camp Swamp Road, Spivey was stopped. Similarly, although he denied it during the hearing, video of Boyd taken the night of the shooting indicated Boyd saw Spivey stopped about many yards away when Boyd began his turn onto Camp Swamp Road. Boyd also testified he could see Spivey stopping because Boyd could see Spivey's brake lights when he told the 911 operator that Spivey was stopping and they were about to have a shootout. Critically, on the 911 call Boyd also can be heard stating his intent to keep following Spivey and his awareness that he was about to have a "shootout." Despite Spivey being stopped

² Both Defendants described Spivey's behavior as erratic, dangerous and scary. Williams testified there was a lot that happened on the road that day which scared the "Hell out of" him. Nonetheless, it is clear to the Court that the Defendants did not call 911 until well into their pursuit of Spivey, including a significant amount of pursuit at very high speeds in excess of what was safe and the posted speed limits.

in the roadway and no longer posing an immediate threat due to his driving or otherwise, the Defendants drove up toward Spivey and stopped a distance behind Spivey's truck.³ Spivey got out of his truck with his handgun down by his side and shouted to Boyd and Williams to stop following him.

Boyd had his handgun drawn and pointed in Spivey's direction when Spivey exited his vehicle. Boyd began to fire at Spivey while Spivey was standing by the door of his truck.⁴ Either while entering his truck or after getting into his truck, Spivey was struck by one round in the right side of his back near his armpit.⁵ The bullet's trajectory, traveling from the upper rear and side of Spivey's back, through his torso forward and across his body, and lodging in the upper front left

³ Although the police sketch of the scene indicates Boyd's truck was parked approximately 75 feet behind the Spivey vehicle once police arrived, Boyd can clearly be heard in the 911 call indicating that he was "backing up" after the shooting. Given the totality of all the evidence indicating the Defendants' efforts to coordinate their stories and manipulate the evidence, the Court finds the Defendants moved Boyd's truck after the shooting in order to present their actions in a more reasonable light. Regardless of whether they moved their truck after the shooting, it is clear to the Court that the Defendants were not "ambushed" by Spivey as they claimed.

⁴ Although, during the hearing and during their prior deposition testimony, both Defendants carefully recounted essentially the same description of Spivey's actions once he exited his vehicle. It is clear to the Court that the Defendants' stories are simply not credible. Essentially, both Defendants now claim that Spivey got out of his truck with his weapon in his hand, that Spivey was throwing his hands up in the air and yelling at them, that Spivey stepped into the oncoming lane of traffic and began advancing on the Defendants, that Spivey advanced as far as the back of his truck or slightly beyond where he racked his pistol in an exaggerated manner or "Matrix" move, swinging the pistol around as he raised it, pointed his pistol at the Defendants and began firing at the Defendants. Both Defendants insisted Spivey fired first. As will be discussed in this Order, the Defendants' descriptions lack credibility and I find them incredible. First and foremost, nearly every aspect of their stories contradicts the eyewitness testimony of Frank McMurrough and cannot be reconciled with either his testimony, his 911 call made immediately after witnessing the shooting, or his onsite video interview made by police. Further, there was significant testimony, including but not limited to the testimony of crime scene investigative Detective Shellneil Tamasi, that she diligently searched for spent shell casings from Spivey's gun along the side of the road, under Spivey's truck, and in the road that would have supported that Spivey advanced to or beyond the back of his truck before he began firing, but she found no such shell casings. Additionally, although Boyd insisted at the hearing that Spivey fired his gun first after advancing on the Defendants, during cross-examination Boyd was confronted with the video of him on the night of the shooting event in which Boyd clearly told investigators Spivey was in his truck door when Spivey fired at them. The Court finds Spivey did not advance but was in his own doorway.

⁵ In multiple calls, Boyd states he is certain he saw Spivey's shirt crinkle or move when he shot Spivey as Spivey was standing outside his vehicle. Spivey's shirt had only one hole in it and that was the shot that killed Spivey as described above.

side of his chest, is consistent with Spivey retreating when he was shot, not advancing toward the Defendants as they claimed. As he was dying, Spivey emptied his handgun into the cab of his own truck as Boyd and Williams continued to fire into the cab of Spivey's truck. No projectiles from Spivey hit the Boyd vehicle.

