

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.) **PLAINTIFF'S BENCH BRIEF**
) **IN OPPOSITION TO**
CHARLES WELDON BOYD and) **DEFENDANTS' MOTION TO DISMISS**
KENNETH WILLIAMS,)
)
Defendants.)

INTRODUCTION

This bench brief is submitted to assist the Court in its analysis of Defendants' Motion for Immunity under the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.* ("the Act"). Plaintiff respectfully submits that Defendants cannot prove by a preponderance of the evidence any avenue to immunity—whether under common law self-defense, § 16-11-440(A), or § 16-11-440(C)—because they were at fault in bringing on the difficulty that resulted in the killing of Scott Spivey.

SUMMARY OF KEY FACTS

On September 9, 2023, Spivey, a 33-year-old driving his black Chevy Silverado on Highway 9, encountered Defendants Boyd (driver) and Williams (passenger) in Boyd's white Dodge Ram towing a trailer. After what Defendants describe as a road rage incident initiated by Spivey—involving alleged brandishing of a handgun and brake-checking—Boyd began an aggressive, high-speed vehicular chase of Spivey lasting approximately nine miles, at speeds at times exceeding 110 mph.

Boyd called 911 during the chase and stated: “He’s trying to run from me now” and “I’m just going to stay with him.” When Spivey turned off Highway 9 onto Camp Swamp Road—toward his home and away from Boyd’s stated destination of Loris—Boyd narrated his intention to continue pursuit: “We’re going to keep trying to follow him.” Boyd then made the conscious decision to follow Spivey onto Camp Swamp Road.

Spivey stopped his truck on Camp Swamp Road. Boyd stopped approximately 75 feet behind. According to disinterested eyewitness [REDACTED]—who was driving in the opposite direction with his windows down and was mere feet from the encounter—Spivey exited his truck holding his handgun **down by his side with the slide locked back** (i.e., not in a shooting mode), stood stationary by his driver’s door, and yelled “stop following me, boy.” [REDACTED] saw Boyd already had his gun drawn and aimed at Spivey over the dashboard. [REDACTED] testified that Spivey **never pointed his gun at Boyd’s truck, never fired first, and never advanced toward the rear of his vehicle.** Boyd opened fire through his windshield. Spivey was fatally wounded, including by a shot to his back. Neither Boyd nor Williams was struck by any bullet. Williams’ immediate reaction, captured on Boyd’s secret recording, was: “**God damn it, Weldon, why couldn’t you fucking leave him alone?**”

In recorded phone calls in the days following, Boyd told his mother: “*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.*” Boyd also instructed Williams to delete their Facebook Messenger communications and coordinated a cover story about how they communicated.

Blaiz Ward, who also called 911 and watched the entire encounter, testified Boyd was on Spivey like “white on rice” most of the time. Ward further testified that, in light of hearing Boyd tell his mama he chased Spivey, that is what she saw that day.

APPLICABLE LEGAL FRAMEWORK

The Act provides three potential avenues to immunity: (1) common law self-defense; (2) § 16-11-440(A) (occupied vehicle/dwelling); and (3) § 16-11-440(C) (attacked in another place you have a right to be). *State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019). The defendant bears the burden of proving entitlement to immunity by a **preponderance of the evidence**. *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022). The court must weigh the evidence and make its own credibility and factual findings. *Id.*

Common law self-defense requires: (1) without fault in bringing on the difficulty; (2) actual belief of imminent danger or actual imminent danger; (3) reasonable belief; and (4) no other probable means of avoiding the danger. *Glenn*, 429 S.C. at 108. The “without fault” element is required under **all three avenues** of immunity. Therefore, a failure on this element is dispositive of the entire motion.

ARGUMENT

I. DEFENDANTS CANNOT PROVE THEY WERE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY.

Self-defense requires the **absence of aggression**. *State v. Grantham*, 224 S.C. 41, 77 S.E.2d 291 (1953); *State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019). “Any 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.” *State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319 (1999); *State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007).

