

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2024-CP-26-03798

JENNIFER SPIVEY FOLEY, as Personal)
Representative of the Estate of SCOTT)
RYAN SPIVEY,)
)

Plaintiff,)
)

v.)
)

CHARLES WELDON BOYD and)
KENNETH WILLIAMS,)
)

Defendants.)
)

**PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

FACTUAL BACKGROUND

This action arises from the brutal murder of Scott Spivey ("Spivey") by Weldon Boyd ("Boyd") and Kenneth Williams ("Williams"). On September 9, 2023, Spivey, a 33-year-old male who resided just over the state line in North Carolina, spent part of his Saturday afternoon at Boardwalk Billy's restaurant in Myrtle Beach. Around 5 p.m., Spivey left the restaurant and headed home driving his black 2021 Chevy Silverado in a westerly direction on Highway 9.

Sometime thereafter, Spivey, while still driving on Highway 9, encountered Boyd and Williams who were traveling in Boyd's white 2022 Dodge Ram, shortly after they left Tractor Supply located on Highway 9. When they left the Tractor Supply parking lot with Boyd driving and Williams in the front passenger seat, Boyd turned left onto Highway 9 to travel in a westerly direction with the intention of driving to his farm located in Loris. Boyd was towing a trailer loaded with lawn furniture that he was delivering to his farm.¹

¹ To drive to his farm, Boyd would have continued straight on Highway 9 beyond Camp Swamp Road, where the shooting occurred.

According to Boyd and Williams, Spivey, for no apparent reason, was brandishing a handgun in his left hand, although he was right-handed, with his window down and his elbow resting on the windowsill of the driver's door as he passed them. Spivey almost immediately thereafter entered the lane in front of Boyd and then Boyd began chasing Spivey. At some point, Spivey braked, either because of traffic or to "brake-check" Boyd. Boyd claims this braking caused him to run off the road. Boyd then began chasing Spivey and called 911, relaying to the dispatcher that Boyd was in pursuit of Spivey. Boyd remained on the 911 call for the duration of the chase which culminated in the murder of Spivey by Boyd and Williams.

Boyd chased Spivey on Highway 9 for approximately nine miles at speeds, at times, in excess of 110 mph. At the intersection of Highway 9 and Camp Swamp Road, Spivey made a right turn onto Camp Swamp Road toward his home in North Carolina, obviously attempting to escape Boyd and Williams and continuing to try to disengage from any interaction with them. Boyd's own words to the 911 dispatcher show that Boyd not only saw Spivey turn onto Camp Swamp Road but also saw him stopping: "Nah, he's turning off the road. We're going to keep trying to follow him, but if he starts shooting, dude, I don't know. Alright, so he's turning onto Camp Swamp Road. Camp Swamp Road. He's stopping. He's stopping. Hey, we're about to have a fucking shootout, dude." See Boyd's 911 Call, Audio Recordings, p. 6, line 4. Instead of continuing straight to their intended destination of Loris or even simply not turning onto Camp Swamp Road, Boyd then made the conscious decision to continue to chase Spivey by making the same right turn onto Camp Swamp Road and driving up behind Spivey.²

² Boyd had countless opportunities to stop or turn off of Highway 9. Even though his 911 call makes it clear that his purpose was to pursue Spivey, he later claimed to witnesses that the real reason he turned on Camp Swamp Road was to stop and make sure the load on his trailer was secure. This discrepancy, in light of the obvious urgency and focus on chasing Spivey as illustrated

Shortly after turning onto Camp Swamp Road, Spivey stopped his truck. Boyd then stopped approximately 75 feet behind Spivey.³ When Spivey exited his truck from the driver's seat, he was holding his handgun down by his side pointed towards the ground with the slide locked back, i.e. not in a shooting mode. He did not walk to the back of his truck; rather he stood in a stationary position at his driver's door and shouted in the direction of Boyd's truck words to the effect that Boyd and Williams should stop following him. Boyd and Williams were still seated in Boyd's truck, and Boyd had his handgun already drawn and aimed at Spivey. Boyd immediately opened fire on Spivey through the front windshield of Boyd's truck without any threat or provocation from Spivey. Spivey fled back into his truck, crawling into his driver's seat. Only after Boyd fired numerous times and struck Spivey did Spivey attempt to return defensive fire. It was at that point that Williams also opened fire. Boyd and Williams continued to fire their handguns through the front windshield of Boyd's truck into the cab of Spivey's truck, while Spivey died of his fatal wounds. Neither Boyd nor Williams was struck by Spivey's bullets. Not even Boyd's truck was shot by Spivey. The 911 call recorded the entire shooting and most of the dialogue between the shooters.⁴

Within minutes of the fatal shooting, Boyd made a phone call to his friend, Brandon Strickland, who was also the Horry County Assistant Chief of Police. During that call, Boyd began the narrative of self-defense and Strickland assured Boyd that he would send the proper people to the scene and that Boyd would be okay. Shortly thereafter, law enforcement arrived on scene and

in real time on the 911 call, is only one of the many lies Boyd has told which have destroyed his credibility.

³ HCPD later measured that it was slightly over 75 feet from Spivey's back bumper to the front bumper of Boyd's truck. Boyd estimated 30 yards (90 feet).

⁴ Boyd was secretly recording his phone calls at the time. His recording of the 911 call captured this information.

immediately began following the narrative that Boyd and Williams had acted in self-defense. Months later, the investigation officially was closed and neither of them was charged with a crime. Their self-defense narrative seemingly paid off. But much to their dismay, since that time, a conspiratorial network of corruption has been uncovered between Boyd, law enforcement and others.⁵ Thanks to the numerous audio recordings of Boyd's phone calls⁶ and bodycam video footage from law enforcement, the chase, the murder, and the corruption are all documented in a play-by-play narrative, unknowingly created in real time by the voices and actions of the actual players in this sick and twisted pursuit.

EXCERPTS FROM DEPOSITIONS AND AUDIO RECORDINGS:⁷

I. THE CHASE AND OPPORTUNITIES TO DISENGAGE

- A. **Deposition of** [REDACTED]: A passenger in a vehicle driven by her husband, [REDACTED] on Highway 9 in the same direction behind Boyd and Spivey near Colonial Charters. In pertinent part, she testified:
- Weldon came out from Tractor Supply onto Highway 9 and we were behind him. *See* Deposition of [REDACTED], p. 11, lines 4-8.
 - The white truck ran off into the median. Then they kind of sped up and got on ahead of us. *Id.* at p. 11, line 17.
 - So I didn't get to see as far as a chase. They were gone. *Id.* at p. 12, line 5.
 - There was no sight of them at the red light when we got stopped. *Id.* at p. 12, line 8.
 - We were so far back I couldn't see. *Id.* at p. 12, line 23.
 - The white truck going into the median just happened one time. *Id.* at p. 13, line 20.
 - Did not see a gun displayed at any time. *Id.* at p. 15, line 4.

⁵ Since the initial investigation was closed and the corruption came to light, certain officers who were involved in the initial investigation were terminated. Upon learning of the actions and activities of its officers, Horry County requested SLED and the FBI investigate. Further, the matter is currently being reviewed by the state grand jury.

⁶ Prior to the day of Scott's murder, Boyd had enabled an application on his phone to automatically record all incoming and outgoing calls in an effort to obtain the upper hand in his ongoing custody dispute with his ex-girlfriend concerning his unborn child. Accordingly, Boyd's phone call conversations immediately after and in the days following the shooting were all recorded.

⁷ The purpose of these excerpts is to provide the Court a summary of critical facts and testimony for ease of reference and understanding. The complete copies of these materials are being filed with this memorandum.

- In the very beginning when everything started, [REDACTED] (her husband) backed off. *Id.* at p. 30, line 17.
- The black truck was always ahead that I seen. *Id.* at p. 31, line 22.
- Did not have the impression Scott was trying to wreck them . . . they were close . . . the black truck wasn't too far ahead of him. *Id.* at p. 35, line 2.
- Had to be between the two lights of Bell & Bell and Colonial Charters when the black truck . . . passed us real fast. *Id.* at p. 42, line 25.
- It was pretty quick after the black truck passed that the median incident occurred, *Id.* at p. 45, line 15, and they just continued to move away from us. *Id.* at p. 43, line 17.
- When the median thing happened, [REDACTED] really backed off. *Id.* at p. 43, line 22. He was deliberately backing off. *Id.* at p. 44, line 1.
- It appeared the black truck would block the white truck like it didn't want the white truck passing or beside him. *Id.* at p. 46, line 2.
- To me the "lane changing" appeared to be a function of the black truck blocking the white truck. *Id.* at p. 46, line 21.
- Never saw the white truck pass the black truck. *Id.* at p. 49, line 12.
- Traffic was heavy and moving the speed limit. *Id.* at p. 51, line 13.
- Never saw Scott run off the road. *Id.* at p. 51, line 24.
- The black truck slamming on brakes was close to the beginning. *Id.* at p. 60, line 25.

B. **Deposition of** [REDACTED] He is the husband of [REDACTED] and was driving his vehicle on Highway 9 in the same direction behind Spivey and Boyd. In pertinent part, he testified:

- The median incident is the majority of what he calls the "road rage" incident. *See* Deposition of [REDACTED], p. 22, line 9.
- At that point, somewhere in there, they started getting away from us. *Id.* at p. 22, line 25.
- Scott never pointed a gun at him. *Id.* at p. 31, line 13.
- Didn't notice Scott point the gun at anyone else. *Id.* at p. 71, line 18.
- He didn't see Weldon chase, not that it didn't happen, but it was after they got away from us. *Id.* at p. 35, line 7.
- They were not in sight when they crossed the red light at Longs . . . so we quit seeing them some before the red light. *Id.* at p. 58, line 9.
- Could see the trucks on Camp Swamp Road prior to coming abreast of Camp Swamp. *Id.* at p. 37, line 19.
- Weldon told them when they first pulled onto Camp Swamp Road that he turned onto Camp Swamp to check his load. *Id.* at p. 117, line 20.
- [That statement] was the first thing I saw that I felt like he [Weldon] did wrong was turned in. *Id.* at p. 118, line 11.

- I felt like that was an instigation . . . He shouldn't have turned in behind him under no circumstance. *Id.* at p. 118, line 21.
- [REDACTED] wouldn't have chased Scott if he'd seen a gun. *Id.* at p. 119, line 12.
- Never heard Weldon say he was just following Scott and relaying information to 911. *Id.* at p. 119, line 24.

C. **Deposition of [REDACTED]**: A passenger in a vehicle driven by her husband on Highway 9 in the same direction behind Boyd and Spivey. In pertinent part, she testified:

- On the day of the shooting, she first saw Weldon Boyd's truck going from side to side of the road like he was trying to pass. *See* Deposition of [REDACTED], p. 9, line 17.
- She was traveling near Colonial Charters. It was between Colonial Charters and maybe the next one, but it was after Colonial Charters or right there. *Id.* at p. 10, line 6.
- She saw the white truck pulling a trailer and there was a piece of furniture on the back side of the trailer moving back and forth. *Id.* at p. 10, line 13.
- Weldon was changing lanes back and forth and traffic was kind of heavy in that area. *Id.* at p. 10, line 25.
- And it looked like Weldon was just going back and forth, and then he went to move from the right lane back to the left lane and when he did, he run off the shoulder of the road and he snatched the truck back on and they continued that and then they got in such a high rate of speed, they left us way behind. *Id.* at p. 11, line 4.
- There was a truck ahead of Weldon's truck. It looked to me like Weldon was trying to get ahead of him or something. *Id.* at p. 12, line 12.
- She was about at least two cars, maybe two cars or three cars behind when she observed this. *Id.* at p. 13, line 4.
- She did not see them again until she got on up near Camp Swamp Road. *Id.* at p. 13, line 15.
- When she saw this the vehicle in which she was riding was going probably 50-55 mph. *Id.* at p. 15, line 3.
- "It looked like road rage to me, from – because the guy was – it looked – he was going – the white truck was going back and forth from side to side trying to get around whatever truck was ahead of him." *Id.* at p. 17, line 25.
- Only saw white truck run off the road one time. Off and back on. *Id.* at p. 19, line 21.
- It looked like the white truck was road raging based on what she saw. *Id.* at p. 25, line 13.
- Really started noticing white truck switching lanes after it ran off the road. *Id.* at p. 25, line 22.
- After the white truck runs off the road, it appeared not to slow down. It did not stop. He just drives back on the road and "got even faster" and that's when they got – he got out of sight. I didn't see him anymore. *Id.* at p. 26, line 3.

COURTESY OF A

- Weldon's speed increased immediately after coming back on the road. *Id.* at p. 26, line 16.
- She and her husband absolutely never drove speeds in excess of 70 mph and didn't go up to 80 or 90 or 100 mph. *Id.* at p. 27, line 4.
- She did not see any display of a gun by anyone. *Id.* at p. 28, line 24.
- She did not see a gun or any pointing of a gun that day. *Id.* at p. 29, line 9.