The Court heard from numerous witnesses, some of whom witnessed the chase and some of whom witnessed the gunfire. Boyd testified that Spivey stepped away from his truck and into the oncoming traffic lane, raised his weapon up "Matrix-style" (or fully raised and pointed at Boyd's truck but in a rotated position), and that Spivey then advanced on Boyd's truck and began firing his weapon. Williams gave nearly an identical account of the encounter. Both Defendants claimed they only drew their weapons after or about the time Spivey fired, despite evidence to the contrary. Boyd even testified that he had to drop his phone to then draw his weapon, while Williams testified he had to retrieve his gun out of his bag located in the floorboard of the truck.

However, this testimony does not align with and is contradicted by other evidence in the case. Frank McMurrrough, an independent eyewitness who was traveling in the opposite direction on Camp Swamp Road, testified he drove past the Spivey truck as Spivey exited with his gun down by his side pointed to the ground, and the slide was locked back indicating the gun was not in firing position.⁶ McMurrrough stated that Spivey never walked away from the open door beside his truck.

⁶ Mr. McMurrrough's vehicle could not have traveled past the Spivey vehicle had Mr. Spivey, in fact, stepped away from his truck and into Mr. McMurrrough's lane. More importantly, Mr. McMurrrough testified Spivey did not advance, step into the oncoming lane, or even threaten the Defendants. According to Mr. McMurrrough, Spivey would not have even had time to load or raise his weapon before gunfire erupted from Boyd's vehicle.

McMurrough's windows were all down and he heard Spivey yell for Boyd to stop following him. Completely inconsistent with the Defendants' story, as McMurrough's truck reached the Boyd truck, he saw Boyd through the windshield already aiming his gun (two-handed grip) over the dashboard at Spivey. McMurrough then looked in his side mirror at Spivey and stated that Spivey turned towards his truck and his arm only slightly raised ("just moved it, not draw, not come up"). McMurrough stated that at the point when his truck's headlights were even with Boyd's driver's door "all Hell broke loose" from the Boyd truck as Boyd fired his weapon and appeared to empty his clip through the front windshield of Boyd's vehicle. McMurrough's testimony in this regard almost exactly recounts his initial description to 911 of seeing the driver of the white truck (Boyd's vehicle) empty his entire clip through the windshield. McMurrough clearly testified the first person he saw shoot was the driver of the white truck which was Weldon Boyd. Significantly, in an unguarded moment during his cross-examination, Williams stated he was not aware of Frank McMurrough when Williams testified during his deposition about Spivey stepping into the oncoming lane of traffic or McMurrough's lane of travel. The admission undermines the Defendants' claim that Spivey stepped into the oncoming lane, as McMurrough, who was traveling in that very lane, testified Spivey never left the area beside his truck.

Audio forensics expert, Dr. Robert Maher, analyzed Boyd's recording of the 911 call and concluded that there were no sounds or evidence of gunshots by Spivey. Although the Defendants' cross-examination of Dr. Maher seemed to focus on the sound proofing of Boyd's truck as the reason why Spivey's gunshots were not recorded, both Defendants are clearly heard in multiple recorded phone calls describing hearing Spivey shoot his weapon three times after he re-entered his truck. The fact that they could hear the weapon discharge even after it was inside Spivey's