Even accepting Defendants’ version that Spivey was the initial aggressor, Boyd’s response was to engage in a relentless, nine-mile, high-speed vehicular chase at speeds exceeding 100 mph, tailgating Spivey while knowing he was armed. Boyd’s conduct violated multiple statutes (excessive speed, reckless driving, breach of peace, assault with a dangerous weapon) and was

“reasonably calculated to produce the occasion” of the encounter on Camp Swamp Road. *See Slater* (approaching an ongoing altercation while armed constitutes fault); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973) (consciously placing oneself in position where an encounter could be expected constitutes fault).

Critically, it was **Spivey** who attempted to withdraw and disengage by turning off Highway 9 onto Camp Swamp Road toward his home. Boyd made the conscious decision to chase. It does not matter whether Spivey was also at fault. “The question ... is not who else might have been at fault, but whether [the defendant] was *without* fault.” *State v. Williams*, 427 S.C. 246, 830 S.E.2d 904 (2019) (emphasis in original).

II. DEFENDANTS CANNOT PROVE IMMINENT DANGER OR REASONABLE BELIEF.

Defendants maintain that Spivey fired first. This claim is contradicted by: (a) the disinterested eyewitness [REDACTED], who testified Spivey never pointed his gun at Boyd’s truck (“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”); (b) the forensic evidence and expert testimony of Dr. Maher; (c) the fact that Spivey’s gun had its slide locked back (non-shooting mode); (d) the absence of shell casings outside Spivey’s truck; and (e) the undisputed 75-foot distance between vehicles, which Boyd himself acknowledged was “a hard shot” with a pistol.

Because Defendants have unequivocally asserted they were in **actual** danger (not mistaken appearances), they are not entitled to an “appearances” defense once their account is disproven. *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000) (“Since there was no evidence appellant was acting on appearances, he was not entitled to an appearance charge”).

Boyd’s 911 claim that Spivey “racked his gun” on Highway 9 and then again on Camp Swamp Road is further evidence of fabrication: if the gun were loaded and racked on Highway 9,

racking again on Camp Swamp would eject an unspent casing. No such casing was found, confirming the gun was unloaded or the claim was false. See [REDACTED] testimony (slide was back; gun at Spivey's side the entire time).

III. DEFENDANTS HAD OBVIOUS MEANS OF AVOIDING THE DIFFICULTY.

"The law does not permit one to take human life lightly." *State v. Hardin*, 114 S.C. 280, 103 S.E. 557 (1920). Defendants had hundreds of opportunities to stop pursuit on Highway 9. Not chasing Spivey was the most obvious and probable means of avoiding the difficulty. Instead, they relentlessly pursued him for nine miles and followed him onto Camp Swamp Road—a road that diverted them from their stated destination.

IV. SECTION 16-11-440(A) DOES NOT APPLY.

Subsection (A) requires that the person against whom deadly force was used was in the process of "entering" or had "entered" the defendant's dwelling, residence, or occupied vehicle. S.C. Code Ann. § 16-11-440(A). Spivey never attempted to enter Boyd's truck. Even shooting at an occupied vehicle is insufficient. *State v. Scott*, 424 S.C. 463, 819 S.E.2d 116 (2018) (actively shooting at a residence not enough to satisfy "entering" requirement); *State v. Dennis*, 2026 WL 218221 (Jan. 28, 2026) (no evidence victim reached inside vehicle). Additionally, Defendants were engaged in unlawful activity and using their vehicle to further that activity, which independently disqualifies them under § 16-11-440(B)(3).