D. Deposition of Blaiz Ward: Witnessed the chase while driving in the same direction on Highway 9 behind Spivey and Boyd. In pertinent part, she testified:

- Some of the things she was saying on 911 call weren't accurate. *See* Deposition of Blaiz Ward, p. 10, line 23.
 - Things she said could be confusing. *Id.* at p. 11, line 1.
 - When she saw the gun she reacted to it. Frantic. *Id.* at p. 11, line 7.
 - Had a prior incident with a gun and that caused her to be very much afraid. *Id.* at p. 11, line 17.
- Almost immediately after she saw the black truck he passed her. *Id.* at p. 12, line 20.
 - Going a good bit faster than her. *Id.* at p. 12, line 23.
- She was trying to relay information to 911. *Id.* at p. 13, line 23.
- Was trying to keep Scott in sight as far as she was going. *Id.* at p. 14, line 4.
- Thinks the trucks started to interact further on up beyond Colonial Charters. *Id.* at p. 15, line 1.
- Sees Weldon's truck go into the median. *Id.* at p. 15, line 7.
- Believes that happened just one time. "He just swerved over." *Id.* at p. 15, line 11.
- After Weldon went off the road he got back on. *Id.* at p. 15, line 16.
- Doesn't think there was ever a time when the two trucks were not in her sight even if they were ½ mile ahead of her. *Id.* at p. 16, line 1.
- Tells dispatcher "I'm not trying to speed" because she's speeding. *Id.* at p. 16, line 17.
- She was going so fast that she didn't even look down to see how fast she was going. *Id.* at p. 16, line 21.
 - She was trying to relay information. *Id.* at p. 16, line 25.
 - But she was staying back some distance. *Id.* at p. 17, line 3.
 - Because she perceived the danger. *Id.* at p. 17, line 5.
- From Colonial Charters up until get to MinuteMan, they greatly exceeded the speed limit. *Id.* at p. 17, line 13.
- Never a time Weldon was not pursuing Scott, it's like after they seen each other, that was it. It was steady going. *Id.* at p. 17, line 14.
- After passing MinuteMan, the two trucks really took off and reached some high rates of speed. *Id.* at p. 21, line 10.

- She fell back behind them when this happened maybe ½ mile, but it was a distance. *Id.*
 - During this time she was still speeding. “There’s no other way to put it, yes.” *Id.* at p. 21, line 24.
- She does not know when the shooting event began compared to what she saw. *Id.* at p. 24, line 1.
- Couldn’t see Scott out of his truck. *Id.* at p. 24, line 11.
- At no time that day did she actually see Scott. *Id.* at p. 24, line 16.
- She now knows she didn’t see Scott shooting Weldon’s truck, she just thought she did because she saw the glass flying. *Id.* at p. 25, line 10.
- What she saw happening between those two trucks made her afraid somebody could get killed. *Id.* at p. 25, line 20.
- Today she believes what she saw was Weldon Boyd pursuing Scott Spivey. *Id.* at p. 26, line 12.
- During the time she saw it, she was thinking Scott just wasn’t allowing Weldon to pass him. *Id.* at p. 26, line 16.
 - Because it looked like Weldon was trying to get past Scott or beside him. *Id.* at p. 26, line 20.
- Weldon was on Scott like white on rice most of the time. *Id.* at p. 26, line 21.
- When Scott turned on Camp Swamp there wasn’t a car between him and Weldon, Weldon was immediately behind Scott. *Id.* at p. 27, line 16.
- Weldon was very close. *Id.* at p. 28, line 6.
- The facts she observed that day haven’t changed. *Id.* at p. 41, line 2.
- After Scott passed her, there wasn’t no pointing of a gun at her. *Id.* at p. 47, line 1.
- Her 911 call was not all the way accurate. *Id.* at p. 52, line 22.
- I was driving fast the whole time. *Id.* at p. 59, line 2.
- Whenever I said he pulled over on the side of the road . . . I really meant he stopped dead in Camp Swamp Road. *Id.* at p. 66, line 8.
 - Was a distance away when she made this statement. *Id.* at p. 67, line 6.
- Made the statement that the “black truck was causing the disruption” whenever she had no idea exactly what was going on. *Id.* at p. 68, line 18.
- Didn’t see Scott jump out or shoot. *Id.* at p. 70, line 3.
- She saw Scott run Boyd off the road somewhere, coming up on that Food Lion before you hit MinuteMan and 905. *Id.* at p. 75, line 24.
 - It looked like brake checking. *Id.* at p. 76, line 21.
- In today’s eyes she does not believe that Scott was causing all the trouble. *Id.* at p. 77, line 10.
- Hearing Boyd talk to his mother about chasing Scott. “I did not like the way that sounded because you know how an angry man is. Am I saying he’s angry? No, but it just – it didn’t sound appropriate. And that was before – I mean no, I had no idea what

was taking place at the moment, but moral of the story, my mind changed because yes, everything coming to the surface . . . *Id.* at p. 107, line 9.

- When she heard the call between Weldon and his mama, it informed her about what she saw. *Id.* at p. 114, line 16.
- Weldon's description in that call is what she saw him do that day. *Id.* at p. 115, line 25.
 - Hearing it made what she saw make sense. *Id.* at p. 115, line 25.
- She saw both trucks turn. *Id.* at p. 120, line 10.
 - Saw both trucks stop. *Id.*
 - She could see them from Highway 9. *Id.*

E. Deposition of Bradley Williams: The Defendant passenger and 2nd shooter. In pertinent part, he testified:

- Weldon was angry when Scott ran them into the median. *See* Deposition of Bradley Williams, p. 10, line 10.
- Agrees Weldon exceeded the speed limit after they got back on Highway 9. *Id.* at p. 18, line 1.
- A few minutes after the red light at Bell & Bell, he sees Scott. *Id.* at p. 20, line 1.
- Didn't go "terribly fast" from running off the road until catching up to Scott.
 - "Nothing that had me worried." *Id.* at p. 23, line 11.
- He saw the other white truck and saw it turn onto Camp Swamp before Scott. *Id.* at p. 28, line 1.
- Claims that "We didn't see his truck" [after it turned]. "I seen him turn off #9 and then lost sight of him." *Id.* at p. 30, line 1.
- Nothing kept Weldon from stopping before turning onto Camp Swamp. *Id.* at p. 37, line 17.
- He was in full agreement to follow Scott . . . Didn't see anything wrong as far as what Weldon was doing. *Id.* at p. 37, line 23.
- "Chase" is not accurate: We followed, we did not chase. *Id.* at p. 39, line 16.
- He didn't witness any actions of Weldon that he thought were aggressive or threatening. *Id.* at p. 40, line 11.

F. Deposition of Weldon Boyd: The Defendant driver and shooter. In pertinent part, he testified:

- Heard Bradley holler, looked over, saw Scott with his gun aimed straight out the window, Spivey's mirror almost hitting his truck's mirror, with his gun aimed straight at Bradley's head. *See* Deposition of Weldon Boyd, p. 12, line 3.
 - Can't give any landmark where this happened. *Id.* at p. 12, line 15.

- When he first saw Scott, they would have been going around the speed limit. *Id.* at p. 27, line 1.
- Scott somehow in that moment got in front of them and brake-checked them. “I know he did that twice, one of which ran us off the road.” *Id.* at p. 12, line 25.
- Scott was beside them and then zipped up in front of them and slammed on brakes. *Id.* at p. 27, line 23.
- Once Scott got in front of them, they never got back in front of him. *Id.* at p. 13, line 7.
- When he saw Scott pointing the gun, Weldon began slowing down. *Id.* at p. 13, line 10.
 - Because Scott was aiming the gun at them, *Id.* at p. 13, line 15, to create distance, *Id.* at p. 13, line 19, **and** because Scott had a gun. *Id.* at p. 13, line 24.
- Weldon perceived that as dangerous. *Id.* at p. 14, line 2.
- Traffic was moderate. *Id.* at p. 16, line 24.
 - There were blotches of traffic where it got compacted, then it would open up. *Id.* at p. 17, line 18.
- Had just left Tractor Supply when Weldon saw Scott. *Id.* at p. 18, line 2.
- I was not chasing him. I was following him relaying information to 911. *Id.* at p. 22, line 2.
 - Doesn’t recall if he has ever told anyone he was chasing Scott. *Id.* at p. 22, line 6.
- After Scott ran him off the road, he doesn’t know if he used those words: [“Fuck this guy” and “I chased him”]. “I was frustrated with what he’s just done to us.” *Id.* at p. 22, line 22.
- “I don’t know if [my] truck could outrun [Scott’s] truck or not.” *Id.* at p. 21, line 11. Doesn’t recall if he ever told anyone that Scott could not outrun him. *Id.* at p. 21, line 15.
- “Obviously, someone aims a gun at you it makes you mad.” *Id.* at p. 33, line 10.
- He thinks anyone would be frustrated at the situation. *Id.* at p. 39, line 6.
- “Some [photos] may have been taken while I was on **speaker** with 911.” *Id.* at p. 23, line 16.
- Scott continuously tries to slow down on us. We don’t go to a complete stop, but he doesn’t try to just keep going. He keeps trying to instigate with us. *Id.* at p. 28, line 4.
- When he ran them off the road, Scott slammed on brakes so hard that Weldon could not see the white lenses on Scott’s brake lights. *Id.* at p. 28, line 11.
- After going into the median, he did not chase Spivey. *Id.* at p. 29, line 9.
- **But:** He didn’t stop his pursuit, kept Scott within eyesight the entire time until Scott turned off Hwy 9. *Id.* at p. 29, line 14.
- I wasn’t looking at the speedometer, but I don’t believe we ever exceeded the speed limit too much. *Id.* at p. 30, line 4.
 - Can’t say for sure what that means though. *Id.* at p. 30, line 7.
- The fact that he was pulling a trailer affected his ability to maneuver his vehicle. *Id.* at p. 32, line 9.
- Pulling the trailer didn’t prevent them from pulling over or stopping. *Id.* at p. 32, line 18.

- Scott was clearly telling them he had a firearm. *Id.* at p. 38, line 11.
 - [First time] When Scott aimed it at them the communication was “I’m going to kill you” but they didn’t shoot out of restraint. *Id.* at p. 38, line 18.
 - Not scared shitless enough that Weldon stopped — he felt like the right thing to do **was call police** and help relay information. *Id.* at p. 39, line 2.
 - 911 call happened after the second time Scott **brake checked them**. *Id.* at p. 54, line 8.
 - From time he called 911 until he gets to Camp Swamp, there’s nothing that stops him from pulling over. *Id.* at p. 55, line 7.
 - If Weldon said he “chased” Spivey before it’s just phrasing . . . we didn’t go after him full speed. *Id.* at p. 61, line 6.
 - Agrees there is a difference between keeping someone in eyesight and being on their ass. *Id.* at p. 61, line 12.
 - Concedes that none of the questions the dispatcher asked required him to keep Scott in his sight. *Id.* at p. 65, line 9.
 - And **none** required him to be on Scott’s ass. *Id.* at p. 65, line 13.
 - Scott did not force anyone else off the road. *Id.* at p. 69, line 22.
 - Scott tried to get beside them, but Weldon would brake and not let him do that . . . we didn’t instigate with him once he was in front of us. *Id.* at p. 70, line 8.
 - May have went faster than 65. *Id.* at p. 70, line 15.
 - Once Weldon drove into the median Scott was always in front. *Id.* at p. 70, line 18.
 - Scott and the other white truck that was speeding with him . . . they were having their own incident. *Id.* at p. 71, line 1.
 - White truck turned down Camp Swamp before Scott. *Id.* at p. 71, line 1.
 - Scott and the white truck “had something going on.” *Id.* at p. 72, line 10.
 - “I was reading a road sign, I looked forward, I see a door swing open and a guy jumps out with a gun.” *Id.* at p. 80, line 9.
 - I didn’t know he was stopped. *Id.* at p. 89, line 1.
 - When he told dispatcher he was going to put Scott down . . . he was trying to relay that this **was serious**. *Id.* at p. 90, line 13.
 - On Hwy 9 he considered how he pursued Scott could escalate the situation **and** that’s why Weldon allowed distance between them. *Id.* at p. 105, line 12.
 - Denies they had drawn their weapons before Camp Swamp. *Id.* at p. 108, line 19.
 - The majority of time we were following Scott we were safely disengaged. *Id.* at p. 108, line 23.
- G. Audio Recordings Transcribed:** Certified transcript of audio recordings prepared by Lisa M. Adams, CVR-Master Level.
- **911 Call (Audio Recordings, p. 3, lines 14-15):** Boyd to dispatcher: “He’s, he’s trying to run from me now. We’re on Highway 9 headed towards Loris.” Boyd’s own words confirm Spivey was fleeing. A person running from you is not posing an imminent threat.

- **911 Call (p. 3, lines 20-21):** “I’m just going to stay with him the whole way. Y’all need to get this guy off the road.” Confirms Boyd maintained continuous, voluntary pursuit.
- **911 Call (p. 6, lines 19-22):** “Now he’s turning off the road. We’re, we’re going to keep trying to follow him; but if he starts shooting, dude, I don’t know.” Real-time admission that pursuit was intentional and ongoing as Spivey turned onto Camp Swamp Road. Directly contradicts any claim Boyd stumbled into the confrontation.
- **911 Call (p. 6, lines 1-2):** “All right, so he’s turning onto Camp Swamp Road . . . He’s stopping. He’s stopping. Hey, we’re about to have a fucking shootout dude. This dude’s got a gun. He’s got a fucking gun.” Boyd narrates his deliberate turn onto Camp Swamp while watching Spivey stop, yet Boyd drives up to Spivey.
- **Audio 59 (pp. 134-135):** Boyd to his mother: “Oh, he knew I was following him. My – me and you talking, he knew he had fucked up at that point, because all the other cars slammed on brakes and was trying to get away from him, and I was like, ‘He just ran me off the road and aimed a gun at Bradley’s head, fuck this guy,’ and I chased him. Oh, I was on his ass, and he couldn’t – his truck couldn’t outrun my truck, and he knew it. So, yeah, he was terrified.” Contradicts his deposition claim that he was merely “following” and did not chase Spivey.
- **Audio 70 (pp. 154, lines 25-p. 155, line 4):** Boyd says he told dispatcher: “I’m going to follow this guy until you can get a cop over here and stop him.” Then Boyd says: “He tried to run from me. I kept up with him.” Repeats the pursuit narrative.
- **Audio 7 (p. 36, lines 18-24):** Boyd tells his parents he messaged Williams: “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.” Then he says, “And he did, he got right in that fight and he fucking fought it out and he did not stop until it was over.”