truck significantly undermines their argument. The only testimony that Boyd's truck had some form of special sound proofing came from the self-serving testimony of Boyd.⁷ The Defendants did not present any evidence at the hearing that the truck Boyd was driving was in any way equipped with sound proofing that would have prevented Boyd's recording from detecting the impulses from gunshots aimed directly at the microphone (cell phone) and that were closer to the microphone than the shots from inside Spivey's vehicle. It was the Defendants' burden to present any such evidence. Nonetheless, Dr. Maher further testified that there is no indication that Boyd dropped or otherwise moved his phone immediately prior to the onset of gunfire, which contradicts Boyd's testimony that he had to drop his phone to draw his weapon. Similarly, Dr. Maher testified there are no sounds of Velcro or zippers being ripped open immediately before the weapons in Boyd's truck begin to fire. This evidence undermines Williams' testimony that he only got his weapon out after Spivey "racked" his gun and he began yelling "backup, backup." Additionally, on cross-examination, Williams admitted Boyd told the 911 dispatcher they "had their guns out too" and Williams did not correct Boyd. Importantly, Boyd was impeached on this point with his own secret cell phone recordings. In several calls, Boyd is clearly heard describing that he intentionally left his phone on and sitting between him and Williams so that everything would be recorded, including in one call with his mother.

⁷ The Court heard testimony from Boyd that if he was going really fast and the motor was running at high RPMs that the noise of the motor would be so loud that one could not hear inside the cab. Yet the conversation with the 911 operator was discernable while he was demanding much or the supercharged motor. Additionally, the video shown of Boyd demonstrating the truck's fast acceleration allowed by a large supercharged motor, the Court observed the noise from the high revving motor was not overwhelming. Boyd's testimony is suspect in this regard as well.

Another driver, Blaiz Ward, gave a video recorded statement to Horry County Police and also sat for a video deposition. In the deposition, Ms. Ward stated Spivey passed her at a high rate of speed and she saw he was holding a gun. She called 911 and attempted to follow him to keep him in sight. She saw the Spivey and Boyd trucks interacting, saw Spivey “brake check” Boyd, and saw Boyd’s truck drive into the median but then immediately drive right back onto the road, continuing the pursuit. Ms. Ward admitted she was speeding and told the 911 operator she was trying not to speed. She testified she was going very fast to keep an eye on the two fast moving trucks she never checked to see how fast she was driving. She stated she perceived the danger and therefore stayed back at some distance, even though the two trucks finally began to pull away from her due to their excessive speed.

Ms. Ward testified that she and the two trucks greatly exceeded the speed limit. She stated there was never a period when Boyd was not pursuing Spivey and after passing the Minuteman convenience store, they “really took and off and reached some high rates of speed.”⁸ Ms. Ward fell back about one-half mile during this part of the chase but still had both trucks in her sight. Ward stated that it appeared Spivey was not letting the Boyd truck pass him, although Boyd attempted to try to pass or get beside Spivey. She described Boyd as being on Spivey’s truck “like white on rice most of the time.” Ms. Ward described it as Boyd “pursuing” Spivey and agreed that what she saw that day was consistent with Boyd’s description to his mother of chasing Spivey and being “on his ass.”

⁸ GPS information downloaded by SLED shows extended lengths of time where Spivey’s vehicle was traveling in excess of 100 mph and reached speeds in excess of 113 mph.

Ms. Ward saw the vehicles turn onto Camp Swamp Road and could see them from some distance back down Highway 9. She never saw Spivey fire a shot but thought she did because the glass on Boyd's windshield was flying off; she later understood that this was because Williams was firing at Spivey through the passenger's side of Boyd truck's windshield when she finally caught up to the two trucks.

The Court also listened to audio of the 911 calls. During his 911 call, Boyd stated "he's trying to run from me now" and "I'm just going to stay with him." Boyd also told the 911 operator "he's trying to run from me now."⁹ Boyd also told a dispatcher, "He tried to run from me. I kept up with him." Boyd told the dispatcher further that "we have our guns out too," "[w]e're armed as well. He keeps throwing the gun in our faces. I have no idea if he's about to shoot us. If he keeps this up I am going to put him down" and "sir, [if] this guy aims a gun at me, we're going to have to shoot him." These statements demonstrate that both Defendants had drawn their weapons and were prepared to use deadly force while actively pursuing Spivey, contradicting any claim of purely defensive action.