V. SECTION 16-11-440(C) DOES NOT APPLY.

Subsection (C) requires the defendant prove (in addition to the first three elements of self-defense): (1) no unlawful activity; and (2) the defendant was "attacked in another place where he has a right to be." *Glenn*, 429 S.C. 108. Both elements require a **proximate cause analysis**. *Id.* Where unlawful or aggressive conduct is what lands the defendant in the location of the confrontation, he cannot show he was "in a place where he had a right to be." *Id.*; *State v. McCarty*,

437 S.C. 355 (2022). Here, Defendants arrived at the scene on Camp Swamp Road solely because they chased Spivey there. Their unlawful conduct (speeding, reckless driving, breach of peace, assault with a vehicle) was the proximate cause of the confrontation. The question is not merely “were Defendants on a public road” but “why were they there.”

VI. DEFENDANTS’ DELIBERATE DESTRUCTION OF EVIDENCE WARRANTS A NEGATIVE INFERENCE AND INDEPENDENTLY SUPPORTS DENIAL OF IMMUNITY.

The record contains undisputed evidence that Boyd directed Williams to destroy their Facebook Messenger communications after the shooting and that Williams complied. This deliberate spoliation of evidence warrants a negative inference against Defendants and independently supports denial of their motion for immunity.

A. The Recorded Evidence of Evidence Destruction.

Audio Recording 73 (pp. 168–170 of the Certified Transcript of Audio Recordings) captures a phone call in which Boyd instructs Williams: “Hey, a couple of things. Go back on Facebook and just delete our chat again.” Williams responds, “Okay.” Boyd then directs Williams on a cover story for how they communicated: “If they ask, me and you just talked through the JR, me, you in chat, or we text or call each other.” Boyd explains the urgency: “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 instructs: “So just delete that one thing, and then we’ll let you know what to do.” Williams: “Alright.” *See* Transcript of Audio Recordings, Audio 73, pp. 168–170.

Williams confirmed this destruction under oath. When asked, “Did you ever have a conversation with Weldon about him directing you to delete or destroy anything?” Williams answered: “I remember deleting Facebook.” When asked what Boyd told him to delete, Williams responded: “Just delete the messenger.” *See* Deposition of Bradley Williams, p. 12, lines 6–10; *see also id.* at p. 13, line 10.

Boyd, meanwhile, testified at deposition that he “does not recall” telling Williams to delete messages (p. 95, line 11); that “[t]here wasn’t anything to delete” (p. 95, line 24); and yet conceded he “doesn’t know if he did or didn’t tell Bradley to delete stuff” (p. 96, line 21). Most tellingly, Boyd agreed that “the only reason someone would delete was if they had something to hide.” *See* Deposition of Weldon Boyd, p. 96, line 1.

B. A Negative Inference Is Warranted and Appropriate.

South Carolina law has long recognized that the intentional destruction of evidence gives rise to an inference that the destroyed evidence was unfavorable to the party who destroyed it. “It is an established rule that whenever relevant evidence which would tend to bring out the truth is willfully suppressed, a presumption arises that it would be unfavorable to the party suppressing it.” *Kershaw County Bd. of Educ. v. United States Fid. & Guar. Co.*, 278 S.C. 106, 292 S.E.2d 604 (1982). This principle applies with particular force where, as here, the destruction was deliberate and coordinated between the very parties seeking immunity. *See also Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 735 S.E.2d 491 (2012) (discussing the availability of adverse inferences for spoliation).

This is not a case of negligent loss or innocent destruction. The audio recording captures Boyd **orchestrating** the deletion: instructing Williams to “go back on Facebook and just delete our chat *again*,” coaching a cover story for investigators, explaining that there is a “war over the

phones” with authorities, and assuring Williams that “we’ll let you know what to do.” The word “again” indicates this was not the first deletion. The fabrication of 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”—elevates this beyond mere evidence destruction into active obstruction.