II. THE SHOOTING

- A. **Deposition of [REDACTED]:** The disinterested eyewitness who was driving in the opposite direction on the two-lane road of Camp Swamp at the time of the shooting. In pertinent part, he testified:
- Demonstrating how Weldon was aiming (two-handed grip) at Spivey as soon as Spivey stepped out of his truck. *See* Deposition of [REDACTED], p. 9, line 23, Exhibit 1 to [REDACTED] Deposition.
 - Pointed over the dash. *Id.* at p. 10, line 1.
 - That’s what he saw. *Id.* at p. 10, line 4.
 - And almost immediately thereafter the gentleman in the white truck unloaded his clip through the windshield. *Id.* at p. 10, line 5.
 - Thinks he saw Scott struck by bullets. *Id.* at p. 10, line 14.
 - I saw them turn on [Camp Swamp] and then they had . . . yeah, black truck stopped, and the **white truck had to stop because it was driving behind it.** *Id.* at p. 13, line 13.
 - I pulled up and saw two trucks **turn on the road two trucks and them stop.** *Id.* at p. 13, line 20.
 - When Scott got out, the slide on his pistol was back. *Id.* at p. 14, line 3.

- Spivey got out of the truck. The slide was in the rear . . . I heard him say stop following me boy. *Id.* at p. 14, line 14.
- It's a two-lane, very small country road, I saw Scott. I could hear him. **They were so close** . . . I could see it clear as day like this. [Weldon] was already drawing pointing, and that's when I got real nervous because I knew. *Id.* at p. 15, line 12.
 - And I looked in the side to see what Scott was doing. His truck door is open . . . he was just next to his truck, and then . . . like I saw the motion of his arm, just like, you know, like it says here, kind of come up to an upward position, like **just moved it, not draw, not come up**, like his arm barely moved and everything went crazy. *Id.* at p. 15, line 21.
- I didn't hear a single pop and then a bunch of pops. I just heard pop, pop, pop, pop, pop, pop, pop, pop, pop, pop, pop, pop . . . *Id.* at p. 16, line 8.
- Had no idea there was a passenger with Weldon. *Id.* at p. 16, line 21.
 - I didn't realize there was another shooter until after I actually left. *Id.* at p. 17, line 6.
- The whole reason I pulled back up was I didn't know how many people were in the black truck. *Id.* at p. 17, line 21.
- [Responding to Ken Moss]: I remember exactly what I saw until I spoke to your client. If that's the question, I can depict it perfectly clear. *Id.* at p. 21, line 2.
- Looked like Scott was getting hit by paintballs and that was outside his truck. *Id.* at p. 26, line 19.
- I saw the pistol being pointed from the white truck. I looked in the side mirror. Scott's arm had moved, and it looked like, you know, I don't know if he was trying to get away or what, like move, and then that's the last we saw him. *Id.* at p. 26, line 25.
- When I looked in the mirror, and then I heard the gunshots. *Id.* at p. 27, line 9.
- Weldon was shooting as he was driving into him so that's why he says bullets were flying by . . . "his truck was only 2½ feet from me." *Id.* at p. 27, line 25.
- I was literally, we were like nose to nose. Our trucks were nose to nose. *Id.* at p. 28, line 6.
- When he heard the first shot his headlights were at Weldon's door, his rearview mirror. *Id.* at p. 28, line 12.
- Called 911 **because** "I was worried about the people in the black truck." *Id.* at p. 35, line 5.
 - That's why I called. *Id.* at p. 35, line 8.
 - Initially thought there might have been a family or something in there. *Id.* at p. 35, line 12.
- Never saw a time Weldon tried to back up. *Id.* at p. 39, line 11.
- I didn't think the black driver was overly aggressive when he got out of the truck either. *Id.* at p. 41, line 2.
- Never saw Scott load the weapon. *Id.* at p. 42, line 2.
- No walking motion by Scott or any kind of motion with his arm other than slightly raising the gun. *Id.* at p. 42, line 10.
- No. He . . . the way he was holding his pistol in his body, it was not intimidating or it was more down by his side, and the slide in the rear. I mean that's a clear indication, well, no, he didn't make any movements. He wasn't jumping around . . . he just said stop following me boy and the gun **was down on his side like this and the slide was in the**

rear. And he wasn't — there was no other crazy behavior or any erratic behavior. In fact, I didn't get nervous until I saw the gun in the white truck because then I was like, oh. *Id.* at p. 42, line 10.

- Alls I saw in the side mirror was him slightly move his arm, not—when you draw a pistol . . . it was not an aggressive draw, self-defense, you know, I've been around guns my whole life . . . I didn't see any motion of him raising that up in an aggressive manner or pointing it or anything like that at all. **No.** What I saw was when his arm slightly moved in my side mirror, all hell broke loose. I don't even think he would have had the time to raise his gun and chamber it and fire in that time. I don't. *Id.* at p. 43, line 2.
- Was told by Ken Moss that Weldon was recording the whole entire thing.
 - **And** the video cut off, somehow—they told me it somehow cut off as I showed up or a certain part of the 911 that the video went dead. *Id.* at p. 44, line 12.
 - **The dashcam video.** *Id.* at p. 44, line 22. Compare Audio 59, p. 122, line 17-p. 123, line 16, of Weldon and his mother talking about “the video.”
- All 4 of his windows were down. *Id.* at p. 47, line 21.
- [When asked “did Scott walk back towards the back of his truck in any manner?”, [REDACTED] responded:] Scott was next to his truck when he got out, **he was by his door.** *Id.* at p. 50, line 8.
- Gun was in his hand down by his side. *Id.* at p. 50, line 21.
- They were almost nose to nose when he observed Weldon's gun. We were close. *Id.* at p. 52, line 4.
- I was right next to that white truck when the shots rang out. *Id.* at p. 52, line 13.
- When I noticed that Weldon had a gun pointed is when I looked in the side mirror and that's when I noticed Scott start to raise his arm and all hell broke loose. *Id.* at p. 57, line 10.
- “I didn't notice [Scott] raise his firearm until I was looking in the side mirror **after** I already saw Weldon Boyd have the gun pointed.” *Id.* at p. 58, line 2.
- **At no point did he see Scott raise the pistol and point it towards the white truck.** *Id.* at p. 58, line 10.
- **I have never once said I saw Scott Spivey point a pistol at the white truck . . . I never saw him point a gun at that white truck ever.** *Id.* at p. 58, line 12.
- **When I heard everything going down, the gun would have been pointed two and a half feet in front of him at the ground still. Scott's gun.** *Id.* at p. 58, line 20.
- Started—it says he started to bring his pistol to an upward position. **I never once said it was aimed or I saw him point that firearm at your client. No, I never said that. I never witnessed that.** *Id.* at p. 59, line 2.
- **When your arm is down at a right angle and you move it a little bit up, that's upward . . . The pistol was by his pocket the whole time.** *Id.* at p. 60, line 12.
- Points out the 911 call contradicts his written statement. *Id.* at p. 68, line 10.
 - Says 911 call is how he remembers it. “And the guy in the white truck just unloaded a complete magazine at the guy.” *Id.* at p. 68, line 14.
- Question: With respect to the testimony that you don't know who shot first, the first person you see shooting as you said in the 911 call, was the guy driving the white truck appeared to unload his magazine through the windshield? *Id.* at p. 75, line 21.
 - Answer: **Yes.** *Id.* at p. 76, line 2.

- Prior to the shooting event, I didn't see [Weldon] except for pointing a gun at somebody else. So I don't know what he did up until that point. I don't know anything other than when I drove by and bullets came from his truck. So I can't comment on anything prior to me pulling up to that incident. I don't know anything else that happened before. *Id.* at p. 22, line 14.

B. Deposition of Bradley Williams: The Defendant passenger and 2nd shooter. In pertinent part, he testified:

- Never took his gun out of his backpack before the shooting on Camp Swamp. *See* Deposition of Bradley Williams, p. 7, line 21.
- They are rolling to a stop when Scott's door opens. *Id.* at p. 30, line 16.
- When Williams is saying "back up," Scott has already racked the gun, aimed it at them. *Id.* at p. 30, line 25.
- Scott advanced from the door of his truck. *Id.* at p. 31, line 5.
- Scott stepped into the oncoming lane after he steps out of his truck . . . gun in hand . . . racks the slide, over-exaggerated rack of the slide. Brings it forward, points and shoots. *Id.* at p. 31, line 14.
 - He's in the oncoming lane when doing this. *Id.* at p. 32, line 1. Same lane [REDACTED] was driving through.
 - Can't see his full body until Scott steps into oncoming lane. *Id.* at p. 31, line 5.
- Williams' pistol is in his bag when Scott gets out . . . In a holster. *Id.* at p. 34, line 23.
 - Bag has a big zipper pocket. *Id.* at p. 35, line 9.
- Williams goes for his gun after he tells Weldon to back up, back up. *Id.* at p. 35, line 18.
- Scott fired when Williams' weapon finished coming out of his bag and over the dash. *Id.* at p. 35, line 23.
- Scott fires and Williams almost immediately returns fire. *Id.* at p. 36, line 2. *But see* Deposition of [REDACTED] and Report and Deposition of Maher, both of which contradict Williams' claims.
- Only pulled his weapon after Scott fired. *Id.* at p. 41, line 10.
- He and Weldon used Facebook Messenger to communicate. *Id.* at p. 26, line 18.
 - Remembers deleting Facebook messages because Weldon asked him to "just delete the messenger" . . . so "he deleted it." *Id.* at p. 12, line 8; *see also* p. 13, line 10.
 - Doesn't know if Weldon told him to tell anybody from law enforcement or investigating that they only communicated by phone or text. *Id.* at p. 26, line 23.
 - Compare **Audio 73 (pp. 168-170)(Transcript of Audio Recordings)** — **EVIDENCE DESTRUCTION:** Boyd calls Williams and instructs: "Hey, a couple of things. Go back on Facebook and just delete our chat again." Williams says, "Okay." Boyd then directs Williams on a cover story: "If they ask, me and you just talked through the JR, me, you in chat, or we text or call each other." Boyd then explains, "The family's furious that [police] didn't seize our phones, so Ken's trying to work it out. The superiors are saying, "Well, we're going to need to do a data dump," and Ken's telling them that they're not privy to a data dump, so there's a war over the phones right now." Williams confirms: "Okay, but just delete the Facebook convo?" Boyd: "Yeah." Later in the call, Boyd again

instructs, "So just delete that one thing, and then we'll let you know what to do." Again, Williams indicates his agreement by saying, "Alright." Boyd responds, "All right, thanks." Williams: "Yep." This is recorded evidence of two defendants coordinating to destroy evidence and fabricate a cover story about their communications. *Cf.* Boyd's deposition: "Does not recall" telling Williams to delete messages (p. 95, line 11).

C. **Deposition of Weldon Boyd**: The Defendant driver and shooter. In pertinent part, he testified:

- "That he knows of"--. Weldon did not have a dash camera or something. *See* Deposition of Weldon Boyd, p. 15, line 15.
- Weldon claims the entire time Scott went back to his truck, he faced Weldon and kept the gun aimed at Weldon. *Id.* at p. 59, line 25. However, Scott is shot in the back.
- Heard the shots. *Id.* at p. 60, line 6. This contradicts the idea his truck was sound proof and could not hear the shots.
 - Scott gets out and immediately starts advancing . . . by the time he fired, I know he was at the end of his tailgate, if not past it. *Id.* at p. 83, line 4.
 - Feels pretty certain about that. *Id.* at p. 83, line 11.
- The slide was not open when Scott got out. "That didn't happen." *Id.* at p. 87, line 11.
- I didn't know Scott was stopped there on Camp Swamp Road. *Id.* at p. 89, line 1. This relates to the fabrication that Weldon was unsuspecting and ambushed.
- "When I started making that turn, there he was." *Id.* at p. 89, line 15.
 - But then Weldon chose to pull up behind Scott which is inconsistent with being in fear for his life.
- "Back up" was not in response to him shooting because he has not shot yet . . . **I was trying to flee.** *Id.* at p. 90, line 1.
- Weldon's pistol is NOT already drawn by the time Scott fires. *Id.* at p. 91, line 12.
- Dropped his phone when he drew his pistol. *Id.* at p. 91, line 15. Even though this cannot be heard on Weldon's secret telephone recording.
 - Got both hands up and engaged the target. *Id.* at p. 92, line 12.
- I listened to Scott's gun go off and saw the muzzle flash and began to return fire. *Id.* at p. 92, line 22. However, this is not recorded on the 911 call made by Weldon and it is inconsistent with [REDACTED]'s eyewitness account.
- To the best of his memory, "back up" was first instruction Bradley gave him. *Id.* at p. 104, line 7. However, that was not the first instruction from Bradley; on the 911 call, Bradley says "slow down, slow down, slow down." *See*, Boyd's 911 Call, p. 5, line 13.
- Says Scott shot at them **before** they came to a complete stop. *Id.* at p. 106, line 1. *But see*, p. 80, lines 12-20: When he sees Scott get out, he's "on the brake to stop." "I am on the brake stopping . . . my vehicle's not at a complete stop, but we came to one."
- Scott did not point the gun at the ground. *Id.* at p. 117, line 2.
- Had no reason to believe Scott would be stopped when he made his turn. *Id.* at p. 122, line 20.
- Was shooting at Scott. *Id.* at p. 125, line 14. The significance of this is that most of the bullet holes are in Scott's truck bed or cab.
- Does not recall telling Bradley Williams to "delete messages." *Id.* at p. 95, line 11.