When Spivey turned off Highway 9 and onto Camp Swamp Road toward his home and away from Boyd's stated destination of Loris, Boyd told the 911 operator "we're going to keep

⁹ This statement indicates Mr. Boyd's knowledge that Mr. Spivey was attempting to withdraw from any confrontation with Mr. Boyd or Mr. Williams. *Cf. State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (where an aggressor (here, Mr. Spivey) withdraws in good faith from a conflict and that withdrawal is communicated to the other party (here, Mr. Boyd and Mr. Williams) by word or act, the right of the aggressor to self-defense is restored). Certainly, driving over 110 miles per hour trying to get away from Mr. Boyd's pursuit indicates a reasonable attempt to withdraw, although it was not working. The Court finds that Spivey clearly indicated by his retreat, his speed, and his defensive maneuvers that he was trying to disengage from any initial conflict, but the Defendants brought on the difficulty by their relentless pursuit.

trying to follow him.” This decision to abandon their stated destination and continue pursuing Spivey toward his home demonstrates that the Defendants were engaged in an unlawful pursuit rather than defensive action. Following the shooting, Williams can be heard saying, “God dammit, Weldon, why couldn’t you fucking leave him alone?” Williams falsely denied remembering making this statement in his sworn deposition testimony, despite the clear audio recording.

Importantly, the Defendants knew that the authorities already had Spivey’s description, the description of his truck, the truck’s license tag information, and that they claimed to be eyewitnesses to Spivey’s erratic driving and road rage conduct. At no time did the 911 operator, or anyone else, advise the Defendants to speed excessively, follow Spivey from 5 to 9 miles weaving in and out of traffic, leave their intended route to Boyd’s farm by turning onto Camp Swamp Road, or try to conduct some type of citizen’s arrest of Spivey.

The Court also listened to and reviewed calls Boyd placed in the days following the shooting.¹⁰ These calls are highly disturbing and demonstrate consciousness of guilt, lack of remorse, and celebration of the killing of Scott Spivey. In one call to his mother, Boyd stated “he just ran me off the road and aimed a gun at [Bradley Williams’] head, and I was like fuck this guy, and I chased him. Oh, I was on his ass, and his truck couldn’t outrun my truck and he knew it. So yeah, he was terrified.” This admission directly contradicts any claim of defensive action and establishes that Boyd was an aggressor who initiated and maintained the pursuit, with Williams as an active participant. During direct examination of Boyd, he claimed he was so upset by his truck

¹⁰ Boyd had downloaded an application to his phone which automatically recorded his phone usage, including the actual audio of phone calls to or from his phone.

that he could not look at it. However, during cross-examination, Boyd is heard in another call responding to his mother's suggestion that he replace the windshield in his truck which had damage from the rounds he fired over his dashboard, saying he did not intend to do that, but wanted to ride around and show off the bullet holes. In yet another call Boyd tells his parents he sent Williams a message by social media telling him "you got in the fight, you stayed in the fight. You didn't ask questions and you didn't hesitate...You're a fucking warrior." Boyd added "and [Williams] did, he got right in the fight and he fucking fought it out and he did not stop until it was over."

In one call with Williams, Boyd instructs Williams to delete their communications between them on social media so that the Spivey family could not obtain these messages and if police ask to tell them they communicated by other means. Williams is heard in the call clarifying the instructions and then readily agreeing to Boyd's instructions. At the hearing, Williams admitted he willingly complied with the instructions to destroy evidence and provide false information to law enforcement. These are the actions of a just or innocent man.¹¹ Perhaps the most disturbing call involved Boyd and Williams both laughing about the incident and joking that they were going to get teardrop tattoos to commemorate the fact that they had shot and killed Spivey.¹² This callous celebration of taking a human life demonstrates a complete absence of reasonable fear for their safety and contradicts any claim the Defendants acted in necessary self-defense.

¹¹ Although it is not necessary to draw a negative inference from the Defendants' behavior to destroy evidence in order to deny this motion, the Court finds the Defendants willfully destroyed evidence to prevent that evidence from being used against them.

¹² A teardrop tattoo can have many meanings, but it generally (but not always) signifies the person has killed someone. *E.g.*, *State v. Dressner*, 45 So.3d 127, 152 n. 44 (La. 2010). In the context of this recorded telephone call between Mr. Boyd and Mr. Williams, I find that is the meaning they were ascribing to the desire to obtain teardrop tattoos was to celebrate killing Scott Spivey.