B. The Negative Inference Independently Supports Denial of Immunity.

The Court should draw the inference that the destroyed Facebook Messenger communications contained information unfavorable to Defendants’ claim of self-defense. This inference operates at multiple levels in the immunity analysis:

First, the inference bears directly on **credibility**. Defendants bear the burden of proving each element of immunity by a preponderance of the evidence, and the court must make credibility determinations. *McCarty*, 437 S.C. at 372. An individual who deliberately destroys evidence and fabricates a cover story about his communications with his co-defendant has fatally compromised his credibility as a witness. Boyd’s own concession—that “the only reason someone would delete was if they had something to hide”—applies with full force to his own conduct.

Second, the inference weighs against Defendants on the “**without fault**” element. The Court should infer that the deleted communications contained evidence demonstrating Defendants’ fault in bringing on the difficulty—whether through planning, expressions of intent, or admissions of aggressive conduct. This inference, combined with the substantial independent evidence of Defendants’ fault, makes it impossible for Defendants to carry their burden.

Third, the inference is evidence of **consciousness of guilt**. The deliberate destruction of evidence in the aftermath of a killing—combined with coordination of a false

narrative, leveraging of law enforcement connections, and Boyd's immediate call to the Horry County Assistant Chief of Police—demonstrates that Defendants knew from the outset that their conduct could not withstand scrutiny. An innocent person acting in lawful self-defense does not direct his co-defendant to destroy evidence and rehearse a cover story. *Cf. State v. Chhith-Berry*, 437 S.C. 527 (Ct.App. 2022) (recorded calls contradicting defendant's prior statements undermined credibility and supported denial of self-defense claim).

Defendants cannot meet their burden of proof by a preponderance of the evidence when they have destroyed relevant evidence, fabricated a cover story, and asked this Court to credit the testimony of witnesses whose credibility has been so thoroughly impeached by their own recorded words and sworn concessions.

VII. DEFENDANTS' CREDIBILITY IS FATALY COMPROMISED.

Credibility means believability. *McCarty*, 437 S.C. at 372. Defendants' accounts are contradicted by: (a) [REDACTED]'s eyewitness testimony; (b) the forensic and audio evidence; (c) Boyd's own recorded admissions of chasing Spivey; (d) Boyd's shifting and inconsistent accounts (claiming he was "relaying information" to 911 while his recorded calls show he "chased him" and was "on his ass"); (e) Williams' immediate statement blaming Boyd; and (f) recorded evidence of coordinated destruction of Facebook Messenger evidence and fabrication of a cover story. *See State v. Chhith-Berry*, 437 S.C. 527 (Ct.App. 2022) (contradictory statements and recorded calls showing different account undermine credibility); *State v. Curry*, 406 S.C. 364 (2013) (immunity denied where testimony varied substantially and physical evidence contradicted defendant's account).

CONCLUSION

Defendants cannot prove by a preponderance of the evidence that they were without fault in bringing on the difficulty—an element required under **all three** avenues to immunity. This deficiency alone is dispositive. They further cannot establish imminent danger, reasonable belief, or the absence of probable means of avoiding the encounter. Their deliberate destruction of Facebook Messenger evidence and fabrication of a cover story warrant a negative inference that the destroyed communications were unfavorable to their defense and demonstrate a consciousness of guilt incompatible with a claim of lawful self-defense. Neither § 16-11-440(A) nor § 16-11-440(C) provides them relief. Their credibility is fatally undermined by the disinterested eyewitness testimony, forensic evidence, their own recorded admissions, and their documented efforts to destroy evidence. The Court should deny Defendants' Motion for Immunity.

GOODING AND GOODING, P.A.

BY: s/ Mark B. Tinsley

Mark B. Tinsley – SC Bar #15597
H. Woodrow Gooding – SC Bar #2180
265 Barnwell Highway
Allendale, SC 29810
(803) 584-7676

-and-

Natasha M. Hanna – SC Bar #70198
Law Ofc. of Natasha M. Hanna, P.C.
4712 Jenn Dr., Suite A
Myrtle Beach, SC 29577

Attorneys for Plaintiff

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