- There wasn't anything to delete. *Id.* at p. 95, line 24.
- Agrees the only reason someone would delete was if they had something to hide. *Id.* at p. 96, line 1.
- Doesn't know if he did or didn't tell Bradley to delete stuff. *Id.* at p. 96, line 21.
- Best of my knowledge, I didn't. *Id.* at p. 97, line 1.

D. Audio Recordings Transcribed: Certified transcript of audio recordings prepared by Lisa M. Adams, CVR-Master Level.

- **911 Call (p. 3, lines 10-12):** Boyd tells dispatcher: "We'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 shoot him." A conditional future statement of intent to kill, made while pursuing — not a reaction to imminent danger. Also shows Boyd was aware of the danger but continued nonetheless.
- **911 Call (p. 4, lines 14-15):** "Listen, this dude shoots at me, we're going to put him down. He's — I mean, this dude's insane." Second statement of intent.
- **911 Call (p. 5, lines 1-2):** "Sir, this guy aims this gun at me, we're going to have to shoot him." Third statement of intent. Boyd is addressing the operator formally and calmly explaining his plan.
- **911 Call (p. 5, lines 19-21):** "Tell the cops we're in a white Ram pickup truck and we are armed. I'm military, so it ain't us; don't shoot us." Boyd announces they are already armed before reaching Camp Swamp. *But see* Boyd's deposition denying weapons were drawn before Camp Swamp. *But see* the beginning of the 911 call, "He was about to shoot at us. We pulled our guns out." Boyd's 911 Call, p. 3, line 23.
- **911 Call (p. 5, lines 24-p. 6, line 9):** "He's turning off the road. We're going to keep trying to follow him, but if he starts shooting, dude, I don't know. All right, so he's turning onto Camp Swamp Road . . . He's stopping, he's stopping. Hey, we're about to have a fucking shootout, dude. This dude's got a gun. He's got a fucking gun." Boyd narrates the impending confrontation he drove into.
- **911 Call (p. 7, lines 4-5):** Williams' statement captured immediately after the shooting: "God damn it, Weldon, why couldn't you fucking leave him alone?" The most devastating piece of evidence: Boyd's own companion, in the immediate aftermath, blames Boyd for causing the confrontation.
- **Audio 62 (p. 150):** Boyd tells someone: "We both, I believe, struck [Scott] while he was outside of the vehicle. We were about 30-40 yards apart. He crawled back into his truck and we quit shooting. Then when he was in his truck, we couldn't see him. He was laying down. He started shooting at us again from in his truck. So we started shooting at his truck cabin and then it went quiet." This admission describes a shooting sequence where Spivey was hit outside, crawled back to his truck wounded, and they resumed fire into the truck cabin. This is significant because Spivey was fatally wounded by a shot into his back and, other than graze wounds which most likely happened inside the vehicle, he was not otherwise hit.
- **Audio 59 (p. 122, line 17-p. 123, line 16):** Boyd tells his mother that if there was a connection between his ex-fiancé and Scott then "we got big fucking problems. Because then it doesn't matter what — it doesn't matter anymore." To which Boyd's mother replies, "Oh my gosh. Well, but the video shows something different **and** you were on

the . . .” Boyd interrupts, “I haven’t seen—I haven’t seen the video . . . Yeah, but I haven’t seen the video. And does the video show him aiming at us and firing or did it start too late?”

APPLICABLE LAW

Defendants have moved for an order granting them immunity in this action pursuant to the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 et seq., commonly referred to as the “Stand Your Ground Law” and referred to herein as “the Act.” A complete understanding of the Act’s application requires a review of South Carolina’s common law of self-defense and its evolution.

To justify the use of deadly force under the common law of self-defense, a defendant must establish four elements:

1. The defendant must be without fault in bringing on the difficulty;
2. 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;
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 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; and
4. The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Glenn, 429 S.C. 108, 838 S.E.2d 491 (2019). The fourth element is commonly referred to as a duty to retreat, i.e. if the defendant has other probable means to avoid the danger, he has to take advantage of those probable means. Further, South Carolina common law recognizes that a person’s home is his castle. Under the common law Castle Doctrine, “one attacked, without fault

on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense.” *Id.* (other citations omitted).

In 2006, the South Carolina Legislature promulgated the Act to codify the common law Castle Doctrine; to extend its protection to include not only one’s home but also an occupied vehicle and a person’s place of business; and to provide immunity to persons acting in defense of themselves or others. Under the Act, “[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...” S.C. Code Ann. §16-11-450(A)(emphasis added). In other words, the Act grants immunity to those who use deadly force that is either (1) permitted by the elements of the Act itself **or** (2) permitted by another applicable provision of law. Our courts have held that “another applicable provision of law” includes the common law of self-defense.

In *State v. Glenn*, our Supreme Court outlined the proper framework a court should use in evaluating a defendant’s claim of immunity under the Act: “Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. If the defendant has failed to meet the elements of reasonable fear [elements 2 and 3 of self-defense] or the duty to retreat [element 4 of self-defense], the court should then determine whether section 16-11-440(A) or (C) [of the Act] is applicable.” 429 S.C. 108, 838 S.E.2d 491 (2019); see also *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022);

Section 16-11-440(A) may, under appropriate facts, replace the reasonable fear element of self-defense by providing a presumption that the person’s fear was reasonable under certain circumstances. Section 16-11-440(A) provides:

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.

S.C. Code Ann. 16-11-440(A)(2015) (emphasis added). Further, “[t]he presumption provided in subsection (A) does **not** apply if the person . . . who uses deadly force is engaged in an **unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity.**”

S.C. Code Ann. §16-11-440(B)(3)(emphasis added). Accordingly, when an occupied vehicle is involved, subsection (A) requires: **(1)** that the defendant was **without fault** in bringing on the difficulty (first element of common law self-defense); **(2)** that the victim was in the process of **entering** or actually entered the occupied vehicle; **(3)** that the defendant was **not engaged in unlawful activity**; and **(4)** that the defendant was **not using the occupied vehicle to further an unlawful activity**.

Similarly, in other cases where the defendant has not proved that he is excused from the common law duty to retreat (i.e., **because he had other probable means of avoiding the danger**) by a preponderance of the evidence [and subsection (A) does not apply because the victim was not attempting to enter the defendant’s dwelling, residence, or occupied vehicle], the court should then consider whether section 16-11-440(C) is applicable because that provision was enacted to extend

the protections of the Castle Doctrine to “[other places[s] where [the defendant] has a right to be.” Section 16-11-440(C) provides:

A person who is not **engaged in an unlawful activity** and *who is attacked⁸ 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.

S.C. Code Ann. 16-11-440(C)(2025)(emphasis added). In essence, when a defendant is defaulted to subsection (C), **in addition to satisfying the first three elements of self-defense** (without fault, imminent danger, reasonable response), he must also prove by a preponderance of the evidence that **(1) he was not engaged in an unlawful activity; and (2) he was attacked in a place where he had the right to be**. See *State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019)(“[T]he circuit court must analyze whether, at the time of the incident, [the defendant] was engaged in an **unlawful activity** and was **attacked** in another place where he had a right to be.”). Further, the elements of **unlawful activity** and **being in a place where the defendant has a right to be** require a proximate cause analysis, i.e., the defendant must show that both the unlawful activity and the location where he claims he had a right to be were not proximately related to the killing. *Id.* If the unlawful activity is proximately related to the difficulty and is what lands the defendant in the place where the killing occurs, the defendant cannot successfully claim he was in a place where he had a right to be even if he would ordinarily have a right to be there but for his unlawful activity.

⁸ As discussed below, Boyd and Williams were not attacked by Spivey and certainly cannot prove by a preponderance of the evidence that they were attacked by Spivey. Spivey was in lawful possession of a weapon. A finding that Boyd and Williams were under attack merely because Spivey was in lawful possession of a weapon that he was holding down by his side will create an invitation for hotheads like Boyd to commit needless and senseless killings knowing they are protected under the Act.

Lastly, a claim of immunity under the Act requires a pretrial ruling by the circuit court. As for the standard of proof, “the circuit court should utilize a **preponderance of the evidence** standard of proof when considering whether a defendant is entitled to immunity under the Act.”⁹

When determining whether the Defendants have met the preponderance standard, “the circuit court must weigh the evidence and make its own **credibility** and factual findings before reaching a decision as to immunity.” *State v. McCarty*, 437 S.C. 355, 372, 878 S.E.2d 902, 911 (2022) (citing *State v. Andrews*, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019)(emphasis added)). The well-accepted jury charge based on relevant case law makes it clear that credibility means believability:

To determine the facts in the case you will have to evaluate the credibility, **which means believability**, of each witness. In considering whether to believe a witness’s testimony about a particular matter, you may consider:

What was the manner and appearance of the witness who testified – was he or she straightforward, or hesitant in answering?

Was the testimony of a witness consistent – or inconsistent?

How did the witness come to know the facts that he or she testified to? – Or what was his or her ability to know these facts?

Is there some reason a witness would want to give testimony which would help – or hurt –one side or the other? In other words, was the witness biased or prejudiced?

And was the testimony of a witness strengthened – or weakened – by other testimony or evidence?

You can believe as much or as little of each witness’s testimony as you think proper. You may believe the

⁹ If the defendant fails to prove his right to immunity by a preponderance of the evidence but “there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to [jury] instructions on the defense [at trial].” *State v. Slater*, 373 S.C. 66 66, 644 S.E.2d 50 (2007).

testimony of a single witness against that of many witnesses, or just the opposite.

Ervin's S.C. Requests to Charge – Civil, § 1-1. Further, in determining credibility, “live testimony is generally favored and considered more probative, at least in part, because the factfinder is able to observe a witness's demeanor, including during cross-examination.” *State v. Dennis*, 444 S.C. 353, 907 S.E.2d 142 (Ct.App. 2024) (citing *U.S. v. Mathis*, 559 F.2d 294 (5th Cir. 1977); see also *Gorecki v. Gorecki*, 387 S.C. 626, 632, 693 S.E.2d 419, 422 (Ct. App. 2010) (in discussing credibility issues, the appellate court noted that the lower “court had the opportunity to see the witnesses, hear ‘the testimony delivered from the stand, and had the benefit of that personal observance of and contact with the parties which is of peculiar value in arriving at a correct result in a case of this character’”) (citing *DuBose v. DuBose*, 259 S.C. 418, 423, 192 S.E.2d 329, 331 (1972) (internal citation and quotations omitted)). Contradictory statements by a witness are an indicator of a lack of credibility. See *State v. Chhith-Berry*, 437 S.C. 527 (Ct.App. 2022) (court noted that the defendant “continued to change his story and contradict himself and other witnesses' accounts of events” and that recorded jailhouse phone calls contradicted his prior statements: “While in jail, [the defendant] called his mother and spoke to her and [defendant's brother]. During the recorded phone call, defendant said he was not going to ‘watch[his] brother get his ass kicked,’ expressed his dislike for [the victim] for ‘think[ing] he was all hard and shit,’ bragged that he ‘fucked that boy up, and stated that he believed [the victim] deserved to be dead’”); (*State v. Curry*, 406 S.C. 364, 752, S.E.2d 263 (2013) (the denial of immunity was affirmed where the testimony of the witnesses “varied substantially” and the defendant “testified he pulled the gun from his pocket because he believed [the victim] was lunging toward him” but the physical evidence showed the defendant “shot [the victim] six times in the back, killing him.”).

Although the term “preponderance of the evidence” is a commonly used term in South Carolina civil courts, a deeper dive into its long-standing meaning is helpful here in the context of an immunity hearing. In the 1928 case of Chandler v. Moore, the court affirmed the lower court’s use of the “old scale” illustration of the preponderance of the evidence. The lower court’s charge read:

“You were supposed to hold in your hand a perfectly evenly balanced scales. In the pan of the one you put the evidence in support of the allegations of the Complaint, in the other you put the evidence opposed to the allegations of the complaint. If the evidence in support of the allegations of the complaint outweigh the other and carry down that side of the scale, then the plaintiff has sustained his complaint by the preponderance or the greater weight of the evidence. If however, the scales stand perfectly even, the balance doesn't waver, the plaintiff has not sustained the material allegations of his complaint by the preponderance or greater weight of the evidence; or if the evidence opposed to the allegations of the complaint outweigh those in its favor and this side of the scale goes down, then it (he) is (has) not sustained the allegations of his complaint by the preponderance or greater weight of the evidence. But, gentlemen, after all, reduced to its last analysis, **the preponderance or greater weight of the evidence is that part of the evidence which carries to your mind the conviction of its truth, fixed conviction of truth, outweighs the other evidence in the case and satisfies you that justice lies there. That, after all, gentlemen, succinctly stated, means that the preponderance or the greater weight of the evidence is that part of it which carries to your minds and to your consciences the conviction of its truth.**”

Chandler v. Moore, 148 S.C. 152, 145 S.E. 699 (1928) (emphasis added). After analyzing the jury charge, the *Chandler* court held:

The charges of the judge, complained of, are complete answer to any attack which can be made against them. “The old scale” illustration is a landmark of our law, for it has come down to us from our forefathers in the jurisprudence of England and America from time immemorial. It is almost too sacred to even discuss, and certainly too greatly respected to even need defense.