DISCUSSION

The Act provides immunity from criminal prosecution or civil action to a person who is found to be justified in using deadly force. S.C. Code Ann. § 16-11-450; *State v. Chhith-Berry*, 437 S.C. 527, 878 S.E.2d 352 (Ct. App. 2022), *cert. denied* May 24, 2023; *State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019). The General Assembly adopted the Act in 2006 with the intent “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) (2015).

The Act 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... 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 harm to himself or another person or to prevent the commission of a violent crime....

S.C. Code Ann. § 16-11-440(C).¹³ To obtain immunity under this subsection of the Act, the person attacked must be someone who was not engaged in unlawful activity and was in a place where he had a right to be. *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022). The person seeking protection under the Act must show, by a preponderance of the evidence, that he has a valid claim

¹³ This is the only subsection of § 16-11-440 that is applicable to the facts of this case. The shooting did not involve a claim that and no evidence was presented that Mr. Spivey was in the process of unlawfully or forcefully entering a dwelling, residence, or occupied vehicle (or had done so), or was attempting to remove another person against his will from the dwelling, residence or occupied vehicle. S.C. Code Ann. § 16-11-440(A). To the extent Defendants assert a right to immunity under subsection (A), the Court finds the Defendants have failed to prove by a preponderance of the evidence that they are entitled to immunity under this subsection. Further, to the extent that Defendants assert a right to immunity under the common law of self-defense, the Court likewise finds they have failed to prove by a preponderance of the evidence any of the elements of common law self-defense.

of self-defense and the court must consider all of the elements of self-defense except the duty to retreat.¹⁴ *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022).

Self-defense, even under the Castle Doctrine, “is predicated on the absence of aggression or fault on [the Defendant’s] part in bringing on the difficulty; the doctrine is for defensive, and not offensive purposes.” *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). *See, also, Id.* (“While the Act may be considered ‘offensive’ in the sense that the immunity operates as a bar to prosecution, 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.”). “Any act of the [shooter] in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.” *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007), citing *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999).

A claim for immunity under the Act requires a pretrial determination using a preponderance of the evidence standard. *State v. Chhith-Berry*. The trial court must sit as the fact-finder at a pre-trial hearing, weigh the evidence presented, and reach a conclusion under the Act. *State v. Andrews*, 427 S.C. 178, 830 S.E.2d 12 (2019), citing *State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d

¹⁴ Common law self-defense requires a person asserting it to establish four elements: (1) the person must be without fault in bringing on the difficulty; (2) the person must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in imminent danger; (3) 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 person 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; and (4) the person 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. Glenn*, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019), quoting *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). Only that last element (the duty to retreat) is not applicable under the Act.

564 (2019). Thus, the relevant inquiry is whether the person asserting protection has proved entitlement to immunity under the Act by a preponderance of the evidence. *State v. Andrews*.

In this case, there are conflicting versions of what happened at the point of the shooting on Camp Swamp Road on September 9, 2023.¹⁵ In a separate order, this Court found that Boyd's testimony lacked any credibility. The Court held that one instance of Boyd's lack of credibility lies in the differing descriptions of Spivey's behavior once Spivey stepped outside of his truck on Camp Swamp Road, and Williams' testimony mirrored this portion of Boyd's testimony. Comparing the description by McMurrough, a disinterested eyewitness, of Spivey's behavior to the descriptions given by Boyd and Williams, they are totally different.

The Court cannot reconcile those differing descriptions even though McMurrough was looking through his vehicle's rearview or side mirror. There is a substantial difference in the accounts. However, as described above, McMurrough's account most closely aligns with the physical evidence (lack of shell casings, audio forensic analysis, etc.) and Boyd's own video statement when interviewed the night of the shooting describing Spivey standing in the doorway of his own truck. The Court finds neither Boyd nor Williams were credible in describing what happened once Spivey stepped out of his vehicle.