Id. Echoing its 1928 holding, the court more recently reiterated that “[a] preponderance of the evidence is evidence which convinces the fact finder as to its truth.” Pascoe v. Wilson, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016) (citing *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693 S.E.2d 419, 422 (Ct. App. 2010) (citation omitted)); see also State v. Johnson, No. 2019-000938, 2025 WL 2802927, at *1 (S.C. Ct. App. July 30, 2025) (applying the same definition of preponderance of the evidence in a criminal murder case: “A preponderance of the evidence is evidence [that] convinces the fact finder as to its truth.”) (citing *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016)). The Fourth Circuit recently provided a different illustrative definition of the preponderance standard in a coal mine case:

A miner cannot make such a showing by solely relying on evidence equally indicative of coal-dust-induced lung disease and smoking-induced lung disease. That is because a preponderance of the evidence means a showing of “more likely than not.” *See U.S. Steel Min. Co. v. Dir., OWCP*, 187 F.3d 384, 389–91 (4th Cir. 1999). If the only evidence a miner presents could equally relate to smoking or coal dust exposure, he has not shown that his lung disease is more likely than not from coal dust. At best, he's presented evidence of a “tie.” And while a tie goes to the runner in baseball, it goes to the employer in black lung cases.

Am. Energy, LLC v. Dir., Off. of Workers' Comp. Programs, United States Dep't of Lab., 106 F.4th 319, 327 (4th Cir. 2024). Applied here, a tie goes to Plaintiff and means Defendants lose their motion for immunity.

Lastly, the court, “as the designated fact-finder in this matter, must provide adequate findings to support its decision so an appellate court can perform its role of reviewing the ruling under an abuse of discretion standard.” *State v. McCarty*, 437 S.C. 355, 374, 878 S.E.2d 902, 912 (2022) (citing *Cervantes-Pavon*, 426 S.C. at 452 n.4, 827 S.E.2d at 569 n.4, for the proposition

that “specific findings of fact and conclusions of law are critical to reviewing courts, particularly given the gravity of the circumstances these cases necessarily involve”).

ARGUMENT

Here, Defendants are not entitled to immunity under the common law of self-defense, § 16-11-440(A), or § 16-11-440(C). Accordingly, the Court must deny Defendants’ motion for immunity.

I. IMMUNITY UNDER THE ACT

As set forth above, there are three possible avenues to immunity under the Act: (1) common law self-defense; (2) § 16-11-440(A); and § 16-11-440(C.) South Carolina case law instructs that the court’s inquiry must begin with whether the Defendants can prove by a preponderance of the evidence each of the four elements of self-defense. If they cannot, then the court must determine if they qualify for immunity under subsection (A) or subsection (C) of § 16-11-440.

A. Immunity under the Common Law of Self-Defense

Defendants are not entitled to immunity under the common law of self-defense because they cannot prove each of its elements by a preponderance of the evidence.

1. First Element: Without fault in bringing on the difficulty.

- a. Defendants must prove they were without fault in bringing on the difficulty.**
- b. This element is required for immunity under common law self-defense, § 16-11-440(A), and § 16-11-440(C).**
- c. Because Defendants cannot prove by a preponderance of the evidence that they were without fault in bringing on the difficulty, they are not entitled to immunity on any ground.**

Boyd does not have a right under South Carolina law to engage in road rage by using his

vehicle to chase down another driver, even if the other driver also engaged in road rage. As such, the Defendants cannot prove they were without fault in bringing on the difficulty that resulted in the killing of Spivey.

Through the years, our Supreme Court has had multiple opportunities to define the meaning of being without fault in bringing about the **difficulty**, i.e. **the imminent threat that demanded the immediate action to strike**. At its basic level, self-defense requires the **absence of aggression** or fault in bringing on the difficulty; the doctrine is defensive, not offensive. *See State v. Grantham*, 224 S.C. 41, 77 S.E.2d 291 (1953) (other citations omitted); *see also State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013); *State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019) (noting that “the circuit court correctly noted that a movant must demonstrate an absence of aggression”). Stated differently, aggression equates to fault; a defendant who acts with aggression cannot be without fault. *Id.* Any act by the accused that is “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. Bryant*, 336 S.C. 340, 520 S.E.2d 319 (1999). Further, “one who provokes or initiates an [immediate need to strike] cannot escape criminal [or civil] liability by invoking self-defense.” *Id.*

In *Bryant*, the defendant was breaking into the decedent’s vehicle when the decedent approached him with a screwdriver and the defendant fought back with a knife. The defendant claimed self-defense. The court found no right to self-defense because the defendant initially provoked the attack and **never withdrew**. The court explained that while “[o]ne’s right to self-defense is restored after a withdrawal from the initial difficulty with the victim if that withdrawal is communicated to the victim by word or act,” the defendant failed to withdraw after provoking

the attack. *Id.* “If appellant truly intended to withdraw, he could have easily left the open parking lot.” *Id.* (citing *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973)).

Here, even if Spivey was the original aggressor, it was Spivey who chose to withdraw from the initial difficulty by running from Boyd and finally turning onto Camp Swamp Road to escape Boyd’s relentless chase.¹⁰ Instead of withdrawing and going his separate way, Boyd ignored countless means of avoiding the difficulty altogether and did the opposite of retreating; rather, he made a conscious decision to aggressively and relentlessly chase Spivey at excessive speeds, at times exceeding 100 mph, and while traveling close behind Spivey in a threatening manner.¹¹ Such an unlawful use of a vehicle to chase another driver is in violation of the law¹² and, especially in

¹⁰ Although it is clear that Spivey was attempting to disengage and withdraw prior to and when he turned onto Camp Swamp Road, it does not matter if Spivey was also at fault. The court made this abundantly clear in *State v. Williams*, where a drug dealer who arrived at an illegal marijuana transaction with a weapon shot and killed another participant in the drug deal. In finding the defendant Williams could not prove self-defense because he was not without fault, the court explained: “We readily acknowledge [the victim] was at fault, and perhaps Mitchell and Hamlin [other participants in the drug deal]. **The question, however, is not who else might have been at fault, but whether Williams was without fault.** In answering that question, it does not matter who else was at fault. **Thus, the fact ‘there is evidence ... that [the victim] ... produced the violent occasion’ is not relevant. The dissent mistakenly relies on the premise that only one person can be at fault.**” 427 S.C. 246, 253, 830 S.E.2d 904, 908 (2019)(emphasis added).

¹¹ Just as in *Williams*, see *supra* footnote 10, where the drug dealer consciously chose his situation, the defendant in *Slater*, see *infra*, who approached an ongoing altercation in a high school parking lot while armed with a gun, also consciously chose to insert himself into the situation where the difficulty arose. The court in *Williams* recognized this similarity and why such a conscious decision prevents a finding that a defendant is without fault: “*Slater* is important to our analysis in this case because [the defendant] armed himself for the purpose of entering into a situation **he knew to be rife with violence**—just like Williams did here.” *State v. Williams*, 427 S.C. 246, 253 830 S.E.2d 904, 908 (2019).

¹² Boyd’s excessive speed alone makes his actions in chasing Spivey unlawful and in violation of S.C. Code Ann. § 56-5-1520; his excessive speed for the purpose of chasing another driver tailgating the other driver and being “on his ass” and using his cell phone to take photographs and talk to 911 all at the same time gives rise to violations of S.C. Code Ann. § 56-5-2920 for reckless driving (“Any person who drives any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property is guilty of reckless driving.”), § 16-3-600

for simple assault (“A person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers or **attempts** to injure another person with the present ability to do so”) (emphasis added), and for assault and battery with a deadly weapon (South Carolina courts have long held that an automobile is a dangerous instrumentality that can be used as a deadly weapon. *See State v. Phillips*, 226 S.C. 297, 299, 84 S.E.2d 855, 855–56 (1954) (explaining that because “the said motor vehicle [is] considered a dangerous instrumentality,” it can be used as a deadly weapon and explaining that “[t]his doctrine was derived from an analogy between the negligent use of a motor vehicle and the negligent handling of a deadly weapon.”)). Further, Defendants’ decision to relentlessly chase Spivey, hunt him down, and kill him arguably gives rise to a finding of unlawful activity under the lynching statute, S.C. Code Ann. § 16-3-210. The chase was also a breach of the peace. *See* S.C. Code Ann. § 22-3-560; *see also State v. Simms*, 412 S.C. 590, 594–95, 774 S.E.2d 445, 447 (2015) (“A breach of the peace is a common law offense. Encompassing a broad range of conduct, South Carolina courts have analyzed a breach of the peace over the centuries as a crime defying strict definition: The term ‘breach of the peace’ is a generic one embracing a great variety of conduct destroying or menacing public order and tranquility. In general terms a breach of peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order. *State v. Poinsett*, 250 S.C. 293, 297, 157 S.E.2d 570, 571 (1967) (citation omitted); *see also Randolph*, 239 S.C. at 83, 121 S.E.2d at 350 (‘Breach of the peace is a common law offense which is not susceptible of exact definition.’). As noted by the court of appeals in *State v. Peer*: ‘Throughout the various definitions appearing in the cases there runs the proposition that a breach of the peace may be generally defined as such a violation of the public order as amounts to a disturbance of the public tranquility, by act or conduct either directly having this effect, or by inciting or tending to incite such a disturbance of the public tranquility. Under this general definition, therefore, in laying the foundation for a prosecution for the offense of breach of the peace it is not necessary that the peace actually be broken; commission of an unlawful and unjustifiable act, tending with sufficient directness to breach the peace, is sufficient.’ 320 S.C. 546, 552, 466 S.E.2d 375, 379 (Ct.App.1996) (citing 12 Am. Jur. 2d *Breach of Peace & Disorderly Conduct* § 4 (1964)). ‘Whether conduct constitutes a breach of the peace depends on the time, place, and nearness of other persons.’ *Id.* (citing 3 S.C. Juris. *Breach of Peace* § 7 (1991)); 3 S.C. Jur. *Breach of Peace* § 3 (“Whether conduct constitutes breach of peace depends on time, place and nearness of other persons.” SC Code 1976, § 16-17-530; *In re Jeremiah W.*, 353 S.C. 90, 576 S.E.2d 185 (Ct. App. 2003); (“Offense of ‘breach of the peace’ is defined as a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order. S.C. Code 1976, § 16-17-530; *In re Jeremiah W.*, 353 S.C. 90, 576 S.E.2d 185 (Ct. App. 2003)); (“Term ‘breach of the peace’ is generic one embracing great variety of conduct destroying or menacing public order and tranquility; in general terms, it is such a violation of public order as amounts to disturbance of public tranquility, by any

light of Boyd's knowledge that Spivey was armed, is reasonably calculated to produce the response that occurred---Spivey stopping his vehicle to demand they stop following him.

State v. Slater illustrates this point well. In *Slater*, the court reiterated that “[a]ny act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to self-defense.” 373 S.C. 66, 644 S.E.2d 50 (2007).¹³ After attending a step show at the high school, Slater went outside and was talking to a group of girls in the parking lot. When he noticed a group gathering around a truck, he retrieved his gun from his vehicle and walked toward the truck but then changed his mind and turned around. Just moments later, he noticed another disturbance in an adjacent parking lot and proceeded with his gun to that parking lot where he found a robbery unfolding and saw five men assaulting a person who was on the ground. Slater walked up to the robbery and surprised one of the attackers who pointed a gun at Slater. Slater turned around and began to run towards his car. Slater heard a gunshot as he was running away and began shooting his gun behind him. His gunfire struck the person on the ground who had been assaulted by the five men. Slater was charged with murder and claimed self-defense; however, the trial court refused to charge the jury on self-defense. The Supreme Court agreed and

act or conduct directly having this effect or inciting or tending to incite violence or disturbance of public tranquility.” See publication Words and Phrases for other judicial constructions and definitions; *State v. Peer*, 320 S.C. 546, 466 S.E.2d 375 (S.C. App. 1996)). See also, § 11:7. Breach of the peace; Aggravated breach of the peace (BPHAN) (M), Criminal Offenses in South Carolina § 11:7 (“The common law offense of breach of the peace involves violent acts or acts and words that destroy or menace public order and integrity, including a real and present danger of riot, disorder, **interference with traffic on public streets or other immediate threat to public safety**, peace or order.” *Cantwell v. State of Connecticut*, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940)).