As mentioned above, Williams' account of what happened on Camp Swamp Road mirrors Boyd's account and also is not credible. Williams also described Spivey as stepping away from

¹⁵ Oftentimes when the use of deadly force is in question, the only other witness to the events – the person who was shot – is dead. *Compare Stanton v. Elliott*, 25 F.4th 227, 234 (2022) (noting in qualified immunity cases involving police shootings courts should be careful at summary judgment to avoid simply accepting the shooter's self-serving statements and must consider all contradictory evidence; “[T]he judge must ensure that the officer is not taking advantage of the fact that the witness most likely to contradict his story—the person shot dead—is unable to testify.”). However, in this case there were several other witnesses to the events and abundant other evidence, including audio recordings and law enforcement videos, to assist the court in sorting out what more likely than not happened that day.

the truck into the oncoming lane, raising his weapon in a sweeping and rotating manner, advancing on the Boyd truck, and firing first. As stated above, McMurrrough's description belies that version. Again, the Court finds it significant that Williams admitted he was not aware of what McMurrrough would say when he gave his account of Spivey's actions.

Next, no matter how the roadway conduct on Highway 9 is described – as a pursuit, as a chase, or as merely following Spivey – Boyd and Williams admittedly knew that Spivey, the person they were following at a high rate of speed trying to keep up with, had a gun.¹⁶ By all descriptions Spivey was acting foolishly on the roadway, but foolish behavior by someone does not require or permit anyone else to act foolishly or aggressively in response. Driving in excess of 100 miles per hour trying to keep up with someone who has a gun is foolish and aggressive behavior that foreseeably brought on the confrontation with Spivey.¹⁷

¹⁶ Williams argued that he and Mr. Boyd had a common law duty to pursue Mr. Spivey until Mr. Spivey was stopped by law enforcement, citing *State v. Nall*, 304 S.C. 332, 338, 404 S.E.2d 202, 206 (Ct. App. 1995) (noting “[f]rom the earliest times, the English common law placed a duty on every person who encountered another in the commission of a felony to apprehend him or to make outcry calling the community to pursue and take him.”). South Carolina statutory law permits a citizen to arrest another person upon certainty that a felony has been committed, S.C. Code Ann. § 17-13-10 (1976 as amended), or in the nighttime under specific circumstance. S.C. Code Ann. § 17-13-20 (1995). See *State v. McAteer*, 340 S.C. 644, 532 S.E.2d 865 (2000) (describing the genesis, development, and operation of these two statutes, and holding there is no common law right to make warrantless citizen's arrests of any kind). In *McAteer*, the Supreme Court held the adoption of these acts in 1865 “evinces a legislative intent to regulate all warrantless arrests by private citizens, and thus to supplant the common law in this field.” 340 S.C. at 649-650, 532 S.E.2d at 867. Therefore, the only right that exists is statutory, and neither of the statutes places a *duty* on a citizen to pursue and arrest someone who commits a crime in the person's presence. See, e.g., *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980) (“The use of the word ‘may’ signifies permission and generally means that the action spoken of is optional or discretionary. This is the ordinary significance of the use of the word ‘may,’ and nothing appears to require that it be given any other meaning in the present statute.”). In any event, at no time during the events on September 9, 2023, or thereafter up until this motion, did either Mr. Boyd or Mr. Williams claim to anyone that they were attempting to effect a citizen's arrest of Mr. Spivey. Significantly, in their deposition testimony they denied ever attempting to make any citizen's arrest.

¹⁷ All three parties presented evidence that described one-second intervals during the pursuit. Forensic evidence established Mr. Spivey's vehicle reached at least 113 miles per hour at one point and often exceeded the posted speed limit by more than 10-25 miles per hour. Yet Boyd was able to maintain a close proximity to Spivey's vehicle

Lastly, the telephone calls Boyd made following the shooting demonstrate the Defendants trying to get their stories straight, trying to get help from law enforcement, and trying to make certain that they were going to be free and clear of any responsibility or liability. This is particularly true of the telephone calls between Boyd and Williams in the days following the shooting.