¹³ Although it is clear that Defendants' conduct in chasing Spivey was unlawful, it is important to note that unlawful activity is **not** required for a finding that Defendants cannot show they were without fault. As our courts have made clear, aggressive behavior (which may or may not be technically unlawful) is sufficient to show fault in bringing about the difficulty.

found that Slater was **not** without fault in bringing on the difficulty. The court noted that “the record clearly reflects that Slater **approached an altercation** that was already underway with a loaded weapon by his side.” *Id.* (emphasis added). “**Such activity could be reasonably calculated to bring the difficulty that arose in this case.**” *Id.* Slater’s actions, including [his **conscious decision** to approach an **altercation** that was already underway] and the unlawful possession of the weapon, proximately caused the exchange of gunfire, and ultimately the death of the victim.” *Id.*; see also *State v. Wigington*, 375 S.C. 25, 649 S.E.2d 185 (Ct.App. 2007) (where the defendant injected himself into a verbal argument between the victim and the victim’s daughter, removed himself from the presence of the controversy, and then returned with a loaded gun, the defendant’s conduct could be reasonably calculated to bring about the difficulty that arose). Here, Boyd’s fault was much more egregious than Slater’s. According to Boyd’s own testimony, he knew that Spivey was having an ongoing altercation with another driver--the driver of a second white truck¹⁴—and that Spivey had a weapon.¹⁵ Like Slater, Boyd, with a loaded weapon, chose to approach and pursue an altercation that was already underway. As in *Slater*, even if Spivey pointed or fired his gun at Boyd when Spivey exited his truck which is **not** supported in any way by the forensic evidence or testimony of the independent eyewitness, [REDACTED],¹⁶ Boyd cannot claim the benefit of self-defense because Boyd was **not** without fault in bringing on the encounter with Spivey.

¹⁴ See Deposition of Boyd, p. 71, line 1 (Scott and the other white truck that was speeding with him . . . they were having their own incident; white truck turned down Camp Swamp before Scott); *Id.* at p. 72, line 10 (Scott and the white truck “had something going on”).

¹⁵ See Deposition of Boyd, p. 13, line 10 (When he saw Scott pointing the gun, he began slowing down); *Id.* at p. 13, line 19 (Because Scott was aiming the gun at them, **and** to create distance); *Id.* at p. 13, line 24 (**and** because Scott had a gun).

¹⁶ See Deposition of [REDACTED], p. 75, line 21--p. 76, line 2) (Question: “The first person you see shooting as you said in the 911 call, was the guy driving the white truck appeared to unload his magazine through the windshield? Answer: “Yes”).

Further, “[a]s a general rule, the plea of self-defense is not available to one who kills another in mutual combat.” *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973). “To constitute mutual combat there must exist a mutual intent and willingness to fight; and this intent may be manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.” *Id.* (other citations omitted). As the *Graham* court explained,

Where a person voluntarily participates in . . . mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict on the ground of self-defense, regardless of what extremity or imminent peril he may be reduced to in the progress of the combat, unless, before the homicide is committed, he withdraws and endeavors in good faith to decline further conflict, and, either by word or act, makes that fact known to his adversary.

Id. In *Graham*, the defendant appealed his manslaughter conviction, arguing the trial court erred in charging the jury on the law of mutual combat and that the plea of self-defense could not be invoked if the shooting resulted from a mutual intent to fight. The defendant and the decedent had argued and made threats against each other the day before the killing, and the defendant purchased a pistol that night. The following day, they met in town, had a heated discussion, and the defendant waved his gun in the decedent’s face. The decedent left and returned a short time later with a pistol. The decedent parked his truck in front of a barber shop where the defendant was inside. The decedent got out of his vehicle holding his pistol in plain view. The defendant saw the decedent holding his pistol outside the barber shop and chose to walk outside with his gun, thereby “**placing himself in a position where an encounter with the deceased could be expected.**” *Id.* (emphasis added). Both parties fired their weapons, and the decedent was fatally wounded. In upholding the conviction and finding no error in the trial court’s jury charges, the court applied the law of mutual combat to the facts of the case:

There was ill-will between the parties. They had threatened each other and it is inferable that they had armed themselves to settle their differences at gun point. Under these circumstances, the apparent willingness of each to engage in an armed encounter with the other, sustained an inference that they were engaged in mutual combat at the time of the killing, and required that the issue be submitted to the jury for determination.

Id. Most significant is the fact that the defendant made the conscious decision to exit the barber shop with his gun when he saw the deceased standing outside the barber shop with his gun, provoking the encounter and ultimately the difficulty.

In *State v. Taylor*, the court elaborated on mutual combat:

The case law does establish that there must be ‘mutual intent and willingness to fight’ to constitute mutual combat. Mutual intent is ‘manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.’ Whether or not mutual combat exists is significant because ‘the plea of self-defense is not available to one who kills another in mutual combat.’ In order to claim self-defense, the defendant ‘must be without fault in bringing on the difficulty.’ Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in mutual combat, the ‘no fault’ element of self-defense cannot be established.

State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003) (other citations omitted). Further, there must be an “antecedent agreement to fight” for the court to charge mutual combat. *Id.*; see also *State v. Bowers*, 428 S.C 21, 832 S.E.2d 623 (Ct.App. 2019).

Here, assuming Spivey pointed his weapon at Defendants while driving next to them, maneuvered his vehicle in front of them, brake-checked them causing them to run off the road, and then continued to brandish his weapon out of his window, one might argue that Spivey initially instigated the incident. However, Boyd then made the **conscious decision** to pursue and chase Spivey at speeds greatly in excess of the speed limit and while in close proximity to the rear of Spivey’s vehicle. The maneuvering of vehicles by Boyd and Spivey on Highway 9 before they

turned onto Camp Swamp Road evidences ill will between the parties. The ill will is further documented on Boyd's 911 call and subsequent recorded phone calls. Further, as the lead vehicle that ultimately and deliberately turned off Highway 9 onto Camp Swamp Road, Spivey attempted to disengage and retreat in an obvious attempt to remove himself from any interaction with Defendants to no avail,¹⁷ since Boyd made a **conscious** decision to chase and turn onto Camp Swamp Road, a road that diverted him away from his intended destination of his farm, with the only purpose of continuing his aggression against Spivey.¹⁸ Much like the defendant in *Graham* who made a conscious decision to exit the barber shop when he knew the deceased was standing outside with a gun, Boyd made a conscious decision to chase Spivey for an extended length of time onto Camp Swamp Road when Boyd knew Spivey was armed with a pistol and was having some kind of interaction with another vehicle.¹⁹ Further, while chasing Spivey, Boyd acted

¹⁷ To be clear, even though the evidence is clear that Spivey turned onto Camp Swamp to head home away from Boyd and Highway 9, it is **NOT** necessary for the court to find that Spivey disengaged. From the Defendants' perspective, the doctrine of mutual combat applies here regardless of whether Spivey disengaged, much like the holding in *Williams* that it matters **not** whether the victim was also at fault.

¹⁸ Although Boyd now claims he was merely relaying information to 911, the calls belie this assertion. First, the 911 dispatcher is not asking for information. *See*, Deposition of Boyd, pp. 64-66; Transcript of Boyd's 911 Call. Second, Boyd says "he's trying to run from us" and "I'm going to stay with him." *See*, Transcript of Boyd's 911 Call. Finally, in a recorded phone call with his mother in the days following the shooting, Boyd told his mother:

Oh, he knew I was following him. Me and you talking. He knew he had fucked up at that point because all the other cars slammed on brakes and was trying to get away from him. And I was like, he just ran me off the road and aimed a gun at Bradley's head. 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.** I believe 100% he had realized he's fucked up. He's probably going to jail and **he's running.** And then for some reason when he turned down that road, I turned."

¹⁹ To the extent the case law requires the victim to know the defendant was armed, Spivey most definitely knew that Boyd was operating and using his vehicle as a deadly weapon. *See State v. Bowers*, 428 S.C. 21, 832 S.E.2d 623 (Ct.App. 2019).

unlawfully in multiple ways, including operating a vehicle at an excessive speed, driving recklessly, breaching the peace, committing assault with a dangerous weapon (i.e. his truck), and engaging in a high-speed chase.²⁰ As such, Boyd committed acts in violation of the law and his actions were reasonably calculated to bring about the encounter. Defendants are therefore **not** without fault in bringing about the difficulty.

State v. Hendrix involves another set of facts that unfolded over the course of a day and culminated in Hendrix, the older man, shooting and killing Cherry, the younger man. 270 S.C. 653, 244 S.E.2d 503 (1978). Earlier in the day, the two men had a confrontation at Hendrix' tomato patch when Cherry said they were going to have to fight to settle their disagreement; Hendrix responded that he was going home to get his gun and would have a gun with him in his truck. Shortly thereafter, Hendrix drove to Cherry's house, but Cherry was not at home. As Hendrix was driving away from Cherry's home, he passed Cherry heading in the opposite direction. Cherry stopped in the road, backed up slightly, and then continued on toward his house. Hendrix proceeded to his lake lot. Later, Cherry arrived at Hendrix's lake lot, jumped out of his vehicle and advanced toward Hendrix without a weapon. Hendrix pulled out his shotgun and told Cherry to back off. Cherry then retrieved his shotgun from his vehicle. Some witnesses said Cherry never pointed his gun at Hendrix, but others said he did. Ultimately, Hendrix shot Cherry four times in rapid succession. The trial court denied Hendrix' motion for directed verdict on the ground of self-defense, and the jury convicted Hendrix of manslaughter. On appeal, the court found that the trial court erred in failing to grant Hendrix' motion for directed verdict.

Why was Hendrix allowed the benefit of self-defense while Graham, who shot his decedent in front of the barber shop, was not? Why did the doctrine of mutual combat not apply? While

²⁰ See, *supra*, footnote 12.

both *Graham* and *Hendrix* involve an unfolding course of events, there is one critical difference that accounts for the different outcomes. Graham, with actual knowledge that the deceased was armed and standing outside the barber shop, made the conscious decision to proactively exit the barber shop with his own weapon and **engage** in an encounter that brought on the difficulty. Hendrix, although previously engaged in the unfolding difficulty and although his actions of going to Cherry's house foreseeably could have worsened the ill feelings, made the decision to **remove** himself from the difficulty by retreating to his own property. It was only when Cherry made the conscious decision to locate Hendrix and then aggressively engage in and continue the difficulty that Hendrix fired shots to protect himself. The law encourages the deescalation of conflicts and cooler heads prevailing; it does not aid or encourage hotheads. With Hendrix, there was a break in the causal chain that allowed him to successfully claim self-defense.²¹ With Graham, he continued the causal chain by consciously exiting the barber shop to confront someone thereby bringing on the difficulty.

Here, Defendants are like Graham; they easily could have stopped chasing Spivey at any time or continued straight on Highway 9 towards their intended destination instead of choosing to aggressively chase Spivey. Williams' expressed this exact sentiment just seconds after the killing as captured on Boyd's secret recording of the 911 call: **"Goddamnit Weldon, why couldn't you**

²¹ It is instructive to consider the outcome if Cherry had killed Hendrix in that same setting. Without any doubt, Cherry would not have been able to successfully claim self-defense as Hendrix did because Cherry pursued Hendrix onto his property with aggression; as such, he was at fault in bringing on the difficulty. Likewise, in *Graham*, if Graham, while walking out of the barber shop with his gun, had been shot by the victim, the victim would not be entitled to self-defense because he sought Graham out, acted aggressively, and was at fault in bringing on the difficulty. But even so, this hypothetical result did not prevent Graham from also not being entitled to claim self-defense.

fucking leave him alone?” Boyd’s 911 Call Recorded by Boyd’s Phone. It is Spivey who, like Hendrix, made the decision to attempt to withdraw and retreat from any confrontation with Boyd.

2. Second Element: Fear of imminent danger or actual imminent danger.

- a. **Defendants must have actually believed they were in imminent danger of losing their lives or sustaining serious bodily injury OR they actually were in such imminent danger.**
- b. **This element is required for immunity under both the common law of self-defense and § 16-11-440(C) and is presumed ONLY for immunity under § 16-11-440(A) which does not apply to Defendants for the reasons set forth below.**

First, Defendants have steadfastly maintained that Spivey attacked them by getting out of the vehicle, aiming his gun, and shooting first. They claim to be certain that Spivey fired first and that they were in actual imminent danger. They have left no room for uncertainty or mistaken beliefs. They have never said, “We thought he fired first” or “we thought we saw him aim his gun at us while standing outside his vehicle.” Rather, they have expressed certainty that is directly contradicted by the forensic evidence as well as the disinterested eyewitness testimony of [REDACTED]. Accordingly, what they “believed” does not matter because their lie goes directly to their credibility. The physical and forensic evidence and the disinterested eyewitness testimony of [REDACTED] make it clear that Spivey did not fire first nor did he aim his gun at Defendants once exiting his vehicle. This discrepancy shows a blatant lie that Boyd and Williams immediately concocted to help their self-defense narrative. Because they have chosen to lock into this lie that Spivey shot first, they cannot now argue they were entitled to act on appearances. As our courts have made clear, a defendant is entitled to an appearances charge only “where the claim of self-defense arises from a **mistaken** appearance of danger.” *Gilchrist v. State*, 364 S.C. 173, 612 S.E.2d 702 (2005) (citing *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000)); *see infra*,

discussion on the right to an appearance charge. Here, they are not claiming any mistaken belief; rather, they adamantly maintain their lie that Spivey shot first.

Secondly, the undisputed distance of roughly 75 feet between the stopped vehicles in and of itself shows the lack of any imminent threat. Boyd, who actually believed the distance was closer to 30 yards, appreciated this lack of actual imminent danger by acknowledging to his mother that “30 yards with a pistol is a long shot. You’ve got a four-inch barrel at 30 yards. That’s a hard shot. And then trying to shoot through windshields and still hit somebody, that’s a hard shot. I don’t know how much we hit him when he was outside of the truck, but the goal we had is the same thing they taught us in the military. Once you take fire, you gain fire superiority. That’s how you get people to back off or get cover and you overtake ‘em. You put more rounds on them than they’re able to put on you. They realize they’re overpowered and that’s what we did.” *See*, Recorded Phone Call Between Boyd and Mother. That he knew the distance created a very hard shot illustrates that the Defendants were not in imminent danger.