WILLIAMS' MOTION TO DISMISS

As the passenger, Williams certainly occupies a different position from Boyd. However, while Williams has better credibility than Boyd, his testimony mirroring Boyd's version of the moments immediately leading up to the shooting is not credible -- that testimony is belied by the other evidence as described above. Further, although Williams may not have wanted to initiate or continue the pursuit, nor was he in a position to control how fast Boyd drove during the pursuit, he willingly went along with and encouraged the encounter with Spivey.

As a passenger in the truck, Williams owed a duty to warn Boyd to stop the pursuit or demand that Boyd permit Williams to leave the truck. Williams did neither. "[W]hen a gratuitous passenger becomes aware that the automobile in which he is riding is being persistently driven at an excessive and dangerous speed, the duty devolves upon him in the exercise of due care for his own safety to caution the driver, and, if his warning is disregarded and speed unaltered, to request that the automobile be stopped and he be permitted to leave the car." *Lynch v. Alexander*, 242 S.C. 208, 213, 130 S.E.2d 563, 566 (1963). The key is whether a person of ordinary care would have left the automobile if given a reasonable opportunity to do so. *Id. See, also, Thompson v. Michael*,

throughout the entire pursuit and to stay extremely close to Mr. Spivey's vehicle (like "white on rice" according to Ms. Ward).

315 S.C. 268, 433 S.E.2d 853 (1993) (a passenger has a duty to warn and demand that a car be stopped if the car is being driven in a reckless or careless manner and there is a reasonable time and opportunity for the passenger to give such a warning and make such a demand to be let out). Here, Williams breached that duty.

Williams admitted that while he told Boyd to slow down as Boyd was getting close to Spivey's truck and to back up on Camp Swamp Road, he never warned Boyd to stop driving at excessive speeds throughout the extended pursuit nor asked to be let out of the vehicle. Further, the evidence demonstrates Williams recognized or perceived an actual danger at the very beginning of the extended pursuit, giving Williams more than ample opportunity to ask to leave Boyd's vehicle during the pursuit or demand Boyd stop the pursuit. He remained silent.

The Act was meant to codify the common law Castle Doctrine with the exception of the duty to retreat. S.C. Code Ann. § 16-11-420(A) (2015) ("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."); *State v. Jones*, 416 S.C. 283, 291, 786 S.E.2d 132, 136 (2016) (noting subsection 16-11-420(A) "extended [the Castle Doctrine's] protection, when applicable, to include an occupied vehicle and a person's place of business"). The purpose of § 16-11-440(C) was merely to extend the common law right under the Castle Doctrine to other places where a person has a right to be. *State v. Chhith-Berry*, 437 S.C. at 543, 878 S.E.2d at 361. It was not the intent of the General Assembly to sanction the use of deadly force for someone who willingly extends participation in a "road rage" incident with someone who the shooter knows is armed, is acting foolishly, and is attempting to withdraw from the situation.

CONCLUSION

To be entitled to protection under the Act on any ground, a person requesting immunity must prove his entitlement to immunity by a preponderance of the evidence. This Court is of the confirmed belief that credibility is the crux of task of the fact finder. In this case, the Court is the sole fact-finder. The Court has weighed and evaluated every witness and all evidence presented at the immunity hearing. After conducting the mental exercise of weighing the evidence of whether Williams is entitled to immunity, the Court finds that the scales remain unmoved. Williams did not meet his burden of proving he was entitled to immunity.

Accordingly, for the reasons stated above as well as the reasons argued in Plaintiff's Memorandum in Opposition to Defendants' Motions to Dismiss and the facts cited therein, the Court finds that the Defendant failed to satisfy his burden and Williams' Motion to Dismiss on the grounds of immunity under the Act is DENIED.

Eugene C. Griffith, Jr.
Circuit Court Judge



Horry Common Pleas

Case Caption: Jennifer Spivey Foley , plaintiff, et al VS Charles Weldon Boyd ,
defendant, et al
Case Number: 2024CP2603798
Type: Order/Other

It is so ordered

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