Thirdly, the disinterested eyewitness, [REDACTED], saw everything and said it did not happen the way Defendants claim. [REDACTED] saw and heard the encounter as he was driving by the vehicles with his windows down in the opposite direction on the two-lane road of Camp Swamp.²² He saw Spivey get out of his vehicle, standing stationary outside his truck by his driver’s door holding his gun down by his side with the slide open, i.e. not in a shooting mode.²³

²² *See* Deposition of [REDACTED], p. 15, line 12 (It’s a two-lane, very small country road. I saw Scott. I could hear him. They were so close . . . I could see it clear as day like this.); p. 27, line 25 (Weldon was shooting as he was driving into him so that’s why he says bullets were flying by . . . “his truck was only 2 ½ feet from me”); p. 28, line 6 (I was literally, we were like nose to nose. Our trucks were nose to nose); p. 28, line 12 (when he heard the first shot his headlights were at Weldon’s door, his rearview mirror); p. 47, line 21 (all 4 windows were down).

²³ *See* Deposition of [REDACTED], p. 50, line 8 (When asked “Did Spivey walk back towards the back of his truck in any manner?”, [REDACTED] answered, Scott was next to his truck when he

Boyd, the gun enthusiast, could have certainly appreciated this if he actually wanted to determine the existence of any actual imminent threat. According to [REDACTED], at no time prior to Boyd opening fire did Spivey aim his gun at Defendants, shoot first, or do anything threatening.²⁴ While Defendants want to say [REDACTED] testified he did not know who fired first, he did testify the only person he saw fire was Boyd.²⁵

Fourth, Williams also did not perceive an imminent threat. He did not start shooting at first when Boyd did which can only mean that Williams did not appreciate any imminent danger. This is confirmed by [REDACTED]'s testimony and his 911 call in which he told the dispatcher that "the guy in the white truck just unloaded a complete magazine at [Spivey], shot through his back window." [REDACTED] 911 Call; Deposition of [REDACTED], p. 68, line 10, p. 68, line 14 (testifying that the 911 call in which he says, "And the guy in the white truck just unloaded a complete magazine at the guy," is how he remembers it); p. 16, line 21 [REDACTED] had no idea there was a passenger with Weldon; p. 17, line 6 [REDACTED] didn't realize there was another shooter until after he actually left). It is also confirmed by Boyd's statement to Williams that "you got in the fight." *See* Recorded Phone Call between Boyd and Williams. Further, the audio forensic evidence and testimony of Dr. Maher is consistent with and supports the conclusion not only that

got out; he was by his door); p. 50, line 21 (gun was in his hand down by his side); p. 42, line 10 (slide was in the rear); p. 42, line 2 (never saw Scott load the weapon).

²⁴ Additionally, the lack of shell casings outside of Spivey's truck supports [REDACTED]'s testimony and refutes Defendants' story.

²⁵ *See* Deposition of [REDACTED], p. 58, line 10 (At no point did he see Scott raise the pistol and point it towards the white truck; *Id.* at p. 58, line 12 (I have never once said I saw Scott Spivey point a pistol at the white truck . . . I never saw him point a gun at that white truck ever); *Id.* at p. 75, line 21 (Question: The first person you see shooting as you said in the 911 call, was the guy driving the white truck appeared to unload his magazine through the windshield? Answer: **Yes.** *Id.* at p. 76, line 2).

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Spivey did not shoot first but also that Boyd emptied an entire clip prior to Williams firing his weapon. *See* Deposition of Dr. Maher with Written Report of Maher attached as Exhibit 8.

Fifth, the fact that Spivey was holding, possessing or had access to a gun in and of itself alone cannot sustain their burden of showing imminent danger.²⁶ All one needs to do to realize the absurdity of such a position is to imagine a world in which anyone carrying a weapon is subject to being gunned down because the weapon itself creates an imminent danger. Such a position would create a dangerous quandary for an open carry state like South Carolina.

3. Third Element of Self-Defense: Reasonable Belief .

- a. If the fear element is based on Defendants' actual belief they were in imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief; or, if the defendants actually were 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 death.**
- b. Like Element 2, this element is required for immunity under both the common law of self-defense and § 16-11-440(C) and is presumed ONLY for immunity under § 16-11-440(A) which does not apply to Defendants for the reasons set forth below.**

Reasonable belief requires the following showing:

[T]he 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. The test is not whether an unusually timid or an unusually brave man would have been so warranted—were the circumstances such as would warrant a man of ordinary firmness, prudence, and courage in coming to the same conclusion at the time the fatal blow was struck, in concluding at the time the fatal blow was struck that it was necessary, or appeared to be necessary, to strike the fatal blow in order to prevent serious injury or death to the one assailed.

²⁶ Again, these Defendants cannot claim a right to act on appearances when they claim without any doubt Spivey fired first and created an actual imminent threat. *See supra*, Section I.(A.)(2.); *infra* Section I.(A.)(3.).

State v. Hardin, 114 S.C. 280, 103 S.E. 557 (1920)(emphasis added). For illustration, the *Hardin* court further charged:

[I]f one should point an unloaded gun at you at a distance of 10 or 12 steps, though the gun might be unloaded and though there might not be any actual danger, you would have a right to act on appearances. A man must believe **at the time it was necessary, or it must have appeared to be necessary**, and the circumstances must be such as to warrant that conclusion in the mind of a person of ordinary reason, prudence, and courage [to strike the deadly blow to save himself].

Id. This illustration from 1920 is especially helpful in the set of facts currently before the court. In the illustration, the defendant was only 10 to 12 steps away from the pointed gun and the defendant had no idea if the gun was loaded or unloaded. Here, Boyd testified that Spivey was approximately 30 yards, i.e. 90 feet, away from Defendants when he exited his vehicle; Boyd testified that Spivey not only aimed his gun at them after exiting his truck but actually shot first. However, even without consideration of [REDACTED]'s damning testimony, Boyd's own testimony combined with the forensic evidence makes this claim incredible, if not impossible. While traveling on Highway 9, Boyd told the 911 dispatcher that Spivey racked his gun. If the gun was loaded, racking it would cause a shell to be released into the chamber. Then, later in the 911 call after the vehicles stopped on Camp Swamp Road and after the shooting occurred, Boyd told the 911 dispatcher that Spivey racked his gun again while standing next to his truck. This is a critical detail that shows Boyd is lying. If Spivey's gun was loaded and he racked the gun while driving on Highway 9, that necessarily means a bullet entered the chamber. There is no evidence that he fired a shot while on Highway 9. Accordingly, if he racked his gun again while standing next to his vehicle, an unspent casing would have been ejected onto the ground. However, no unspent casings were found which means the gun was not loaded in the first place or Boyd lied. As an avid gun enthusiast, Boyd knew there was no reason for Spivey to rack his gun more than

one time to load a bullet into the chamber and that to rack it without ejecting a casing would mean it was unloaded. Either way, this shows with certainty that Boyd is lying and knew there was no danger. If he knew there was no danger, he certainly cannot show that a reasonable person would have opened fire on Spivey. More importantly, [REDACTED] testified it did not happen.²⁷

This lie, aside from destroying Defendants' credibility, illustrates why the Defendants are not entitled to an appearance charge once they have lied about being in **actual** danger. See *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000). In *Starnes*, the defendant was convicted of two murders. The defendant/appellant testified that one of the victims (Welborn) actually pointed a gun at him giving rise to actual danger. Conversely, the defendant/appellant testified that he did not see a gun in the other victim's hand. In considering whether the right to act on appearances applied to those facts, the court differentiated between the two victims and explained:

Appellant was not entitled to an appearance charge in regard to the Welborn shooting. According to appellant, he was in actual danger when Welborn pointed a gun at him, cursed him, and questioned him as to where he was going. Appellant's claim to self-defense did not arise from a perceived, but rather an [alleged] actual threat. Since there was no evidence appellant was acting on appearances, he was not entitled to an appearance charge."

Id. Here, the Defendants are adamant that Spivey actually shot first and that they were not acting on appearances. Accordingly, they do not get to rely on appearances after their lies are exposed.

²⁷ See Deposition of [REDACTED], p. 15, line 21 (And I looked in the side to see what he's doing. His truck door is open . . . he was just next to his truck and then . . . like I saw the motion of his arm, just like, you know, like it says here, kind of come up to an upward position, like **just moved it, not draw, not come up**, like his arm **barely** moved and everything went crazy); p. 43, line 2 ("I didn't see any motion of him raising that up in an aggressive manner or pointing it or anything like that at all. No. What I saw was when his arm slightly moved in my side mirror, all hell broke loose. I don't even think he would have had the time to raise his gun and chamber it and fire in that time. I don't.); p. 50, line 21 (gun was in his hand down by his side); p. 57, line 10 (when I noticed that Weldon had a gun pointed is when I looked in the side mirror and that's when I noticed him start to raise his arm and all hell broke loose); p. 14, line 3 (when Scott got out, slide was back).

Further compounding the difference between our facts and the illustration given by the *Hardin* court about someone pointing a gun at 10 to 12 feet away from the defendant is the fact that here, [REDACTED], the disinterested eyewitness, was mere feet away from Spivey and testified that Spivey did not aim his gun at Boyd's truck and did not threaten the Defendants in any way while Spivey was standing outside his truck but rather held the gun pointed down. Further, [REDACTED] could clearly see that the slide was open, indicating that the weapon was **not** loaded and presented no imminent or immediate danger—this was in plain view of the Defendants. Defendants, being gun enthusiasts, knew the fact that the slide was open not only meant that the gun was not an imminent threat but also was intended to communicate it was not an imminent threat.²⁸

Here, Defendants have dug in with their assertion that Spivey shot at them first. They are unequivocal in their testimony on that point. Even though the disinterested eyewitness testimony of [REDACTED] along with the forensic evidence and expert testimony prove these claims to be false, the Defendants, by lying, have lost any right to rely on appearances.²⁹ Further, and perhaps most importantly, the Defendants' claims show a lie that destroys their credibility. Boyd's deposition testimony when asked about shooting Spivey in the back illustrates his motive to lie:

My concern was that it could be misconstrued because the key factor was he shot first while he was outside of the vehicle. And I didn't want it to be seen as we just when he got back in the truck he got shot there. I didn't know where he got hit, so yeah, I was concerned about where he got hit. I was hoping that there would be something that showed that he was hit while he was outside shooting at us. I wanted it to be clear that he shot first from outside the truck, because that's what happened

²⁸ To brandish means to point in a threatening manner. You cannot threaten with an obviously unloaded gun.

²⁹ In other words, they cannot now pivot and claim they were mistaken in their belief.

Deposition of Weldon Boyd, p. 59 ll. 10-20. Boyd was immediately concerned about proving his self-defense claim, and he knew the “key factor” was to claim that Spivey shot first while outside the vehicle. This testimony, in light of the fact that his claim is obviously false based on all the other evidence, shows that Boyd immediately started to orchestrate his self-defense claim.

4. Fourth Element of Self-Defense: Probable Means of Avoiding

- a. Defendants must show they had no other probable means of avoiding the danger of losing their own lives or sustaining serious bodily injury than to act as they did in this particular instance.
- b. This element applies to claims of immunity under common law self-defense only when the Castle Doctrine does not apply; here, the common law Castle Doctrine does not apply because Defendants were not on their own premises. Therefore, if claiming immunity under common law self-defense, these Defendants must prove they had no probable means of avoiding the difficulty.
- c. The duty to retreat is excused when a defendant qualifies for immunity under § 16-11-440(A)³⁰ or § 16-11-440(C). However, the statute is not a license for vigilantism and does not give one the right to chase, as one who chases is necessarily not without fault.

The duty to retreat when there are probable means to avoid the difficulty is based on the law’s longstanding recognition of the value of human life. The principles described in *Hardin* about the value of human life still hold true today:

The law does not permit one to take human life lightly. If by retreating he can avoid taking human life without increasing his own danger of receiving serious bodily harm or losing his own life, he **must** do it . . . but he must avoid taking human life, if he can do it by stepping aside or retreating, provided he does not increase his own danger thereby. The law does not require him to put himself in any worse condition or position. **A man must have no other probable means of escape except to take the life of his assailant.**

³⁰ As set forth above, subsection (A) clearly does not apply because Defendants were not attacked in their vehicle.

State v. Hardin, 114 S.C. 280, 103 S.E. 557 (1920); *see also State v. Randall*, 118 S.C. 158, 110 S.E. 123, 124 (1921) (the court emphasized this principle of the value of human life that underlies the significance of the duty of retreat by charging the jury: “If there is any reasonably safe way **to prevent the taking of human life**, then the obligation is due on the defendant to avail himself of that means”)(emphasis added).

Defendants cannot prove this element. Not chasing Spivey was an obvious and probable means of avoiding any difficulty with Spivey. They had hundreds of opportunities to avoid this encounter by merely stopping their pursuit on Highway 9, but they chose to relentlessly and aggressively chase Spivey down Highway 9 and then continued to chase him by turning onto Camp Swamp Road behind him. The Defendants’ actions in relentlessly chasing Spivey, even after he obviously attempted to retreat and get away from them, illustrate the exact opposite of retreating or stepping aside when that choice would have, without a doubt, safely eliminated any difficulty. These Defendants chose rogue vigilantism over placing any value on the life of Scott Spivey. They epitomize what it means to take human life lightly.

B. Immunity under Section 16-11-440(A)

Because Defendants cannot prove each element of common law self-defense, the Court must next determine if § 16-11-440(A) applies. Section 16-11-440(A) provides:

A person is presumed to have a reasonable fear of imminent peril of death of 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.

S.C. Code Ann. § 16-11-440(A)(2015). As set forth above, when an occupied vehicle is involved, case law establishes that immunity under subsection (A) requires: (1) that the victim was in the process of **entering** or actually **entered** the occupied vehicle; (2) that the defendant was without fault (first element of common law self-defense)³¹; and (3) that the defendant was not engaged in unlawful activity or using the occupied vehicle to further an unlawful activity. Here, the Defendants fail on each element of subsection (A) immunity.

1. Entering an occupied vehicle.

First, subsection (A) does not apply because Spivey **was not entering and had not entered** Boyd's vehicle. In *State v. Scott*, 424 S.C. 463, 819 S.E.2d 116 (2018), the court addressed a set of facts that illustrates this point. Scott and his fiancé were at home asleep during the nighttime while their teenaged daughters were at a teen night club. Following an altercation, the teenaged daughters left the night club to drive home, and the assailants followed them in a different vehicle with a gun. The teenaged daughters called home to let Scott and his fiancé know they were being chased and were headed home. While Scott and his fiancé helped the girls inside the house, they heard a gunshot. Scott retrieved a gun and ran to the front door of the house. As the assailants' vehicle slowly drove by his house and opened fire on the house, Scott returned fire and a person in a different vehicle was fatally wounded. Scott was charged with murder and claimed immunity under the Act. The circuit court granted Scott immunity, and the State appealed. In affirming, the

³¹ Technically, the court should never reach subsection (A) because these Defendants cannot prove by a preponderance of the evidence that they were without fault, a necessary element in each of three avenues to immunity.

court found that Scott met the four elements of self-defense: he was not at fault; he believed he was in imminent danger of losing his life; his fear was reasonable; and he had no duty to retreat because he was attacked on “his own premises” and the common law Castle Doctrine therefore applied. The court also explained why § 16-11-440(A) did not apply: “However, there is **no** evidence whatsoever in this record that Niles or anyone else was ‘in the process of unlawfully and forcefully **entering** a dwelling or residence,’ a prerequisite that clearly must be met before the presumption [of reasonable fear under subsection (A)] applies. Therefore, the circuit court erred in finding that subsection 16-11-440(A) applied.” *Id.* Because Scott was standing in the front door of his residence or dwelling and obviously not in a vehicle, the court focused on the applicable language of dwelling or residence. However, the court’s analysis applies with equal force to an occupied vehicle. The court recognized that the key language under subsection (A) is “in the process of **entering** or actually **entering**.” The fact that the assailants were actively shooting at Scott’s residence was **not** enough to satisfy the requirement of subsection (A) which requires an attempt to **enter** or actually **entering**. Here, under the authority of *Scott*, even if Spivey fired his weapon at the Defendants’ occupied vehicle, Defendants cannot claim immunity under subsection (A) because there is no evidence that Spivey was in the process of **entering** an occupied vehicle. *See also State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019); *State v. Dennis*, 2026 WL 218221 (January 28, 2026) (in a murder case where the defendant was sitting in his vehicle when he stabbed the victim who was standing just outside the vehicle, the court upheld the denial of immunity under subsection (A) relying on the fact that there was no evidence the victim ever reached inside the vehicle before the stabbing; accordingly, there was no evidence that victim had attempted to or did in fact **enter** the vehicle as required for immunity under subsection (A)).

2. Without fault in bringing on the difficulty.

Secondly, even if Defendants could show Spivey was entering Boyd's vehicle, case law establishes that immunity under subsection (A) also requires that the Defendants prove the first element of common law self-defense of being **without fault** in bringing on the difficulty, an element that the Defendants cannot prove. As discussed above in Section I.(A.)(1.), a defendant who acts with aggression cannot by definition be without fault. Further, "[a]ny act by the accused that is '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.'" Here, the only reasonable conclusion is that Defendant acted with aggression in their relentless chase of Spivey at speeds that well-exceeded the posted speed limit while "on his ass" and while Spivey was running from them. Defendants knew Spivey had a gun; they also knew, at least according to their claims, that he "brake-checked" them causing them to run off the road. Even so, they chose to chase him down. Any reasonable minded person would have known that such a reaction by Defendants was reasonably calculated to bring on an encounter with Spivey. *See supra* Section I.(A.)(1.) and footnote 9 for a full discussion of the without fault element, all of which is incorporated herein by reference.

3. Unlawful activity.

Thirdly, subsection (B) specifically conditions the presumption of reasonable fear on a finding that the defendants were not engaged in **unlawful activity** or using the occupied vehicle **to further unlawful activity**. S.C. Code Ann. § 16-11-440(B). For the same reasons detailed above as to why Defendants cannot prove they were without fault, these Defendants cannot prove they were not engaged in unlawful activity or using the vehicle to further unlawful activity. *See supra* Section I.(A.)(1.). The Legislature's inclusion in subsection (B) of the additional

requirement that defendants not be engaged in unlawful activity and not be using the occupied vehicle to further unlawful activity makes it clear that the Act is not a license for vigilantism and certainly does not give one the right to chase another driver.³² In fact, using the vehicle to engage in a high-speed vehicular chase while “on [Spivey’s] ass” seems to be the quintessential example of unlawful conduct that disqualifies a defendant not only from immunity under (A), but under all theories of self-defense. *See supra* Section I.(A).(1.) and footnote 9 for a full discussion of the unlawful activity element, all of which is incorporated herein by reference.

C. Immunity under Section 16-11-440(C)

Under the facts of this case, the Defendants are defaulted to subsection (C) because they are not excused from the duty to retreat under common law self-defense subsection (A) does not apply.

Section 16-11-440(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.

³² The no unlawful activity requirement also highlights another important point. Although there is no duty to retreat under subsection (A) or (C), that is true **only** if there is no fault and no unlawful activity that brings about the difficulty. By including the no unlawful activity requirement in both subsections, the Legislature has prevented a defendant from being excused from the duty to retreat when unlawful activity brings on the difficulty. In other words, the Legislature has imposed on a person claiming immunity under subsection (A) a duty not to engage in unlawful activity. Choosing not to engage in unlawful activity is necessarily choosing a probable means of avoiding the difficulty. Therefore, if the probable means of avoiding the difficulty is to refrain from unlawful activity, i.e. engaging in a high-speed chase in pursuit of another vehicle, the defendant must choose not to engage in the unlawful activity in order to be excused from the duty to retreat under both subsection (A) and (C). In that way, probable means of avoiding the difficulty remains relevant under both subsection (A) and (C).

As the court clarified in *State v. Glenn*, a defendant claiming immunity under subsection (C) must prove the **first three elements of self-defense**,³³ i.e. (1) without fault, (2) belief of/actual imminent danger, and (3) reasonable fear, plus the elements specifically required by subsection (C), i.e. (1) the defendant was **not engaged in unlawful activity** and (2) the defendant was **attacked in a place where he had a right to be**. 429 S.C. 108, 838 S.E.2d 491 (2019). Further, the elements of **unlawful activity** and **being in a place where the defendant has a right to be** require a proximate cause analysis, i.e., the defendant must prove any unlawful activity and the location where they claim they had a right to be were not proximately related to the killing. *Id.*

As with subsection (A), the court should never reach subsection (C) because these Defendants cannot prove by a preponderance of the evidence the first three elements of self-defense: without fault, fear of or actual imminent danger, or reasonableness of their fear or actions. Likewise, the same conduct that shows Defendants were not without fault in bringing on the difficulty shows that Defendants were engaged in unlawful activity, i.e. chasing, speeding, reckless driving, breach of the peace, assault with a vehicle as a deadly weapon. *See supra* Section I.(A).(1.) including footnote 9 for a detailed analysis of the unlawful activity element, all of which is incorporated herein by reference. Defendants were also not attacked and were not in a place where they had the right to be because of how they got there and why they were there. It is not enough to ask: Was the defendant on a public road? Rather, the question is why were they there in this confrontation. In this case, they were on Camp Swamp Road because they chased Spivey to that location. The court cannot put on chronological blinders as to how or why they were stopped on this public roadway at this particular point in time.

³³ As with subsection (A), the court should never reach subsection (C) because these Defendants cannot prove by a preponderance of the evidence the first three elements of self-defense: without fault, fear of or actual imminent danger, or reasonableness of their fear or actions.

This point is illustrated by our case law. As directed by *Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019), and subsequent Supreme Court cases, the trial court must apply a proximate cause analysis to both the unlawful activity and being in a place where the defendant has a right to be. The *Glenn* analysis makes it clear that these two elements are inextricably linked when the proximate cause analysis is conducted. While in *State v. Jones*, the court recognized that “the Legislature intended the protection of subsection (C) to apply to incidents . . . without a geographical restriction,” 416 S.C. 283, 786 S.E.2d 132 (2016), the court in *Glenn* appreciated the significance of applying a proximate cause analysis to the “right to be” language:

“[A]nalyzing a defendant’s “right to be” in a place where he is attacked under section 16-11-440(C) **without considering proximate cause or a causal connection to the incident** leaves an innocent person’s ability to seek the Act’s protection up to happenstance, which we also do not believe was the intent of the Legislature. Such analysis in this context is supported by our longstanding self-defense precedent predating the Act. *See, State v. Leaks*, 114 S.C. 257, 103 S.E. 549, 551 (1920)(holding that a defendant’s presence at and participation in an unlawful gambling game “did not destroy the right to self-defense” because “[t]he causal connection between the unlawful act of gambling and the encounter . . . is too remote.”); *State v. Gunter*, 126 S.C. 375, 376, 119 S.E. 844, 844 (1923)(refusing to hold “that a man, under the circumstances stated, is deprived of the right to self-defense, unless . . . his presence there was reasonably calculated to provoke a difficulty with the deceased . . .”). Indeed, to bar a victim of crime from claiming immunity based on a hyper-technical reading of the statute would lead to absurd results when his presence in the place he was attacked had no relation to the incident itself. *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364, 366 (2005)(“However plain the ordinary meaning of words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.”). This absurdity is readily illustrated through this example: A person peaceably jogging through a public municipal park at 8:59 p.m. would be entitled to defend herself from an attacker under the protection of the Act, but should the clock turn to 9:00 p.m., at which time the park “closes” under the municipal code, when she is attacked, then she is categorically barred from immunity under the

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Act due to her *technically* not having the “right to be” there. Such an absurd result would undoubtedly thwart the Legislature’s intended objective to protect victims of crime.

429 S.C. 108, 838 S.E.2d 491 (2019). Although the court in *Glenn* was concerned with ensuring an innocent person would not be excluded from immunity under the Act, the same logic applies to ensuring that a **guilty** person is not granted immunity under the Act when he is in a public place without regard to whether he has a “right to be” in the particular geographical location where the incident occurs but engaged in unlawful activity in arriving to the location and was therefore with fault in bringing on the difficulty. *See also State v. McCarty* 437 S.C. 355, 878 S.E.2d 902 (2022). Both *Glenn* and *McCarty* make it clear that when the unlawful or aggressive activity is what lands the defendant in a location where he might otherwise have a right to be but for the unlawful or aggressive activity, the defendant can no longer show he was in a place where he “had a right to be.”

Here, while a public roadway might ordinarily be a place where a driver has a right to be under normal circumstances, it was Defendants’ unlawful and aggressive activities of traveling at excessive speeds and engaging in a high-speed chase that led to their confrontation with Spivey. And we know that to be true because Spivey exited his vehicle and demanded they stop following him. It was the unlawful and aggressive activity of chasing Spivey at high speeds--breaching the peace and dignity of the public—all while at close distances and “on his ass” that landed Boyd and Williams on Camp Swamp Road in a confrontation with Spivey. As such, their location, that was brought about only because of their unlawful and aggressive activity, was not a place where they had a right to be. That chasing Spivey would escalate the situation and bring on difficulty with Spivey was foreseeable to any rational-minded person. As such, Defendants are deprived of the right to self-defense because their “presence was reasonably calculated to provoke a difficulty with

the deceased.” *State v. Gunter*, 126 S.C. 375, 119 S.E. 844 (1923) (citing *State v. Emerson*, 78 S.C. 83, 58 S.E. 974, 978 (1907) (“The law of self-defense, as repeatedly declared in this state, requires that the slayer shall be “without fault” in bringing on the difficulty. **One is not “without fault” who does that which a reasonable man would expect to bring on a physical encounter and which did actually contribute to bringing it on.**”) (citing *State v. Rowell*, 75 S. C. 494, 56 S. E. 23 (1906) (emphasis added). The Defendants’ location and their unlawful and aggressive activity were definitively linked to the incident itself and were the proximate cause of the difficulty of their making.

Of note is that historically, self-defense is not a geographical issue. Rather, it is about permission or presence and really a question of why the person claiming self-defense was there. Was the person invited? Did the person have a possessory ownership interest? Was the person executing a lawful warrant? Was the person in a public place unrelated to the “difficulty”? Or, as here, did the person chase another driver until the other driver finally stopped? Defendants clearly cannot prove by a preponderance of the evidence an entitlement to immunity under § 16-11-440(C).

CONCLUSION

For each of the reasons set forth herein, the Defendants are not entitled to a finding of immunity under the Act on any ground because they cannot prove each element by a preponderance of the evidence. Accordingly, the Court should deny Defendants’ Motion for Immunity.

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-and-

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February 16, 2026

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